

Proposed Interagency Agreement

Louisiana Used Motor Vehicle Commission and Louisiana Auctioneers Licensing Board

Explanation

Auctioneers are primarily licensed with the Louisiana Auctioneers Licensing Board. There are two types of auctioneers who are now licensed by the Louisiana Used Motor Vehicle Commission: Wholesale and Public Retail. Wholesale or Dealers Auctions are regulated through LSA-R.S. 32:794, which restricts the activities of Dealers' Auctions. Public Retail Auctions are those defined as auctions which are not open exclusively to dealers. LSA-R.S. 32:781 (7.1). However, auctioneers or auction houses who are not engaged in the auction of used motor vehicles as the principal part of their business, including but not limited to the following auctions: estate auctions, bankruptcy auctions, farm equipment auctions, or government auctions. LSA-R.S. 32:781 (13)(b)(vi).

The statute provides that a person or entity is presumed to be engaged in the business of selling used motor vehicles if he or the entity sells five or more used motor vehicles in any 12 month period if these vehicles are not owned by members of the person's household or not registered to the business entity. This presumption is not mentioned in the exemption, so it is unclear what the meaning of "principal part" of the business of auctioneers as far as it concerns the requirement of five vehicles or some other interpretation. LSA-R.S. 32:781 (13) (a) (i).

The only other mention of a public or retail motor vehicle auction is in LSA-R.S.32:784 (E) which states that a public or retail motor vehicle auction shall not be required to obtain an off-premises permit to auction, via an Internet site, a used motor vehicle for a third party which is in the possession of the third party. Apparently, the whole purpose of including a public or retail auction in the statute was to allow those used motor vehicle dealers the possibility of auctioning online.

The Louisiana Auctioneers Licensing Board and Louisiana Used Motor Vehicle Commission had an agreement confirmed by letter dated March 30, 2001, which stated that an auctioneer would be exempt from obtaining a license from the Used Motor Vehicle Commission for the following reasons:

1. Farm Sales
2. Liquidation Sales
3. Bankruptcy Sales
4. Estate Sales
5. Government and Municipality Sales

The letter also stated that if at any time consignment vehicles were taken in with any of the above mentioned sales, the auctioneer would be required to obtain a used motor vehicle dealer's license. It was also agreed that if an auctioneer had more than one consignment sale at the same location, the auctioneer would be required to obtain a used motor vehicle dealer's license. There

is no evidence that this document was ever reduced to a formal written agreement. There is no indication that the statutory provisions or the interagency agreement was ever memorialized in the commission's regulations.

According to the Used Motor Vehicle Commission, the dealer's license is required because dealers are required to be licensed to transfer open titles or to use a dealer's plate.

Barbara Bonnette asked the Board to review this issue because she has a dealer's license, a salesman's license and an auction license from the Used Motor Vehicle Commission. She does not understand why she needs all three. The Used Motor Vehicle Commission states that all auction licenses obtained through that agency are accompanied by dealer's licenses. She is not aware of anyone who has an auction license without a dealer's license.

After Ms. Bonnette's complaint, a review of the website indicated that there were auction licenses issued which did not have a license with the Louisiana Auctioneers Board. This has presented a new issue.

We also have complaints filed by individuals concerning the conduct of motor vehicle auctions. There should be some agreement regarding what each commission investigates on a complaint.

Proposed Agreement

The following are suggestions:

1. "Principal part of the business" as stated in LSA-R.S. 32:781 (13)(b)(vi) means that the auctioneer or auction house does not take in consignments or sell vehicles more than 25 percent of the time in a calendar year.

"Principal part of the business" will be interpreted pursuant to the presumption of more than five cars in a 12 month period in LSA-R.S. 32:781 (13)(a)(I). Should the auctioneer sell more than five cars in a 12 month period the Used Motor Vehicle Commission shall review the circumstances to determine whether it is the principal part of the business.

In both cases estate sales, farm sales, liquidation sales, bankruptcy and government / municipality sales would be exempt from the statute regardless.

2. Public or retail motor vehicle auctions will not be required to obtain a used motor vehicle dealer's license unless that auction intends to transfer open titles or obtain dealer's plates. Unless motor vehicles are a principal part of the business the auction is not required to obtain an auction license from the Used Motor Vehicle Commission.
3. All those licensed as public or retail auctions or wholesale auctions will be required to have a Louisiana auctioneers individual or firm license.
4. The Louisiana Auctioneers Licensing Board will investigate complaints related to the conduct of the auction by the firm or individual auctioneer, including but not limited to

the requirement of an auction license, the calling of the auction, the obligation to transfer good title, advertising, or the requirement of an escrow account or timely payment pursuant to LSA-R.S. 37:3125. The Used Motor Vehicle Commission will investigate complaints lodged under LSA-R.S. 32:794, the need for a dealer's license, or any conduct which is a violation of the specific laws contained in Title 32. If there is an overlapping investigation, then both agencies will be allowed to conduct the investigation and provide information to the other agency regarding that agency's specific jurisdiction.

5. The two boards through their chairmen or directors may meet at any time regarding any dispute of jurisdiction to resolve the issue.