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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

F I N A L M I N U T E S

MEETING OF:

STATE BOARD OF AUCTIONEER EXAMINERS

TIME: 2:06 p.m.

BOARD ROOM B

One Penn Center

2601 North Third Street

Harrisburg, Pennsylvania 17110

Tuesday, January 9, 2018

State Board of Auctioneer Examiners
January 9, 2018

BOARD MEMBERS:

Sherman E. Hostetter Jr., Chairman
Ian J. Harlow, Commissioner of Professional and
Occupational Affairs
Gerald A. Rader, Professional Member - Absent
Nevin B. Rentzel, Professional Member
Daniel A. Trace, Professional Member
Heather M. Troutman, Consumer Protection Agent

BUREAU PERSONNEL:

Kenneth J. Suter, Esquire, Board Counsel
Thomas A. Blackburn, Esquire, Senior Board Counsel
Ray Michalowski, Esquire, Board Prosecution Liaison
Terrie Kocher, Board Administrator
Kimberly A. Mattis, Director, Bureau of Finance and
Operations,
Julie Snyder, Deputy Director, Bureau of Finance and
Operations
Kimberly Adams, Division Chief, Bureau of Finance and
Operations, Fiscal Management

ALSO PRESENT:

George A. Michak, Esquire, PA Auctioneers Association

1 ***

2 State Board of Auctioneer Examiners

3 January 9, 2018

4 ***

5 The regularly scheduled meeting of the State
6 Board of Auctioneer Examiners was held on Tuesday,
7 January 9, 2018. Sherman E. Hostetter Jr., Chairman,
8 called the meeting to order at 2:06 p.m.

9 ***

10 Introduction of Audience

11 [Chairman Hostetter requested the introduction of the
12 audience in attendance.]

13 ***

14 Approval of Minutes of the November 13, 2017 meeting

15 CHAIRMAN HOSTETTER:

16 Next, we have the approval of the
17 minutes. I need a motion.

18 MR. TRACE:

19 So moved.

20 MR. RENTZEL:

21 Second.

22 CHAIRMAN HOSTETTER:

23 We have a motion and a second. Any
24 other discussion, additions, deletions?

25 [Chairman Hostetter expressed the need to discuss sole

1 proprietorship and auction houses.]

2 Hearing no additional discussion. All
3 those in favor of the motion, signify by
4 saying aye. Those opposed, same sign.

5 [The motion carried unanimously.]

6 ***

7 Appointment

8 Fiscal Year 2017-2018 Budget Review

9 [Kimberly A. Mattis, Director, Finance and Operations,
10 introduced Julie Snyder, Deputy Director, Finance and
11 Operations, and Kimberly Adams, Division Chief, Fiscal
12 Management.

13 Ms. Mattis discussed the Board's licensee
14 population that sets the framework for revenues and
15 expenditures. Ms. Mattis stated the current licensee
16 population was 2,513. She noted a slight decrease
17 from the last three fiscal years due to auction houses
18 no longer being a license class.

19 Ms. Mattis reviewed the different categories of
20 revenue over a biennial period. She stated during the
21 last renewal cycle, just under \$602,000 was brought
22 in, and of that \$602,000, 96 percent came from
23 renewals and applications.

24 Ms. Mattis mentioned that the last renewal fee
25 increase of 30 percent was approved by the Board in

1 2012 and went into effect in 2015.

2 Mr. Harlow noted a licensee list setup charge
3 that is \$71 and 0.005 cents a record.

4 Ms. Mattis discussed Board expenses as a direct
5 expense, timesheet-based expense, and base charges.
6 She reviewed different types of cost that are split
7 between administration and legal. She reviewed
8 expenses for fiscal years 2015-2016 and 2016-2017.
9 She noted the budget for fiscal year 2017-2018 at
10 \$433,000 and expenses as of December 26 of
11 \$177,744.98.

12 Ms. Mattis stated that legal and enforcement
13 investigation costs have been increasing over the
14 years but added that the expenses were warranted. She
15 also projected a negative remaining balance due to
16 higher than normal expenses. Ms. Mattis suggest a
17 plan be developed to correct the negative balance.
18 She suggested an approval for a fee change that would
19 go into effect with the 2021 renewals be made within
20 the next few months.

