



**Post Office Box 50, Morton, MS 39117**  
**601-750-4909 601-732-6447 (fax)**  
**info.msauktioneercommission@gmail.com**

---

### ONLINE PROTOCOL

As established on June 25, 2019 and approved August 20, 2019, Update December 3, 2019

1. Place notification on website indicating jurisdiction and authority over online auctions effective July 1, 2019.
2. The Commission has interpreted 74-3-3-(a) that states "auction" means a sale transaction conducted by means of oral or written exchanges....to include electronic exchanges as they are also written invitations for offers for the purchase of goods.
3. Email notification will be distributed to all licensees and others who have requested information regarding this issue and advise them of this interpretation by the Commission.
4. Distribute notification letter to individuals/firms who are currently advertising and holding online auctions advising them of a 30-day deadline for receipt of applications for licensure of auctioneers and/or firms.
5. Online auction services that only serve as an avenue for an individual to sale one's own personal property at a price determined only by the owner of said property (such as Ebay) is exempt from licensure in accordance with § 73-4-5 (d) which states *The provisions of this chapter shall not apply to the following transactions: A sale conducted by an individual of his own property if such individual is not engaged in the business of selling such property as an auctioneer on a recurring basis.*
6. There is no exemption for out of state businesses or any other entities who bring together buyers and sellers of goods and services thru searchable, user-friendly online interface (a point where two systems or subjects meet and interact; interact with another system or person in Mississippi). Therefore, if the goods or services are located in the State of Mississippi, the online transaction must be conducted by a person, corporation, limited liability company, partnership or other entity possessing a Mississippi auctioneer license [See: Section 73-4-1 (1) Miss. Code Ann. (1972) as amended].

Attachment: Official Opinion of the Mississippi Attorney General's Office dated September 27, 2019



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

September 27, 2019

C. Jack Armstrong, Vice-Chairman  
Mississippi Auctioneer Commission  
Post Office Box 50  
Morton, Mississippi 39117

Re: Authority of Mississippi Auctioneer Commission to Regulate Online Auctions

Dear Mr. Armstrong:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

## OFFICIAL OPINION

### Question Presented

Can the Commission, pursuant to Section 73-4-3, create a rule which further clarifies and requires auctioneers in Mississippi who conduct online auctions to hold a Mississippi auctioneer license?

### Response

Yes. Although the Commission may not expand the definition of "auction" by regulation and can only enact policies consistent with state law, the Commission has the sole authority to adopt regulations, policies or rules identifying which sale transactions fall within the statutory definition of auction that must be performed by a licensed auctioneer.

### Legal Research and Analysis

Section 73-4-5(1) of the Mississippi Code Annotated provides:

It is unlawful for any person, corporation, limited liability company, partnership or other entity to conduct an auction, provide an auction service, hold himself out as an auctioneer, or advertise his services as an auctioneer in the State of Mississippi without a license issued by the commission under this chapter.

Section 73-4-3(a) of the Mississippi Code Annotated provides:

"Auction" means a sale transaction conducted by means of oral or written exchanges between an auctioneer and the members of his audience, which exchanges consist of a series of invitations for offers for the purchase of goods made by the auctioneer and offers to purchase made by members of his audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience.

In your letter, you correctly note that Section 73-4-7(1) of the Mississippi Code Annotated provides the Auctioneer Commission (hereinafter "Commission") the authority to make such rules and regulations as are reasonable and necessary for the orderly regulation of the auctioneering profession and the protection of the public. Additionally, Section 73-4-13(b) of the Mississippi Code Annotated provides that the Commission "is empowered to promulgate such rules and regulations and prescribe such forms as are necessary for the administration and the effective and efficient enforcement of the chapter."

The Commission has the power to interpret its enabling statutes pursuant to Sections 73-4-7 and 73-4-13 so long as those interpretations are consistent with the Constitution and laws of this state. Although the Commission may not expand the definition of "auction" by regulation and can only enact policies consistent with state law, the Commission has the sole authority to adopt regulations, policies or rules identifying which sale transactions fall within the statutory definition of auction that must be performed by a licensed auctioneer. See MS AG Op., *Brister* (June 29, 2012) (although the Board of Professional Engineers and Surveyors may not expand the definition of the "practice of engineering" by regulation, the Board has the sole authority to adopt regulations, policies or rules identifying which tasks fall within the statutory definition of the practice of engineering which must be performed by a licensed engineer). "Executive-branch agencies must follow statutes and, absent a declaration from the judicial branch regarding an interpretation of a statute, must decide what statutes mean." *King v. Miss. Military Dep't*, 245 So.3d 404, 408 (Miss. 2018).

If this office may be of any further assistance to you, please let us know.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:   
Avery Mounger Lee  
Special Assistant Attorney General