

PROVISIONAL NATIONAL DEFENCE COUNCIL DECREE

AUCTION SALES LAW, 1989 (PNDCL 230)

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IN pursuance of the Provisional National Defence Council (Establishment) Proclamation, 1981 this Law is hereby made:

Section 1—Establishment of the Auctioneers Registration Board.

There is hereby established an Auctioneers Registration Board in this Law referred to as "the Board".

Section 2—Composition of the Board.

(1) The Board shall consist of the following persons who shall be appointed by the Provisional National Defence Council:

- (a) a representative of the Ministry of Interior who shall be Chairman of the Board;
- (b) the Registrar-General or his representative;
- (c) the Inspector-General of Police or his representative, not below the rank of Assistant Commissioner of Police;
- (d) a representative of the Ministry of Local Government;
- (e) a representative of the Ghana Institute of Surveyors;
- (f) a representative of the Ghana Auctioneers Association; and

(g) three other persons who in the opinion of the Council can assist the Board in the discharge of its functions.

(2) The members of the Board shall be appointed for such periods and on such other terms and conditions as the Council may determine.

Section 3—Functions of the Board.

(1) The Board shall have the following functions:

(a) grant auctioneers licences;

(b) register auctioneers;

(c) revoke or suspend such licences;

(d) establish standards for the conduct of auction sales; and

(e) receive complaints made by the public in respect of registered auctioneers or relating to auction sales and take such disciplinary action as it deems fit.

(2) The Board shall keep a Register of Auctioneers in which the Board shall enter all auctioneers licensed under this Law.

Section 4—Meeting of the Board.

(1) The Board shall meet at such times and places as the Chairman may determine but shall meet at least once in every three months.

(2) At every meeting of the Board at which he is present, the Chairman shall preside and in his absence, a member of the Board appointed by the members present from among themselves shall preside.

(3) The quorum at every meeting of the Board shall be five.

(4) The validity of any proceedings of the Board shall not be affected by any vacancy in its membership or by any defect in the appointment of any member thereof.

(5) Subject to the provisions of this Law, the Board shall regulate its own procedure.

Section 5—Qualification of an Auctioneer.

(1) No person shall practise as an auctioneer unless the Board is satisfied that—

(a) he has passed a prescribed written examination conducted jointly by the Ghana Institute of Surveyors and the Ghana Auctioneers Association; and

(b) he has served an apprenticeship for one year under a licensed auctioneer.

(2) An auctioneer shall be bound by the rules of conduct laid down by the Board.

Section 6—Application for Auctioneer's Licence.

(1) No person shall practise as an auctioneer unless he possesses an auctioneer's licence granted to him by the Board.

(2) An application for a licence shall be in writing, addressed to the Board.

(3) The Board shall grant a licence to an applicant where it is satisfied with its investigations concerning the application and shall enter the name of the applicant in the Auctioneers Register.

(4) The Board may upon reasonable grounds refuse to grant a licence to an applicant.

Section 7—Auctioneer's Licence.

(1) All licences issued by the Board shall be in the form specified in the First Schedule to this Law and shall be valid throughout Ghana for a period of twelve months from the date of issue.

(2) A licence issued under subsection (1) of this section may be renewed.

(3) All licences issued by the Board shall be published in the Gazette and in the newspapers in the relevant District.

Section 8—Licence Fees.

(1) A licensed auctioneer shall pay in respect of each licence a yearly fee of such sum as the Secretary may prescribe.

(2) Amounts payable under subsection (1) of this section may from time to time be revised by the Secretary after consultation with the Board.

Section 9—Applicant to Enter into Bond.

(1) The Board shall not issue a licence to an applicant unless the applicant enters into a bond in the form specified in the Second Schedule to this Law.

(2) The Board shall prescribe the value of the bond.

(3) Where it appears to the Board that the security of any auctioneer is or has become insufficient, it shall call upon the auctioneer to give sufficient security and if he fails to do so within one month the Board may suspend the licence of such auctioneer until sufficient security has been given.

Section 10—Notice of Place of Business and Particulars of Sale.