21 Ms. Mattis explained the Professional Compliance
22 Office receives all of the complaints, reviews all
23 information received, and then provides the same to
24 legal and the Bureau of Enforcement and Investigation
25 (BEI).

1 Mr. Suter noted a number of appeals. Due to the
2 Act 88 amendments, the Board will need to draft new
3 regulations. Mr. Suter stated that costs money, and
4 the costs for legal fees would not decrease and would
5 probably remain consistent. Commissioner Harlow
6 further explained the time and materials expense to
7 the Board. Mr. Suter noted an increase in the number
8 of complaints for all Boards.

9 Ms. Mattis explained an increase in PCO charges
10 would cause a ripple effect with increased BEI
11 expenses, legal expenses, and hearing expenses.

12 Chairman Hostetter requested a listed that the
13 Board used to receive on a regular basis that
14 reflected the investigations by complaint, by
15 category, the number resolved, as well as the active
16 cases.

17 Mr. Michalowski reviewed the enforcement costs
18 for the Board, noting that it is not a huge licensing
19 population, but the Board may have a fair amount of
20 travel time with the complaints. He explained that
21 many of the legal cases for the Board could be handled
22 through the citation system by paralegals, rather than
23 attorneys, at a lower cost.

24 Mr. Michalowski also suggested, as the Board
25 transitions into the new Act and begins drafting new

1 regulations, the Board should consider updating and
2 adding to the more cost-effective citation list.

3 Ms. Mattis mentioned that the last renewal fee
4 increase of 30 percent from \$100 to \$130 was approved
5 by the Board in 2012 and went into effect in 2015 for
6 training assistants and apprentice auctioneers.
7 Auction houses, auctioneers, and auction companies
8 were \$200 and increased to \$260.

9 Ms. Mattis noted an upcoming meeting with the
10 Commissioner's office, legal office, and executive
11 team to discuss future increases. Ms. Mattis will
12 later present options to the Board for their
13 conclusion.

14 Commissioner Harlow suggested the Board consider
15 a fee increase to reverse the negative numbers. He
16 also mentioned finding more efficiency with the
17 Pennsylvania Licensing System (PALS), including
18 transitioning to electronic-based correspondence.

19 Ms. Mattis reviewed Board member expenses for
20 fiscal years 2015-2016 and 2016-2017. She noted the
21 budget for fiscal year 2017-2018 was \$8,000, and
22 expenses as of December 26, 2017, were just under
23 \$3,000.

24 Ms. Mattis suggested implementing a plan before
25 this time next year to structure the renewals for

1 2021.]

2

3 Report of Board Prosecution

4 [Ray Michalowski, Esquire, Board Prosecution Liaison,
5 discussed advertising and trading assistant
6 complaints. Mr. Michalowski stated several licensees
7 dropped that license after their first initial
8 licensure. Mr. Michalowski discussed encouraging
9 these individuals to obtain the Board's authority,
10 which would add revenue to the Board. Licenses could
11 be revoked and/or civil penalties imposed for
12 prosecuted violations.

13 Mr. Michalowski stated with the regulations under
14 the new Act to narrow down and define violations, both
15 for the licensee population of the Board and
16 representatives of the Board, appealable issues could
17 be avoided in the future. He added the older version
18 of the Act was too vague at times and open to
19 interpretation.

20 Mr. Blackburn discussed the Drew J. Bauer matter,
21 noting that the Bureau was successful with the State
22 Court litigation, but there was a matter in Federal
23 Court in the Western District of Pennsylvania.

24 Mr. Michalowski stated Wesley Rish, Esquire,
25 handled the State Court action and was the contact

1 person for the Bauer matter. Mr. Michalowski informed
2 the Board that Mr. Bauer has no license, and if there
3 was any cost to be recovered, it would be the Attorney
4 General's cost.]

5 ***

6 Report of Board Counsel

7 [Kenneth J. Suter, Esquire, Board Counsel, noted
8 matters for discussion in Executive Session.]

