

1978 WL 34932 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 8, 1978

*1 Mr. Frank Caggiano
Director
Research and Administration
S.C. House of Representatives
Agriculture and Natural Resources Committee
P.O. Box 11867
Columbia, S.C. 29211

Dear Mr. Caggiano:

You have recently asked the opinion of this Office on the applicability of Act No. 111 of 1977 to tobacco auctioneers practicing in this state.

Act No. 111 sets forth the manner in which the occupation of auctioneering will be regulated. Section Two entitled 'Exceptions', reads in part as follows:

'This act shall apply to all auctions held in this State except the following:

(4) any sale required by law to be at auction.'

In order for tobacco auctioneers to be excepted from the effect of this statute it is necessary that the sale of tobacco be required by law or regulation, either state or federal. Review of the state and federal authorities reveals that the disposition of marketable tobacco is governed by federal regulations when the commodity is to be disposed of under the Tobacco Loan Program of the U.S. Department of Agriculture.

Under 7 CFR 1464, et seq., is set forth the scheme by which price supports will be made available to tobacco producers eligible to participate in the price support program. According to the plan, a grower may obtain price support if he offers his tobacco for sale at an auction warehouse under contract with a producer association or, if the producer operates in a nonauction market area, upon his delivery of the commodity directly to his producer association.

Section 1464.2(e)(1), pertaining to the availability of price supports, states in part that '(i) Price support will be available for tobacco offered for auction sale at auction warehouses which have contracted with an association, . . . (emphasis added).' Of central importance is the language 'offered for auction sale' which is to be distinguished from item (4) of Section Two of the Act. The distinction lies in the fact that in none of the language found under [7 CFR 1464.2](#) is there set forth a requirement that there be a tobacco 'sale at auction', but rather only an 'offering for sale' in order for a producer to be eligible to receive price support payments on his marketed crop. The distinction is apparent in practice when a comparison is made with a sale that is effected pursuant to a judicial order and the objects of the sale are to be disposed of absolutely regardless of the monetary return. Under the regulation applicable in this situation, a producer need not actually consummate the sale of his tobacco at the auction in order to receive support on the price of his crop, but is merely required to make them available for purchase by bidders through an 'offering.'

The S.C. law on auctions embodied in Act No. 111 was patterned very closely after the North Carolina statute found in Sections 85B-1, et seq., of the General Statutes of North Carolina, Annotated. Section 85B-2 setting forth the area of

applicability of their law states that one of the activities to be excepted from coverage is 'Leaf tobacco sales conducted in accordance with the provisions of Chapter 106 of the General Statutes.'

*2 In construing a statute the primary guide to a determination of its meaning is the intention of the legislature. [Helfrich v. Brasington Sand and Gravel Co.](#), 268 S.C. 236, 233 S.E.2d 291 (1977). It is apparent that the legislature of N.C. intended to exempt tobacco auctioneers in that state from the purview of their law. Likewise, it is evident that in devising the S.C. law that the S.C. General Assembly did not intend that tobacco auctioneers in this state be exempt from its effect since the specific exception afforded tobacco sales in North Carolina, which could have easily been included in our law, was omitted.

Therefore, based on the applicable law and regulations and established principles of statutory construction, it is the opinion of this Office that tobacco auctioneers are covered by Act No. 111 of 1977 and subject to its full statutory effect. Sincerely,

Reddick A. Bowman, Jr.
Assistant Attorney General

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