(1) Every auctioneer shall before the commencement of any sale by auction and during the time of the sale, display in a conspicuous part of the place where the auction is being held notice—

(a) containing his full name and residence or the name of his firm and the office address written in large letters so as to be publicly visible and legible; and

(b) a clear description giving particulars of the quality and quantity of the items intended to be auctioned.

(2) Where an auctioneer fails to comply with the requirement of subsection (1) of this section, he shall be guilty of an offence and liable on conviction before a court or Tribunal to a fine not exceeding €10,000.00 or to imprisonment not exceeding six months or to both and the Board shall suspend his licence for such period as it may deem fit or revoke the licence.

Section 11—Suspension or Revocation of Licence.

(1) Where the Board makes an order suspending a licence, the licence shall cease to be of any effect during the term of suspension and where the licence is revoked, the licence shall cease to have any effect and the registration of such auctioneer shall be cancelled.

(2) Any auctioneer aggrieved by the suspension or revocation of his licence may petition to the High Court for the restoration of his licence.

Section 12—Sale of Property by Auctioneer.

(1) Subject to subsection (2) of this section every auctioneer shall at the request of the owner of any property undertake the sale of the property and shall sell such property within such time as the owner may require, or as soon thereafter as is possible, having regard to the sale or other property with which he has been entrusted.

(2) The auctioneer shall not be bound to sell such property sooner than seven days after he has undertaken the sale thereof and nothing in this subsection shall be construed as restricting any auctioneer from selling at the same sale the properties of more than one owner if those properties are lotted consecutively and in such manner that no property of one owner shall become mixed with the property of another owner.

Section 13—Notice of Sale.

(1) Where the goods to be sold by auction are not perishable or damaged goods the auctioneer shall give not less than seven days notice of sale to the District Secretary of the district where the sale is to take place.

(2) A notice of sale shall—

(a) state the time and place of the sale; and

(b) give a catalogue of the goods to be sold.

(3) The auctioneer shall exhibit in the district copies of the notice conspicuously for two days and at no less than three public places.

(4) Without prejudice to subsection (3) of this section, the auctioneer shall ensure that notice of the sale is given on the day of the sale through the beating of a drum, a gong-gong or such other means of communication as may be appropriate in the area.

(5) An auctioneer who contravenes the provisions of this section shall be guilty of an offence and liable on conviction before a court or Tribunal to a fine not exceeding ₦5,000.00 or to imprisonment not exceeding three months or to both.

Section 14—Sale of Spirits.

(1) Except as otherwise provided in this section no licence granted under this Law shall authorise any person to deal in or sell, either on account of or for the benefit of himself or of any other person, any spirits the sale of which a licence is required by law, except upon premises in respect of which the owner of such spirits has taken out a proper licence for the sale thereof which is in force at the time of the sale.

(2) Any licensed auctioneer may sell by auction in any town or place, samples of any spirits if the owner thereof has been duly licensed to sell such spirits in the same town or place, and no spirits shall be sold at any such sale in any smaller lots or quantities than the whole contents of such cask or other vessel in which the same are actually contained at the time of sale.

(3) Nothing in subsection (2) of this section shall restrict any licensed auctioneer from selling any spirits which under the Liquor Licensing Act, 1970 (Act 331) or any other law for the time being in force, may be sold without licence.

Section 15—Sale of Firearms and Ammunition.

An auctioneer may sell by auction firearms or ammunition without being registered as a firearms dealer if he has obtained a permit for the purpose of the sale from the Inspector-General of Police and complies with the terms of the permit.

Section 16—Sale of Land.

(1) No sale by auction of any land shall take place unless the auctioneer has given at least twenty-one days' public notice of the sale at the major town of the district in which the land is situated, and also at the place of the intended sale.

(2) The notice which shall state the name and place of residence of the vendor shall be made in writing and where necessary by the beating of drum or gong-gong or such other method intelligible to the public as the District Secretary of the district where such sale is to take place may direct.

