



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

CHARLESTON
25305

Gus R. Douglass
Commissioner

May 1, 1974

The Honorable Edgar F. Heiskell, III
West Virginia Secretary of State
Room 151, State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Heiskell:

Enclosed please find two (2) copies of Administrative Regulations promulgated by me and pertaining to Chapter 19, Article 2, Series XIf.

I certify that the enclosed regulations is a true and accurate copy of the regulations adopted by me on April 25, 1974.

Very truly yours,

Gus R. Douglass
Agriculture Commissioner

GRD:lyc

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE MAY 1 1974

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE DEPARTMENT OF AGRICULTURE

Chapter 19-2
Series ~~19-2~~ XI-f
1974

FILED IN THE OFFICE OF
LEGAL E. ROSSBELL III
SECRETARY OF STATE
THIS DATE 5/1/74

Subject: Regulations Governing the Licensing of Auctioneers

Section 1 - General.

1.01 Scope. These regulations establish general procedures for the licensing of auctioneers.

1.02 Authority. These regulations are issued under the authority of Chapter 19, Article 2c of the Official Code of West Virginia, 1931, as amended.

1.03 Effective Date. These regulations promulgated on the 25th day of April, 1974 become effective on the 1st day of July, 1974.

1.04 Filing Date. These regulations were filed in the office of the Secretary of State on the 1st day of May, 1974.

1.05 Certification. These regulations are certified authentic by the Secretary of State by certification number 33.

Section 2 - Declaration of Policy.

2.01 Chapter 19, Article 2c of the Official Code of West Virginia specifically sets out certain duties, authority and responsibilities of the Agriculture Commissioner. Included in this article is the responsibility of promulgating rules and regulations governing the licensing of auctioneers. The Commissioner is also charged with the enforcement of the rules and regulations for the administration of this article.

2.02 By virtue of the authority vested in me as Agriculture Commissioner of West Virginia by Chapter 19, Article 2c of the Official Code of West Virginia, 1931, as amended, I Gus R. Douglass, do hereby promulgate the following rules and regulations governing the licensing of auctioneers.

Section 3 - Definitions of Words and Terms - When used in these regulations, the following words and terms shall have the following meaning.

3.01 Auctioneer - Means and includes a person who sells goods or real estate at public auction for another on commission or for other compensation. The term "auctioneer" shall not include (1) persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction, (2) the owner of any real or personal property when personally sold at auction by such owner, (3) persons conducting sales pursuant to a deed of trust or other security agreement, (4) attorneys-at-law licensed to practice in this state, (5) fiduciaries of estates when selling real or personal property of such estate and, (6) persons conducting sales on behalf of charitable, religious, fraternal or other non-profit organization.

3.02 Public Auction - Means any public sale of real or personal property where offers or bids are made by prospective purchasers and the property sold to the highest bidder.

3.03 Commissioner - Means the Agriculture Commissioner of West Virginia or his authorized agents.

Section 4 - License for Auctioneers Required.

4.01 Any person desiring to conduct an auction as an auctioneer in this state shall first obtain from the Commissioner a license therefor. Application for auctioneer license shall be filed with the Commissioner on forms provided by him accompanied by a non-returnable application fee of fifteen (15 dollars), as well as the annual license fee of fifteen (15 dollars). The Commissioner shall within thirty (30) days of the receipt of an application either grant or deny the license. In the event the license is denied, the applicant shall be refunded the license fee submitted with the application. Licenses issued shall expire on the thirtieth day of June of each year but shall be renewable upon the payment of the annual license fee of fifteen (15 dollars) providing all other requirements of the article are complied with.

Section 5 - Bond Required.

5.01 Every person applying for a license as an auctioneer or continuing to act as a licensed auctioneer shall file with the Commissioner and maintain in full effect a bond with corporate surety satisfactory to the Commissioner and in the form prescribed by him in the amount of five thousand dollars. Such bond shall be conditioned upon the faithful compliance by the auctioneer with the provisions of the law and the rules and regulations promulgated thereunder and the payment of all taxes, fees and penalties imposed by this state and its political subdivisions as well as the payment by any auctioneer of any final judgment obtained for damages arising out of his conduct or duties as an auctioneer. The original copy of such bond shall be filed with the Commissioner and shall be open to public inspection.

