

Minutes of the  
Florida Board of Auctioneers  
Telephone Conference Call  
January 25, 2005  
10:00 a.m.

**Board Members Present**

Fred Dietrich, Chair  
Michael Moecker  
Craig Accardo  
JoAnn Hill

**Board Members Absent**

Annette Elms, Resigned

**Staff Present**

Julie Malone Garofalo, Ex. Director  
Jerry Wilson, Deputy Director, DBPR  
Donna Salters, Government Analyst I  
Robyn Barineau, Government Analyst II  
Daniel Biggins, Asst Attorney General  
Michael Martinez, Spec. Counsel to the  
Secretary

Mr. Dietrich called the meeting to order at 10:15 a.m. There was a roll call and a quorum was established.

Ms. Malone Garofalo read the letter of resignation from Annette Elms which was submitted to the Governor's Appointment Office and noted that it had not been officially accepted.

Mr. Moecker offered a motion to accept the minutes from the December 7, 2004 meeting. The motion was seconded by Ms. Hill, and passed unanimously.

Mr. Wilson addressed the Board regarding a memo concerning consignment shops and if what they do constitutes unlicensed activity. Mr. Martinez indicated that the rule definition of auction is not supported by statute and the concern is if the department goes after these establishments a rule challenge may occur, which could weaken the departments ability to enforce other actions currently engaged on. Secondly, the department would have to establish what the consignment shops are doing in the regular course of business. And thirdly the department would have to determine how the media and the Internet would affect the interplay of these issues. Mr. Martinez further explained that if the department aggressively goes against the smaller locations, it runs the risk of exposing the rules to challenge and the rule definition can be stricken even to the point of clarifying that businesses can actually be a consignment shop and sell items via the internet and other media technology.

Mr. Moecker stated that the Rule 61G2-8.010, F.A.C defines auctions and it seems to imply that internet auctions would be regulated and part of the definition. Mr. Martinez indicated that internal attorney's reviewed the definition and there was a split on whether it would be part of the definition. He explained that when they reviewed the dates when the definition came out, the date would pre-date the existence of the internet. It was explained that it would require statutory change to include the internet as part of the

definition. Mr. Moecker asked could the board have a plan that would gather data at the state level that would allow them to review the types of complaints submitted concerning internet auctions. Mr. Wilson stated that he had already requested a list of complaints that included internet auctions. He stated that there are only a few complaints concerning internet auctions. He further explained that the department could issue a cease and desist to those businesses, which are using the word "auction" in their names. He further explained that the department may be able to inform the business that it could be operating outside its realm and should give its business a name not using the word "auction".

Mr. Dietrich explained that in review of the definition of auction in Chapter 468.382, F.S., the fact that a company calls itself and advertises as an auction business, it should be investigated as an auction under unlicensed activity. Mr. Moecker stated that just because a business refers to itself as an auction house, does not necessarily make it one. He further stated that a consumer has other remedies through small claims court if the individual suffers a loss in these areas. Mr. Biggins explained that if these businesses are holding themselves out to the public as an auction business, the board has a role in protecting the public in making sure that they are legitimate auction businesses. Ms. Hill stated that it should be safe to address the issue of a business calling itself an auction in the yellow pages and in the name of the business.

Mr. Moecker stated that the department should be able to report complaints of Internet auctions between meetings and see if it is becoming a problem. Mr. Martinez stated that the board should be careful in that they may not want to open up the practice act to exemptions. He suggested that the board wait before proceeding to go to the legislature with changes when there is no proof of any real problems.

#### **Next Meeting**

The next meeting is scheduled for March 22, 2005 in Orlando, Florida at 10:00 a.m.

It was noted that the new executive director for the Florida Auctioneer Association is Ashley Herman. Her contact numbers are 1-888-541-8084 ext. 22 and the fax number is 913-894-5281.

Mr. Moecker offered the motion that the meeting be adjourned. Mr. Accardo seconded it. The meeting was adjourned at 11:15 a.m.