



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

January 5, 2021

Mr. C. Jack Armstrong, III
Chairman, Mississippi Auctioneer Commission
Post Office Box 50
Morton, Mississippi 39117

Re: Reverse auctions exemptions

Dear Mr. Armstrong:

The Office of the Attorney General has received your request for an official opinion.

Question Presented

Does the exemption provided in Section 73-4-5(2)(b) to the licensure requirement for auctioneers apply to auctioneers providing services for reverse auctions as independent contractors?

Brief Response

No. Based on the plain language of Section 73-4-5(2)(b), the exemption only applies to the specified employees, not to independent contractors.

Applicable Law & Discussion

Pursuant to Mississippi Code Annotated Section 73-4-5, any person or entity that conducts an auction, provides an auction service, holds himself out as an auctioneer, or advertises his services as an auctioneer in the State of Mississippi must first obtain a license by the Mississippi Auctioneer Commission. For purposes of licensure, the Code defines an “auction” in the following manner:

“Auction” means a sale transaction conducted by means of oral or written exchanges between an auctioneer and the members of his audience, which exchanges consist of a series of invitations for offers for the purchase of goods made by the auctioneer and offers to purchase made by members of his audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience.

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Miss. Code Ann. § 73-4-3(a). An “auctioneer” is “an individual who is engaged in, or who by advertising or otherwise holds himself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods or real estate at an auction.” *Id.* at § 73-4-3(c).¹

Section 73-4-5(2) contains several exceptions to the licensing requirement including, relevant to your request, an exception for “[a] sale conducted by an employee of the United States or the State of Mississippi or its political subdivisions in the course and scope of his employment.” Miss. Code Ann. § 73-4-5(2)(b).

If a statute is plain and unambiguous, there is no need to engage in statutory interpretation. *Dupree v. Carroll*, 967 So. 2d 27, 30 (Miss. 2007). A plain reading of Section 73-4-5(2)(b) demonstrates that it applies only to a sale conducted by “an employee” of the United States, State of Mississippi, or a political subdivision thereof who is acting “in the course and scope of his employment.” This office is of the opinion that this language does not apply to an independent contractor.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Phil Carter

Phil Carter

Special Assistant Attorney General

¹ This opinion does not address whether a reverse auction meets the definition of an “auction,” provided in Section 73-4-3(a) or whether an individual conducting a reverse auction constitutes an “auctioneer” as defined in Section 73-4-3(c).