(3) Any auctioneer who sells any land by auction in contravention of the provisions of this section shall be guilty of an offence and liable on conviction before a court or Tribunal to a fine not exceeding ₦50,000.00 or to imprisonment not exceeding 12 months or to both.

Section 17—Sale with or without Reserve.

(1) The auctioneer shall state the particulars or conditions of sale by auction of any goods or land whether such sale is without reserve, or subject to a reserved price, and whether a right to bid is reserved by the vendor.

(2) Where the auction sale is as a result of a judgment debt, the sale shall be subject to a reserved price to be determined by the court which gave the judgment.

(3) Where the sale is without a reserved price it shall not be lawful for the vendor or any person acting on his behalf or employed by him to bid at such sale or for the auctioneer knowingly to take any such bidding.

(4) Where the sale is subject to a reserved price as regards any one or more specified lots, it shall be lawful for the vendor or any person employed by him to give one bid for each such lot and no more; and such bid shall be openly declared at the auction upon the lot being put up for sale, before any other bidding for such lot is received.

(5) Where the sale is subject to the right of the vendor to bid it shall be lawful for the vendor or for any one person acting on his behalf, but not more than one, to bid at such auction in such manner as he thinks proper.

(6) Where the vendor or any person acting on his behalf or employed by him, bids at any sale contrary to any provisions of this section, any purchaser may refuse to fulfil his purchase; but the highest bona fide bidder shall be entitled, if he so elects, to have the goods or land at the price offered by him.

(7) Where the sale is subject to a reserved price, the sale shall not take effect even when the property is knocked down to the highest bidder if the highest bid is lower than the reserved price and in such a case the highest bidder has no right of action.

Provided that where an auctioneer signs a memorandum of the contract after accepting a bid below the reserved price he thereby impliedly warrants that he has authority to sell at the price named, and is liable to the purchaser for breach of warranty of authority.

(8) Any auctioneer who knowingly receives a bid made contrary to any of the provisions of this section shall be guilty of an offence and shall be liable on conviction before a court or Tribunal to a fine not exceeding ₦100,000.00 or to imprisonment not exceeding three years or to both.

Section 18—Report of Sale to District Secretary.

(1) An auctioneer shall within seven days after every auction sale furnish a complete account of the sale verified by him by statutory declaration to the District Secretary of the district, specifying the price at which each lot was sold.

(2) Any auctioneer who fails to furnish such account shall be guilty of an offence and liable on conviction before a court or Tribunal to a fine not exceeding ₦10,000.00 or to imprisonment not exceeding three months or to both.

Section 19—Moneys Due.

(1) An auctioneer making any sale by auction shall, unless it is agreed otherwise between him and the vendor, be entitled to sue for the recovery of all sums and the discharge of all liabilities due in respect of such sale.

(2) An auctioneer shall, unless it is otherwise agreed between him and the vendor, be liable for the due payment to the vendor of the net proceeds of every sale of property within ten days from the date of the sale of such property.

Section 20—Authority of the Auctioneer.

(1) Notwithstanding any law to the contrary, in the absence of an express instruction from the vendor, an auctioneer shall not receive payment of the purchase-money otherwise than in cash.

(2) Unless excluded by the express terms of the conditions of a sale the implied authority of an auctioneer includes the authority to receive a deposit on sale of goods.

Section 21—Limitation on the Authority of Auctioneer.

(1) The employment of an auctioneer to sell any property by public auction does not authorise him in case the public auction fails, to sell the property by private contract.

(2) An auctioneer may sell his own property as principal in which case he may not disclose the fact that he is selling as principal.

(3) An auctioneer is the agent of only the vendor where he sells as an agent except that for the purposes of signing the contract the auctioneer shall also be the agent of the purchaser.

(4) Subject to subsections (2) and (3) of this section and without prejudice to any express instructions of the vendor an auctioneer has an implied authority to sell or deal in the subject-matter of the sale in the way usual and customary amongst auctioneers but such authority shall not relieve the auctioneer of any liability for injury caused by his negligence to a person attending the sale unless the injury is caused by an unlawful act or thing which the auctioneer was authorised to do by the vendor.

