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Honorable Michelle Franklin
City Clerk, City of Piedmont
Post Office Box 112
Piedmont, Alabama 36272

Municipalities – Public Auctions – On-line Auctions – Internet – Calhoun County

Online auction sites that are open to the public constitute public auctions as it relates to section 11-47-116 of the Code of Alabama.

Dear Ms. Franklin:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Piedmont.

QUESTION

Do online auction sites, such as www.govdeals.com, constitute a public auction as it relates to section 11-47-116 of the Code of Alabama and corresponding municipal statutes, sections 10-4 and 10-5 of the Piedmont Municipal Code?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the Piedmont Police Department routinely seizes and stores found, abandoned, and stolen property and contraband items. You further stated that, pursuant to section 11-47-116 of the Code of Alabama and sections 10-4 and 10-5 of the Piedmont Municipal Code, the Piedmont Police Chief is authorized to dispose of said property at public auction to the highest bidder. You assert that the use of an online website for the sale of found, abandoned, and stolen property and contraband would be an efficient means of disposal of property that would benefit both the interests of the town and the public. Yet, you seek guidance

from this Office regarding whether use of an online auction would constitute a public auction as authorized by both the state and municipal code.

Section 11-47-116 of the Code of Alabama, which authorizes the disposition of certain personal property by municipalities, states as follows:

> (a) All municipalities are hereby authorized to provide by ordinance for the taking up and storing of abandoned and stolen personal property found within the corporate limits or outside the corporate limits but within the police jurisdictions and to sell the same in the manner provided in subsection (b) of this section. . . .
>
> (b) ***At least every six months the chief officer of the law enforcement department of each such city*** and town adopting an ordinance under subsection (a) of this section ***shall sell at public auction to the highest bidder*** for cash the property which shall have then been taken up and stored for a period of three months or more, the sales to be made after notice of the time and place thereof shall have first been given by publication of notice once a week for two successive weeks in a newspaper of general circulation published in the city or town in question and, in cities and towns in which no newspaper is published, by posting such notice in a conspicuous place at the city hall or police station. The first publication or posting of notice, as the case may be, shall be at least 20 days before the sale. The owner of any of the property taken up and stored may redeem the same at any time prior to its sale by paying the reasonable expense of taking the property in charge, its maintenance and storage and a pro rata of the cost of publication. Each article shall be sold separately and a notation in the storage record book shall be made of the amount received for each article. The person making the sale shall have the right to reject any and all bids if the amount bid be unreasonably low and shall have the right to continue the sales from time to time if no bidders are present. After deducting and paying all expenses incurred in the taking up, storing, maintaining and selling of the property, the balance, if any, shall be

> paid into the general fund of the municipality making the sale.

ALA. CODE § 11-47-116 (2008).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). This statute authorizes the chief officer of the city law enforcement department to sell abandoned and stolen personal property found within the corporate limits, or outside the corporate limits but within the police jurisdictions, at a public auction for cash. The term "public auction," however, is not defined.

Generally, the term "auction" refers to the "public sale of property to the highest bidder." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 142 (2002). The term "public" is defined as "a place accessible . . . to all members of the community." Hence, a public auction is an auction that is open/accessible to or shared by all members of a community. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1836 (2002). There are no specific requirements regarding the manner in which the public auction should be conducted, i.e., the statute does not require the auction to be conducted by an auctioneer or by outcry. Thus, the question remains whether an online auction may be considered a public auction.

The issue of whether an online sale may be considered a public auction has been addressed in an article appearing in the Consumer Finance Law Quarterly Report. This article, *Using an Online Auction to Sell Article 9 Collateral*, addressed the issues facing secured creditors in their quest to sell repossessed property. The information gained in this article is nevertheless useful to the present situation.

This article sets forth three criteria that are typically used in determining whether an auction is public: (1) whether the sale offered the public an opportunity to competitively bid; (2) whether there was sufficient advertising prior to the sale notifying the public of the time, place, and collateral to be sold; and (3) whether the public had access to the place of the sale and the collateral. Michael Korybut, *Using an Online Auction To Sell Article 9 Collateral*, 61 Consumer Fin L.Q. Rep. 792, 798-799 (2007).

An online auction that (1) permits the general public to participate in the auction, allows the public to participate in the competitive bidding process, and permits the public to have access to the sale; (2) complies with the current advertising requirements of section 11-47-116 of the Code would comply with the public notification referred to in the Korybut article; and (3) maintains the collateral in a manner that permits access to the public, should qualify as a public auction. Thus, it is the opinion of this Office that use of an online auction site that meets these criteria would be considered a public auction pursuant to section 11-47-116 of the Code. Whether the auction site, www.govdeals.com, qualifies as a public auction is a factual question best suited for the city council or the municipal police chief to decide.

CONCLUSION

Online auction sites that are open to the public constitute public auctions as it relates to section 11-47-116 of the Code of Alabama.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

Brenda F. Smith

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