9 ***

10 [Pursuant to Section 708(a)(5) of the Sunshine Act,
11 the Board entered into executive session with Kenneth
12 J. Suter, Esquire, and Thomas A. Blackburn, Esquire,
13 at 2:40 p.m. for the purpose of conducting
14 quasi-judicial deliberations on matters that are
15 currently pending before the Board. The Board
16 returned to open session at 2:58 p.m.]

17 ***

18 MOTIONS

19 MR. BLACKBURN:

20 While in Executive Session, the Board
21 conducted quasi-judicial deliberations
22 in the matter of Commonwealth of
23 Pennsylvania Bureau of Professional and
24 Occupational Affairs vs. Erin Groff at
25 File No. 12-64-07005, Docket No. 0682-

1 64-14.

2 Based upon the discussions in
3 Executive Session, I recommend the
4 motion to approve the Adjudication and
5 Order drafted by Counsel to settle the
6 matter currently on appeal in
7 Commonwealth Court.

8 CHAIRMAN HOSTETTER:

9 We need a motion.

10 MR. TRACE:

11 I so move.

12 CHAIRMAN HOSTETTER:

13 Second?

14 MS. TROUTMAN:

15 Second.

16 CHAIRMAN HOSTETTER:

17 Any discussion? Hearing none. All
18 those in favor of the motion, signify by
19 saying aye. Those opposed, same sign.

20 [The motion carried unanimously.]

21 ***

22 [Ian J. Harlow, Commissioner of Professional and
23 Occupational Affairs, exited the meeting at 2:59 p.m.]

24 ***

25 Public Session

1 [George A. Michak, Esquire, PA Auctioneers
2 Association, updated the Board on litigation regarding
3 Ambrose Bauer. Mr. Michak informed that Mr. Bauer was
4 no longer pursuing the Sherman Antitrust Act but has
5 filed a second amended complaint. In the second
6 amended complaint, he is challenging the licensing
7 requirement for trading assistants and trading
8 assistant companies, particularly the language and
9 amendments to the Licensing Act.

10 Mr. Bauer is challenging the Act on the basis of
11 the Equal Protection Clause and the Dormant Commerce
12 Clause under the United States Constitution. Mr.
13 Bauer hired Mike Brandly, an expert witness, who is
14 apparently opining as to the constitutionality of the
15 law.

16 Mr. Bauer claims now he is operating out of West
17 Virginia and soon to be operating out of Ohio as well,
18 even though he is physically present in the
19 Commonwealth of Pennsylvania, which are some of the
20 changes found in the second amended complaint.

21 Mr. Blackburn stated this is now a challenge to
22 the legislation and registration requirement. He
23 noted that there is no licensing or registration
24 required for online auctions in either the state of
25 Ohio or in the state of West Virginia, which is part

1 of his claim. If he can work there without being
2 licensed, he should be able to work here.

3 Mr. Michak explained the registration fees for
4 trading assistants under the original 2008 amendments
5 to Act 88 was fixed at \$100 for trading assistants,
6 and the Board could not adjust that fee.

7 Mr. Michak also noted that under the 2016
8 amendments to Act 88 Section 5.1(c), there still is an
9 initial \$100 registration fee, but the Board can
10 change that fee by regulation. Mr. Michak stated
11 trading assistants are treated the same as auctioneers
12 and auction companies.]

13 ***

14 Report of Board Counsel

15 [Thomas A. Blackburn, Esquire, Senior Board Counsel,
16 discussed education for the Group B Auction School
17 programs.

18 Mr. Blackburn noted his draft for regulations
19 implements the new law and includes Group B schools.
20 Mr. Trace discussed two schools, World Wide and
21 Reppert, for comparison.

22 Chairman Hostetter referred to the Daily School
23 Curriculum for Reppert School of Auctioneering within
24 the Ohio Mandatory Auction School Curriculum.

25 Mr. Blackburn explained the main objective is to

1 set minimum standards for a school whose graduates
2 will be eligible to take the exam with a one-year
3 apprenticeship. The regulation addresses graduates of
4 other schools with at least 20 credit hours who are
5 not required to complete an apprenticeship.

