

# IT'S THE LAW

By

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## Recent Inquiry In Reference To Combining Personal Property

Recently, a licensee wrote to this office requesting guidance with respect to a standard of practice, an established ethical procedure, or any rules of the Board that would apply to auctioneers with respect to combining multiple sellers' personal property together to be sold at the same auction at which the auctioneer's original client's personal property would be sold. This request also included guidance with respect to combining the auctioneer's personal property with any client's personal property.

Below are the answers provided by this office to the above requests.

First, there are no specific auctioneer rules that apply to the above circumstances. There are rules that could indirectly apply due to the auctioneer's actions. These rules include 21 NCAC 4B .0404(a) (13), 21 NCAC 4B .0404(a)(15), and 21 NCAC 4B .0602(b) which state,

21 NCAC 4B .0404(a)(13) and (15)

The Board may assess a civil penalty in accordance with G.S. 85B-3.1(b) or deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, upon any of the following grounds: ... (13) obtaining or attempting to obtain compensation by fraud or deceit...; (15) failure to possess truth, honesty and integrity sufficient to be entitled to the high regard and confidence of the public. In this paragraph a lack of truth, honesty and integrity shall be evidenced by proof that the applicant or licensee is in violation of other provisions of the Board's law and administrative rules which demonstrate that the applicant or licensee fails to meet this standard ...; and

21 NCAC 4B .0602(b)

Any licensee who advertises an "Estate Sale" shall specifically disclose, in all advertisement materials, whether it is the estate of a living or deceased person. Before conducting an auction as an "estate sale", the majority of items in the sale shall come from the estate of the living or deceased person(s). Other items not related to or in an estate may be sold with an estate if specifically disclosed at or before the time of the auction ...

There are also sections of the Auctioneer Law that could apply indirectly due to the auctioneer's actions. These sections of the Law include N.C.G.S. 85B-8(a)(2), N.C.G.S. 85B-8(a)(4), N.C.G.S. 85B-8(a)(5), and N.C.G.S. 85B-8(a)(7), which state,

N.C.G.S. 85B-8(a)(2), (4), (5), and (7)

The following shall be grounds for the assessment of a civil penalty in accordance with G.S. 85B-3.1(b) or the denial, suspension, or revocation of an auctioneer, auctioneer apprentice or auction firm license: (2) A continued and flagrant course of misrepresentation or making false promises, either by the licensee, an employee of the licensee, or by someone acting on behalf of and with the licensee's consent...; (4) Any false, misleading, or untruthful advertising; (5) Any act of conduct in

## Recent Inquiry In Reference To Combining Personal Property (Continued)

connection with a sales transaction which demonstrates bad faith or dishonesty...; and (7) Commingling the funds or property of a client with the licensee's own or failing to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association located in North Carolina funds received for another person through sale at auction.

Second, with respect to a standard of practice, many auctioneers supplement their auction businesses by buying personal property and reselling it at auction with the intention of making a profit. It is also a standard of practice that auctioneers combine other sellers' personal property and the auctioneer's personal property with their client's personal property. The general intention is to expand or supplement the available items for sale in order to increase interest in the auction sale, which thereby increases the participation and the competition during the sale. The ultimate goal is to get all of the sellers the highest possible price for their personal property. There is a proper procedure for combining different sellers' personal property.

When considering an "auction house" or an "auction barn", it is general practice that many sellers will participate under individual agreements/contracts with the auctioneer or auction firm. Due to the common knowledge and the standard of practice, auctioneers are not required to receive permission from sellers to combine other sellers' personal property.

For "non-auction house" or "barn" sales, such as estate sales or sales that occur on a seller's premises, an agreement/contract would be necessary between the auctioneer/auction firm and the seller who owns the premises. This agreement/contract would need to include the terms and conditions for allowing the auctioneer and any of the auctioneer's other sellers to combine their personal property with the seller who owns the premises. The auctioneer would be required to sign an agreement/contract with all of the other sellers.

Because this standard of practice can lead to confusion and frustration between the sellers, an auctioneer/auction firm must take care when combining personal property at an auction sale. An auctioneer/auction firm must understand that their primary duty is as an agent for the seller who owns the premises. This person is the reason for the sale and without this person the auction sale would not be conducted on the seller's premises. An auctioneer/auction firm's secondary duty is as an agent for the other sellers. An auctioneer/auction firm's last duty is to the auctioneer/auction firm as a seller. The agreement/contract should reflect this with all sellers.

Ethically, auctioneers/auction firms should always be cognizant of the ranking of their duties as an agent. More emphasis should be given to advertising the personal property of the seller who owns the premises. Their personal property should be sold while the majority of the audience is in attendance, not at the end when the crowd has become disinterested and possibly left the auction.

Auctioneers/auction firms should take care when "boxing lots". Even though this is a common practice, auctioneers/auction firms should box lots only when it is necessary to achieve the highest prices and keep the audiences' attention. Care should be taken to never combine multiple sellers goods into box lots. If this mistake is made, individual seller's goods cannot be accounted for. The agreements/contracts should have provisions that would allow the auctioneer to box lots, under certain conditions. By following the above procedures, auctioneers/auction firms can reduce the appearance of a conflict of interest.

Auctioneers/auction firms can increase their professionalism and appearance to sellers by educating the sellers prior to the signing of an agreement/contract. Teaching the sellers the difference between absolute auc-

## **Recent Inquiry In Reference To Combining Personal Property (Continued)**

tions and auctions with reserve, between selling only the client's personal property and combining multiple sellers property, and between selling individual lots and boxing lots, etc. benefits both the auctioneer/auction firm and the sellers. The auctioneer/auction firm benefits in the end by realizing the seller knows and understands all of the options that are available and can make an

informed decision as it relates to the written agreement/contract. If the auctioneer/auction firm fulfills the terms and conditions of the written agreement/contract, the seller should be satisfied with the auctioneer/auction firm's performance and there is less of a chance that a complaint might be filed with the North Carolina Auctioneer Licensing Board.

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## **We Have A New Board Member!**

Mr. Lloyd (Mickey) Meekins, Jr., of Lumberton was recently appointed by Governor Michael F. Easley to the North Carolina Auctioneer Licensing Board. His term began on July 1, 2006. He replaced Mr. James W. Johnson, III, who completed his second three year term.

Congratulations are also in order for William M. O'Neal. He has been reappointed by Governor Michael F. Easley to his second three year term.

Special thanks and gratitude go to Mr. James W. Johnson, III, who has proven his commitment and dedication to the Board through his hard work throughout the past six years.

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