Section 6 - Requirements for License.

6.01 Each person seeking an auctioneers license shall submit satisfactory evidence to the Commissioner attesting to the following:

(a) Either that

- (1) Applicant has been the principal auctioneer or has actually assisted in at least five auctions during the twelve (12) month period immediately prior to the filing of his application.
- (2) Applicant is a graduate of a recognized school for auctioneers.
- (3) Applicant is a licensed auctioneer in another state which has reciprocity with West Virginia.
- (4) Applicant has submitted evidence from at least two auctioneers licensed in this state attesting to his qualifications as an auctioneer.

(b) Applicant must be over eighteen years of age, of good moral character, and must not have been convicted of a crime involving moral turpitude; and

(c) Such other information as the Commissioner may require.

Section 7 - Duties of Licensee.

7.01 Each licensee shall have on his person his current license and shall present same upon request at all sales conducted by, or participated in by such licensee.

Licensee shall keep a record of all sales conducted by, or participated in, and an accurate record of all transactions associated with his responsibility as an auctioneer. Such records shall be open to inspection by the Commissioner or his authorized agents.

Licensee shall not engage in the use of profanity, immoral or obscene

language, or any other act of misconduct during the sale at which he is employed. The licensee shall, in an audible and clear voice that can be heard by persons of average hearing, seated or standing in the sale area, announce the conditions for the sale of each item, whether it be by the piece, grouping or pound, or any other conditions or reservations relating to the item. At the time an item is sold, the sale price and the buyer shall be announced in a clear and audible voice.

The licensee shall in case of a dispute between bidders, settle such dispute by reopening bids and reselling to the highest bidder.

A licensee shall not knowingly be involved in a public auction nor sell any item which may be stolen or is illegal to possess or sell under West Virginia or Federal Statutes.

Section 8 - Revocation or Suspension of License.

8.01 The Commissioner may suspend or revoke any license granted hereunder for any violation of this article or the rules and regulations promulgated hereunder.

Section 9 - Trainee Permits.

9.01 Any person may apply for and receive a trainee permit upon the payment of a fee in the amount of ten (10 dollars) and supplying to the Commissioner such other information as he may require.

Permits shall expire on the thirtieth day of June each year, but may be renewed upon the payment of the annual license fee of ten (10 dollars).

A trainee permit shall entitle the holder to assist in or conduct a public auction under the supervision of a licensed auctioneer.

Section 10 - Orders of the Commissioner; Hearings; Review.

10.01 Any order of the Commissioner shall be served by registered mail. Within ten (10) days of the receipt thereof any party adversely affected thereby may, in writing, request a hearing before the Commissioner. Such hearing and any judicial review thereof shall be conducted in accordance with articles five (5) and six (6) of Chapter 29A of the Code. The effect of any order shall be suspended during the course of any hearing or subsequent appeals.

Section 11 - Penalties.

11.01 Any person, firm, association or corporation violating any of the provisions of this article or the rules and regulations promulgated hereunder, shall be guilty of a misdemeanor, and upon the conviction thereof, shall be fined not less than fifty (50 dollars) nor more than two-hundred (200 dollars) for the first offense, and not less than four-hundred (400 dollars) nor more than one thousand (1,000 dollars) for the second and subsequent offenses.

Section 12 - Adoption and Effective Date.

12.01 By virtue of the authority vested in me by Chapter 19, Article 2c of the Official Code of West Virginia, 1931, as amended, I Gus R. Douglass, Agriculture Commissioner, do hereby prescribe, promulgate and declare in effect on the first day of July, 1974, the following rules and regulations herein set forth for the administration and enforcement of the West Virginia Auctioneer Law.

12.02 The Commissioner reserves the right to revoke, suspend, rescind or amend any rules, or regulations herein set forth.

12.03 Done in the office of the Agriculture Commissioner, Capitol Building, Charleston, West Virginia, this the 1st day of May, 1974, effective July 1, 1974.

A handwritten signature in cursive script, reading "Gus R. Douglass", is written over a horizontal line.

Gus R. Douglass
Agriculture Commissioner