6 Mr. Rentzel agreed to set standards for those who
7 meet those requirements to be considered Group B. Mr.
8 Rentzel explained that under the Pennsylvania Code for
9 the approved Group A, there are five principles to be
10 taught. There are 20 credit hours, and each credit
11 hour is 15 hours of instruction that amounts to 250
12 hours of instruction, but an apprenticeship is not
13 included.

14 With the apprenticeship, individuals must meet
15 the requirement of 30 auctions in a year and have more
16 than 250 hours of actual work. Mr. Rentzel reiterated
17 the Pennsylvania Code. He also suggested adopting a
18 curriculum with a minimum of 80 hours of classroom
19 time and more categories.

20 Mr. Suter suggested an emphasis be placed on the
21 certain aspects of training, as well as an equal
22 amount of time in each category.

23 Mr. Rentzel stated the approved course of study
24 should also reflect the same categories instead of
25 just audience communications.

1 Mr. Suter suggested updating additional
2 provisions and reviewing the regulations for changes
3 more globally than just the Act 88 amendments.

4 Mr. Rentzel suggested clearly defining the
5 differences between Group A and Group B schools. He
6 noted that a Group A school is 20 credits. It is 250
7 hours of classroom time and the instructor will cover
8 the principles that a Group B school must cover. 80
9 hours of classroom time is accepted as a minimum,
10 along with a one-year apprenticeship. The experience
11 of being in the field will compensate for the
12 difference in classroom time. The same test would be
13 offered. Mr. Rentzel commented a simple way to handle
14 the license law as individuals willing to undergo 250
15 hours and sit for a test should go to a Group A
16 school. Individuals wanting to serve a one-year
17 apprenticeship should go to a Group B school.

18 Mr. Blackburn stated one way to get licensed is
19 to complete a 20 credit-hour program and pass the
20 exam. Another way to get licensed is to not go to
21 school but complete a two-year apprenticeship and pass
22 the exam. The amended added a third way, which is a
23 combination to complete a program that is less than 20
24 hours and a one-year apprenticeship. Mr. Blackburn
25 suggested that these Group B schools have at least a

1 10 credit-hour program.

2 Mr. Michak commented on the number of licensing
3 states that rely on a Group B school as their only
4 educational requirement and that creates an entry,
5 either with or without an apprenticeship, depending on
6 the state.

7 Mr. Michak suggested examining other licensing
8 states for descriptions of their educational
9 requirements, which might capture the Group B school.
10 The Group A school could then be defined by expanding
11 the time for class hours. Mr. Trace added the
12 downfall in the states that require less class time is
13 that they require continuing education.

14 Mr. Suter explained the process for implementing
15 the new regulations.

16 Chairman Hostetter further discussed the
17 categories and hours for Group A and Group B schools.
18 Section 1 through 14 would require at least 2 hours
19 per section with a total of 65 hours, and then the
20 remaining sections would require 15 hours with no less
21 than an hour per section for a total of 15 hours or
22 more.

23 Chairman Hostetter stated using that with what
24 Mr. Blackburn had already drafted would provide a good
25 outline of the requirements to be expanded for the

1 Group A school. Chairman Hostetter agreed with the
2 one year and 80 hours.

3 Mr. Blackburn referred to the existing Annex A
4 subsection 1.11(c) regarding Group A schools. There
5 are at least 4 hours of instruction and then adding
6 the full list from Reppert of 14 rather than just the
7 6. For Group B, he suggested not using the terms 10
8 credit hours, instead stating the instruction shall
9 consist of at least 2 hours of instruction in each of
10 the same topics.

11 Chairman Hostetter compared A and B under each
12 section. A were the Ohio requirement, and B were as
13 taught by Reppert.

14 Mr. Blackburn explained the process for creating
15 a regulatory draft.

16 Mr. Blackburn reviewed existing Section 1.24
17 subsections (a) through (c) that outline the process
18 for an apprentice to obtain licensure. Subsection
19 1.24(d) clarifies that applicants completing the Group
20 B school need to demonstrate one year of
21 apprenticeship with 15 auctions, not the full 2 years
22 and 30 auctions.

23 Mr. Blackburn discussed auction companies,
24 referring to Section 1.26 amended to get rid of all
25 the references to auction houses that will no longer

1 be licensed.