(5) An auctioneer has no implied authority to conclude a sale by private contract but where the vendor accepts a purchaser introduced by the auctioneer and the vendor himself concludes a sale to such purchaser by private treaty, the auctioneer has a right to claim remuneration from the vendor.

(6) Where the auctioneer has received payment by cheque or other bill of exchange without the authority of the vendor or contrary to his authority (whether express or implied) the vendor shall not be bound by such payment and the purchaser shall remain liable for the payment of the purchase money in which case the vendor may sue the auctioneer for any damages sustained by him.

Section 22—Authority to give Warranty.

(1) Unless by express instructions of the vendor, an auctioneer has no authority to give a warranty at the auction and any unauthorised warranty given by him shall not bind the vendor and the auctioneer shall be personally liable to the purchaser for breach of warranty of authority.

Section 23—Termination of Authority.

(1) The agency of the auctioneer is an agency for sale by auction only and except for the purpose of carrying out the contract made at the auction when the property has been knocked down the auctioneer's authority terminates.

(2) The auctioneer shall not rescind such contract or introduce into it any stipulation as to title.

Section 24—Revocation of Auctioneer's Authority.

(1) Until the time of conclusion of sale and unless the contract is such as to give the auctioneer an authority coupled with an interest, the authority of an auctioneer may be revoked either expressly or in any of the circumstances in which an agreement may ordinarily be terminated.

(2) The authority of an auctioneer may be withdrawn notwithstanding that he has advertised the property for sale and incurred expenses in respect thereof.

(3) An auctioneer shall be liable for trespass if after the termination of his authority he enters the premises of the vendor for the purpose of effecting a sale.

(4) Where the authority of the auctioneer has been revoked, he shall not give the highest bidder right to the property even though the highest bidder is not aware that the authority of the auctioneer has been revoked.

Section 25—Effect of Advertisement of Auction.

(1) Subject to subsection (2) of this section the advertisement of an auction is merely an intimation of an intention to sell and in the absence of fraud, intending purchasers who attend an auction have

no right of action if the property is not put up for sale or where the property put up for sale is withdrawn.

(2) Where an advertisement amounts to a representation of fact that the auctioneer is authorised to sell and this representation is fraudulent, any person who incurs any expense on the faith of such fraudulent representation may sue the auctioneer in tort.

Section 26—Duties of the Auctioneer.

(1) The auctioneer is a bailee for reward and he shall exercise ordinary care and diligence in keeping the goods entrusted to him.

(2) The auctioneer shall on demand by the vendor redeliver the vendor's goods to him except where his right of lien exists either before sale if the authority to sell is revoked or after sale if the goods are unsold.

(3) The auctioneer shall sign a proper contract binding the purchaser and if he fails to do so he shall be liable to the vendor for any damages sustained as a consequence of his neglect.

(4) The purchase of any property at an auction by the auctioneer himself without the vendor's consent shall be voidable and may be set aside at the instance of the vendor unless there is evidence of acquiescence.

Section 27—Auctioneer's Duty to Account.

(1) An auctioneer shall account for any moneys received by him on behalf of the vendor and shall pay such money to him.

(2) Without prejudice to subsection (1) of this section an auctioneer is in a fiduciary position in respect of such moneys received on behalf of the vendor and an order to pay may be made against him as trustee which if disobeyed may render him liable to attachment.

Section 28—Bidding.

A bid is a mere offer and may be retracted by the bidder at any time before the auctioneer announces the completion of the sale and until the property is actually knocked down there is no complete contract of sale.

Section 29—Withdrawal of Property.

The vendor may before the completion of the sale at an auction withdraw the property from the auction, unless the sale is subject to a reserved price which has not been reached.

Section 30—Remuneration of Auctioneer on Sale.

(1) The remuneration of an auctioneer for selling any property by auction shall not exceed seven per centum on the gross amount of the sale.

(2) Where any property exposed for sale is bought by or on behalf of the vendor, the remuneration of the auctioneer shall not exceed three per centum of the amount at which the property has been so bought if such amount is less than ₪500,000.00 or two per centum if it exceeds that sum.

