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Auctioneer Licensing 32 n.p.a. 1978
STATE OF MAINE

Inter-Departmental Memorandum Date February 9, 1978

To Joan Surawski, Adm. Assistant

Dept. Central Licensing Division

From S. Kirk Studstrup, Assistant

Dept. Attorney General

Subject: Opinion re licensing of auctioneers

Your memorandum of February 6, 1978, requested our opinion on questions concerning licensing of auctioneers. It is our understanding that the question results from a situation in which an individual is currently licensed as an auctioneer and is also doing business as an art gallery. The gallery is having an auction and wishes to use the services of an out-of-state auctioneer for this purpose. The auctioneer will be paid by the gallery. You asked four questions with regard to this situation, which will be discussed separately below.

1. Your first question is whether the auctioneer licensed in Maine may renew his current license in the name of his art gallery enterprise. The answer to this question is negative. We do not know the legal status of the art gallery in question, i.e., whether it is a partnership, corporation, etc., but this information would have no bearing upon our answer. Licensing of auctioneers is governed by 32 M.R.S.A. Chapter 5. Section 251 of that chapter requires that auctioneers' licenses be issued to "persons." While as a matter of general statutory construction the term "person" may include corporate bodies (1 M.R.S.A. § 72, sub-§ 15), this construction is used only if it is not inconsistent with the plain meaning of the enactment in question. Section 251 provides that persons seeking a license must meet certain requirements of age, moral character, and knowledge of auction and sales laws, ethics, recording, and related subjects. It is our opinion that these requirements would exclude licensing of a business entity other than an individual.

2. Your second question is whether the individual may renew his license in his name and the name of his business entity. Our answer to this question is negative for the same reasons stated in answer to question No. 1.

3. Your third question is whether the art gallery would have to be licensed because of its proposed auction as set forth in the introductory paragraph. Since the answer to your first and second questions is that a business entity other than an individual may not be licensed, an answer to this question is not necessary.

4. Your fourth question is whether the out-of-state auctioneer would be required to comply with the provisions of 32 M.R.S.A. § 252 concerning non-resident auctioneers, if he were to conduct an auction as proposed. The answer to this question would depend upon the nature of the agreement with the non-resident auctioneer and the manner in which the auction was conducted. If the non-resident auctioneer intends to conduct all aspects of the auction and be personally responsible for any legal liabilities or other consequences of the auction, he must comply with the statutory provisions of § 252. On the other hand, if the non-resident auctioneer is retained simply to assist a licensed resident auctioneer in conducting the auction, and the resident licensed auctioneer is present and responsible for the overall conduct of the auction, it is our opinion that the non-resident auctioneer would be functioning as an employee of the resident auctioneer and would not have to meet the statutory requirements. In either case, we caution that individuals attending the auction should be clearly informed as to the identity of the auctioneer responsible for the conduct of the auction.

J. Kirk Studstrup

S. KIRK STUDSTRUP
Assistant Attorney General

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