2 Mr. Blackburn addressed sole proprietorship
3 auction companies, referring to Section 3(e.1)
4 regarding requirements for a legally recognized entity
5 to obtain an auction company license. Mr. Blackburn
6 noted that Section 2 defines a legally recognized
7 entity as a partnership, association, corporation,
8 limited liability company, or other entity recognized
9 under the laws of the Commonwealth or any other state.

10 Mr. Blackburn informed the Board that based upon
11 his discussions with Counsel for the State Corporation
12 Bureau, a sole proprietorship would not be a legally
13 recognized entity. Mr. Blackburn stated a licensed
14 auctioneer who operates a sole proprietorship would
15 not be required to have an auction company license.
16 But at the same time, a non-auctioneer cannot obtain a
17 license as a sole proprietor auction company.

18 Mr. Blackburn further discussed auctioneer and
19 non-auctioneers and the requirements for an auction
20 company license.

21 Mr. Blackburn suggested including the language
22 that as of September 18, 2016, when Act 88 became
23 effective, that will not require the issuing of new
24 auction company licenses to the sole proprietor but
25 will renew existing licenses.

1 Ms. Kocher questioned whether that section was
2 specific to unlicensed individuals. Mr. Blackburn
3 stated that an auctioneer does not need an auction
4 company license to operate as a sole proprietorship.
5 Mr. Blackburn discussed adding the definition of a
6 legally recognized entity in the statute.

7 Mr. Blackburn discussed obtaining an auction
8 company license as a sole proprietor. Mr. Blackburn
9 stated that an individual would have to have a
10 partnership or LLC or corporation to get an auction
11 company license. Chairman Hostetter added that they
12 would have an auctioneer-of-record do any bid calling
13 if it was required.

14 Mr. Michalowski noted grandfathering in existing
15 nonlicensee sole proprietorships, which will fade away
16 over time. Mr. Blackburn explained that no new
17 licenses will be granted to an individual who has
18 formed a sole proprietorship as an auction company.

19 Mr. Suter referred to the draft for review and
20 discussion next month.

21 Chairman Hostetter made suggestions with regard
22 to existing company licenses. Mr. Blackburn stated
23 the draft will be amended for Board's review at its
24 next meeting. The draft will also be circulated to
25 others in the department in advance of that meeting to

1 obtain clearance before moving forward.]

2 ***

3 Report of Commissioner - No Report

4 ***

5 Report of Board Administrator

6 [Terri Kocher, Board Administrator, noted the 2018
7 meeting dates.]

8 ***

9 For the Board's Information - No Report

10 ***

11 Report of Board Chair

12 [Chairman Hostetter noted the Bid-Calling Contest at
13 the recent Farm Show, the current Pennsylvania
14 Auctioneers Association Convention at the Sheraton,
15 and the Fun Auction.]

16 ***

17 Old/New Business

18 [Chairman Hostetter requested the status of
19 appointments.]

20 ***

21 Adjournment

22 CHAIRMAN HOSTETTER:

23 At this point, we would entertain a
24 motion to adjourn.

25 MR. TRACE:

1 So moved.

2 CHAIRMAN HOSTETTER:

3 Second. All those in favor, signify by
4 saying aye. Those opposed, same sign.

5 [The motion carried unanimously.]

6 ***

7 [There being no further business, the State Board of
8 Auctioneer Examiners Meeting adjourned at 3:49 p.m.]

9 ***

10

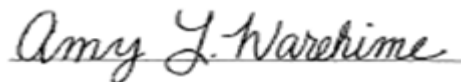
11 CERTIFICATE

12

13 I hereby certify that the foregoing summary
14 minutes of the State Board of Auctioneer Examiners
15 meeting, was reduced to writing by me or under my
16 supervision, and that the minutes accurately summarize
17 the substance of the State Board of Auctioneers
18 meeting.

19

20



21

Amy L. Warehime,

22

Minute Clerk

23

Sargent's Court Reporting

24

Service, Inc.

25

STATE BOARD OF AUCTIONEER EXAMINERS
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January 9, 2018

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