



INDEPENDENTS

AUCTIONEER COMMISSION

*Executive Officer: Karen Wyant
(916) 324-5894*

The Auctioneer and Auction Licensing Act, Business and Professions Code section 5700 *et seq.*, was enacted in 1982 and establishes the California Auctioneer Commission to regulate auctioneers and auction businesses in California.

The Act is designed to protect the public from various forms of deceptive and fraudulent sales practices by establishing minimal requirements for the licensure of auctioneers and auction businesses and prohibiting certain types of conduct.

Section 5715 of the Act provides for the appointment of a seven-member Board of Governors, which is authorized to adopt and enforce regulations to carry out the provisions of the Act. The Board's regulations are codified in Division 35, Title 16 of the California Code of Regulations (CCR). The Board, which is composed of four public members and three auctioneers, is responsible for enforcing the provisions of the Act and administering the activities of the Commission. Members of the Board are appointed by the Governor for four-year terms. Each member must be at least 21 years old and a California resident for at least five years prior to appointment. In addition, the three industry members must have a minimum of five years' experience in auctioneering and be of recognized standing in the trade.

The Act provides assistance to the Board of Governors in the form of a council of advisers appointed by the Board for one-year terms. In September 1987, the Board disbanded the council of advisers and replaced it with a new Advisory Council. [7:4 CRLR 99]

MAJOR PROJECTS:

Commission Pursues Legal Challenge to Impending Fund Transfer. In April, the Commission filed a Petition for Temporary Restraining Order, Preliminary and Permanent Injunction, and Other Extraordinary Relief in the Third District Court of Appeal, challenging the 1991-92 Budget Act provision which requires the transfer of much of the Commission's reserve fund to the state's general fund on June 30. [12:1 CRLR 177] Previous attempts by the Commission to convince the

Department of Finance (DOF) that Commission funds should be used only to pay necessary expenses associated with the effective performance of the duties and powers of the Commission proved unsuccessful; DOF defended the Budget Act provision—which will transfer substantial portions of many occupational licensing agencies' reserve funds to the state's general fund—by opining that the transfer is valid and does not constitute a special tax on regulated business in California.

The Third District subsequently declined to review the Commission's petition; at this writing, the Commission is preparing to file a similar petition in Sacramento County Superior Court.

Commission Drops Plan to Reduce License Renewal Fees. Last October, the Board of Governors proposed to amend section 3525, Division 35, Title 16 of the CCR, to reduce its biennial renewal fee from \$265 to \$200 for auctioneer licensees, and from \$275 to \$200 for auction company licensees. [12:1 CRLR 177] However, at its February 28 meeting, the Board of Governors agreed to forego the fee reduction, based in part on the possible transfer of \$166,000 from the Auctioneer Commission Fund to the state's general fund on June 30 (*see supra*).

LEGISLATION:

AB 2734 (Peace), as amended April 13, would amend Business and Professions Code section 5730, which specifies certain types of activities for which an unexpired and otherwise valid license to operate an auction company is not required. Specifically, this bill would amend section 5730(c), which currently provides that such a license is not required for a sale of real estate, to provide that such a license is not required for a sale of real estate or a sale of real estate with personal property or fixtures or both in a unified sale pursuant to Commercial Code section 9501(4)(a)(ii). [A. Floor]

RECENT MEETINGS:

At its February 28 meeting in Sacramento, the Board of Governors continued its discussion regarding the proposal to impose apprenticeship or educational requirements on auctioneer candidates prior to licensing. [12:1 CRLR 177] Board member Steve Grove proposed that an apprenticeship or educa-

tional requirement be implemented for all new licensees, stating that such an action would encourage increased professionalism in the industry. Grove suggested that the Commission require forty hours of auctioneer school or require that an applicant conduct his/her first three auctions under the supervision of an auctioneer who has been licensed for at least three years by the Commission. The Board directed Executive Officer Karen Wyant to solicit feedback from licensees and evaluate requirements presently imposed by other states; the Board is expected to continue this discussion at a future meeting.

FUTURE MEETINGS:

November 13 in San Diego.

BOARD OF CHIROPRACTIC EXAMINERS

Executive Director: Vivian R. Davis(916) 739-3445

In 1922, California voters approved an initiative which created the Board of Chiropractic Examiners (BCE). Today, the Board's enabling legislation is codified at Business and Professions Code section 1000 *et seq.*; BCE's regulations are located in Division 4, Title 16 of the California Code of Regulations (CCR). The Board licenses chiropractors and enforces professional standards. It also approves chiropractic schools, colleges, and continuing education courses.

The Board consists of seven members, including five chiropractors and two public members. The Board is currently operating with only six members, following the April 10 resignation of Peter Martin, DC. At this writing, Governor Wilson has not named a replacement to fill the vacant position.

MAJOR PROJECTS:

Board Adopts Regulation Defining "Adjustment." On April 23, BCE adopted proposed new section 310.3, Division 4, Title 16 of the CCR, to define a chiropractic adjustment and/or manipulation as "manually or mechanically moving such tissues beyond their passive physiological range of motion by applying a forceful thrust." [12:1 CRLR 179] According to BCE, no regulation currently defines a chiropractic adjustment and/or manipulation; as a result, unlicensed individuals may be performing chiropractic adjustments. The Board anticipates that section 310.3 will strengthen its ability to protect the public from unlicensed persons performing chiropractic procedures. At this