

05-4089

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

June 26, 1990

Harriett E. Bishop, Executive Director
Auctioneers' Commission
915 Main Street
Columbia, South Carolina 29201

Dear Ms. Bishop:

You have asked for an opinion regarding the legality of mini-storage warehouse employees selling at auction contents of the warehouses for storage costs, without obtaining an auctioneer's license.

Generally, a person is required to have a license issued by the South Carolina Auctioneers' Commission in order to sell goods at auction. Section 40-6-50, Code of Laws of South Carolina, 1976 (as amended). However, a person is allowed to sell goods without a license if he or she falls within one of the exceptions to the license requirement found at Section 40-6-20. Section 40-6-20(4) creates an exception for sales required by law to be at auction.

Under Section 39-20-10 et seq. Code of Laws of South Carolina, 1976 (as amended), said chapter being known as the South Carolina Self-service Storage Facility Act, an owner of such a facility has a lien upon property located in his facility for rent and other charges associated with an occupant's rental thereof which becomes effective upon default by the occupant and may be enforced without judicial intervention. Thus an owner of a mini-storage warehouse is legally authorized to sell property of an occupant in default of rent at a public sale (provided all statutory requirements have been met) to the highest bidder thereof to satisfy his lien. (see Sections 39-20-30 and 39-20-45) Not only is the owner of the self-service storage facility empowered to sell the contents for rent, but he is mandated to sell the same at auction i.e., to the highest bidder. Section 39-20-45 contains mandatory language that the sale of personal property located in a self-service storage facility shall be advertised and sold at public sale to the highest bidder.

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... the owner shall publish an advertisement of the public sale to the highest bidder.... The public sale to the highest bidder shall take place.... (emphasis added) Section 39-20-45, Code of Laws of South Carolina, 1976 (as amended).

This Act also provides for enforcement of the owner's lien by distraint and permits sale of the occupant's personal property located in the storage facility to be sold to the highest bidder by a constable or sheriff as a magistrate may direct. (see Section 39-20-47)

While in these special circumstances an owner of a storage facility or an officer is authorized to sell property "at auction," such authority is limited only to the sale of personal property located in the storage facility and specifically for the purpose of collecting past-due rent. Such authority would not extend one's ability to sell any and everything at auction or to conduct auctions on a regular basis without an auctioneer's license as contemplated by Section 40-6-50, which requires anyone selling goods at auction in South Carolina to be licensed.

If I may be of further help, please let me know.

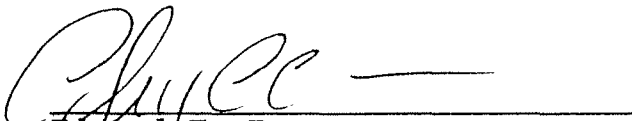
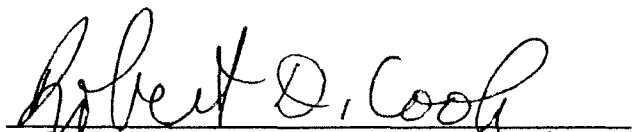
Sincerely,



Alice C. Broadwater
Assistant Attorney General

ACB:bjt

REVIEWED AND APPROVED BY:


Edward E. Evans
Chief Deputy Attorney General
Robert D. Cook
Executive Assistant for Opinions