



ALAN WILSON
ATTORNEY GENERAL

August 23, 2019

The Honorable Bill Sandifer
Member
South Carolina House of Representatives
District No. 2
407 Blatt Bldg.
Columbia, SC 29201

Dear Representative Sandifer:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

A licensed auction firm in South Carolina has been in business for over 40 years. The auction firm is co-owned by a recently deceased licensed auctioneer and his brother, also a licensed auctioneer. The recently deceased licensed auctioneer has been the applicant listed on the annual license for the auction firm. Due to the death of the licensed auctioneer, this year the co-owner (brother of the deceased) of the firm (also a licensed auctioneer) applied for the firm license for the auction firm. The issue is whether the auction firm can retain the same license number under the new applicant. If required to change their license number, the firm would be detrimentally harmed due to being required to change the number on all of their advertising, business cards, bid cards, and consignment sheets. Not to mention that the same firm under the same number has been operating with that license number for over 40 years. SC Code 40-6-240 states, "[a]ny license other than an apprentice license may be renewed annually." I am unaware of any statute or regulation that would require the auction firm to forfeit the license number and have it replaced with a new license number. Rather, I believe if that was the intent of the statute, it would be written in the statute. However, the statute is silent as to whether the firm would be required to forfeit their license number and obtain a new one requiring them to replace it on all of their materials. Accordingly, my question is whether the Auctioneers Code (Chapter 6, Title 40) prohibits the South Carolina Auctioneers' Commission from allowing the auction firm to retain the same auction firm license number when the licensed auctioneer associated with the firm changes.

Law/Analysis

It is this Office's opinion that a court likely would hold that the South Carolina Auctioneer's Commission ("Commission") is not prohibited from reissuing the same license number to an auction firm when there is a change in a licensed auctioneer listed on its license renewal application. This opinion examines Chapter 6 of Title 40 of the South Carolina Code of Laws ("Auctioneers Code") according to the rules of statutory construction in order to determine whether the Commission is prohibited from reissuing the same auction firm license number when there is a change in a licensed auctioneer listed as its owner or manager. Statutory construction of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Our Supreme Court has made it clear that "statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible to produce a single, harmonious result." Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000). While statutory definitions found in unrelated statutes are not to be used to provide a definition for undefined terms, a statute which is *in pari materia* may be so employed. See, Fruehauf Trailer Co. v. S.C. Elec. & Gas Co., 223 S.C. 320, 325, 75 S.E.2d 688, 690 (1953) ["there is no statute *in pari materia* in this state, which contains a definition."]

Op. S.C. Att'y Gen., 2015 WL 4140804, at 11 (July 1, 2015).

With these principles in mind, this opinion next addresses the text of relevant statutes in the Auctioneers Code. The Auctioneers Code expressly states that Chapter 1 of Title 40 applies to auctioneers regulated by LLR and if this incorporation results in a conflict with the Auctioneers Code, the provisions of the Auctioneers Code control. See S.C. Code Ann. § 40-6-05. Reference to similarly constructed statutes in other chapters within Title 40 may be useful for analyzing the Auctioneers Code, however this Office has not found legislative intent to similarly incorporate those authorities with the Auctioneers Code. See Clemson Univ. v. Speth, 344 S.C. 310, 313-14, 543 S.E.2d 572, 574 (Ct. App. 2001) (declining to apply statutory definition from separate chapter of the S.C. Code when "[w]e find no indication the Legislature intended the ... definition... to apply to statutes outside of the Act.").

The Auctioneer Code defines "auction firm" as "any business or entity which engages in the business of conducting or offering to conduct auctions." S.C. Code Ann. § 40-6-20(3). Section 40-6-240(B) provides for the renewal of an auction firm license as follows:

When a licensee applies for renewal, the licensee shall submit proof with the renewal form, in a form acceptable to the commission, that the licensee has acquired commission-approved continuing education of at least four hours within the previous twelve months. Continuing education is not required of apprentice auctioneers and auction firm license holders unless the owner or manager is a licensed auctioneer.

S.C. Code Ann. § 40-6-240(B). When the licensee is an “auction firm,” the statute contains a distinction regarding the required proof of continuing education based on its owner’s or manager’s status as a licensed auctioneer. *Id.* The reference to owner or manager relates back to the information provided in the auction firm’s initial license application form. *See* S.C. Code Ann. § 40-6-235(A). During this initial license application process, the “business entity” itself submits the application for a license. S.C. Code Ann. § 40-6-235(A)(1).¹ The business entity is directed to name a licensed auctioneer who owns or manages it and to provide proof of the auctioneer’s authority to make “decisions affecting the manner in which the firm does business.” *See* S.C. Code Ann. § 40-6-235(A)(3). The statute differentiates between the business entity, who is the licensee, and the owner or manager. *Id.* Likewise, as quoted above, the renewal of an auction firm license statute recognizes an auction firm holds a separate license from that of the owner or manager. S.C. Code Ann. § 40-6-240(B). Nothing in the plain language of S.C. Code Ann. §§ 40-6-235, -240 compels the change of a license number when the business entity applies to renew its license as an auction firm even though it has a change in its listed owner or manager.

Indeed, this Office has not identified any statutory or regulatory authority that compels the Commission to issue a different license number to an auction firm when there has been a change in who fills out its license renewal application. Because the law is silent in regards to license numbering in such a circumstance, this Office would defer to the Commission’s interpretation of the Auctioneers Code. The Commission is the “sole licensing authority” and is granted authority to “adopt rules governing its proceedings” as well as to promulgate necessary regulations. *See* S.C. Code Ann. §§ 40-6-50, -60.² As the administering agency, the Commission may interpret its authority to permit reissuing the same license number to an auction firm after a license renewal in the absence of contrary authority. *See Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Env’tl. Control*, 411 S.C. 16, 766 S.E.2d 707 (2014) (“If the statute or

¹ “Business entity” is defined as “a partnership, limited liability partnership, corporation, limited liability company, or other business association, excluding a sole proprietorship.” S.C. Code Ann. § 40-6-20(5). There is an additional exception from auction firm licensure for sole proprietorships in Section 40-6-235(B). However, according to the scenario described, this exception likely does not apply.

² The Commission has promulgated regulations concerning examinations and licensing. The regulations require a licensee to apply for a new license when a licensee has a lapse in status. *See* S.C. Code Regs. 14-12(C) (“After September 30 of that year any license of an auctioneer, apprentice auctioneer, or auction firm that has not been renewed shall be lapsed. Any licensee in lapse status must make application for a new auctioneer, apprentice auctioneer or auction firm license ...”). However, the regulations do not expressly address license numbering aside from the requirement that advertisements for auctions contain the name and license number of the auctioneer or firm conducting an auction. *See* S.C. Code Regs. 14-5(C). This Office has not identified a regulation promulgated by the Commission which prohibits it from reissuing the same license number to the same auction firm during license renewal.

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regulation ‘is silent or ambiguous with respect to the specific issue,’ the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference.”).

Conclusion

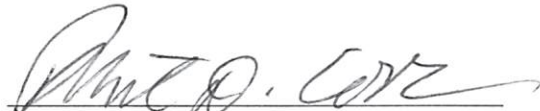
It is this Office’s opinion that a court likely would hold that the South Carolina Auctioneer’s Commission (“Commission”) is not prohibited from reissuing the same license number to an auction firm when there is a change in a licensed auctioneer listed on its license renewal application. This Office has not identified any statutory or regulatory authority that compels the Commission to issue a different license number to an auction firm when there has been a change in who fills out its license renewal application. Because the law is silent in regards to license numbering in such a circumstance, this Office would defer to the Commission’s interpretation of the Auctioneers Code. As the administering agency, the Commission may interpret its authority to permit reissuing the same license number to an auction firm after a license renewal in the absence of contrary authority. See Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Env’tl. Control, 411 S.C. 16, 766 S.E.2d 707 (2014).

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General