(3) No agreement to pay or allow any rates higher than those in this section shall be valid or binding; and any auctioneer who receives or retains out of the proceeds of any sale any higher rates shall be liable to have his licence suspended or revoked by the Board.

Section 31—Auctioneer's Lien.

An auctioneer has a lien by the custom of his business on goods entrusted to him for sale and on the deposit and purchase-money for his charges and remuneration.

Section 32—Vendor to Indemnify Auctioneer.

The vendor shall indemnify the auctioneer for any expenses incurred or damages sustained by him in the ordinary course of his employment and as the natural consequence of the contract of agency.

Section 33—Auctioneer to Interplead.

Where adverse claims are made to goods or money in the hands of an auctioneer, the auctioneer may interplead, subject to the Rules of Court governing interpleader.

Section 34—Failure to Sign Binding Contract.

(1) Subject to subsection (2) of this section where the property is knocked down at an auction, the purchaser has a right of action against the auctioneer where he fails to sign a binding contract.

(2) The auctioneer is under no obligation to sign such a binding contract where the property is advertised to be sold with a reserved price and the bid of the highest bidder, to whom the property is knocked down, does not reach the reserved price.

Section 35—Breach of Warranty of Authority and Fraud.

(1) Where an auctioneer sells property without or in excess of his authority he shall be liable to the purchaser for breach of warranty of authority.

(2) The purchaser is entitled to sue the auctioneer personally for any fraud to which the auctioneer is privy.

Section 36—Auctioneer to Sue in his Own Name.

(1) An auctioneer may, by reason of his lien on or special interest in the property for sale by auction, maintain an action in his own name for the price of the goods sold and delivered by him.

(2) Where the goods sold are not the property of the vendor and are claimed by the true owner before payment is made by the purchaser, the auctioneer shall not maintain an action for the price even though the purchaser has taken away the goods under an express promise to pay.

(3) An auctioneer by virtue of his lien and special interest in the property for sale by auction may maintain an action of trespass or detinue against any person who wrongfully interferes with or destroys the goods.

Section 37—Privilege from Distress.

(1) Except as otherwise provided in subsection (2) of this section goods delivered to an auctioneer for sale are privileged from distress whilst at the auctioneer's ordinary place of business or on the premises temporarily hired for the auction.

(2) This privilege shall not apply to goods on the vendor's premises even though the goods are the subject matter of an auction sale.

Section 38—Action for Conversion.

(1) Subject to subsection (2) of this section an action for conversion may lie against an auctioneer who with or without knowledge of the true ownership of any goods in cases not covered by the Sale of Goods Act, 1962 (Act 137), deals with the property.

(2) The following acts shall not amount to conversion:

(a) a mere advertisement for sale without an actual sale;

(b) where there is a contract of sale between the vendor and the purchaser and the auctioneer acting as agent of the vendor has not taken possession or interfered with the title in the property;

(c) where there is a private contract between the vendor and a purchaser and the auctioneer who has the goods in his possession merely delivers the goods to the purchaser; or

(d) where without any physical interference with the goods the auctioneer merely arranges the price and the goods are delivered by the vendor.

Section 39—Order of Suspension or Revocation from the Court.

(1) Where it appears to the court imposing any fine under this Law upon an auctioneer, that the offence is of such a nature as to require the licence of such auctioneer to be suspended or revoked, it shall make an order to that effect and accordingly the Board shall suspend or revoke the licence.

(2) The Court shall upon making an order of suspension or revocation of a licence forthwith notify the Board which shall publish the order of suspension or revocation in the Gazette and in one daily newspaper.

Section 40—Auctioneer to keep Accounts.

An auctioneer shall open and keep separate bank accounts for his client's moneys and shall in respect of such accounts provide particulars and other information as to moneys received, held and paid by him for or on account of his client.

Section 41—Annual Report of the Board.

The Board shall submit to the Secretary, not later than three months after the end of each financial year, a report on its activities in respect of that year, together with a statement of income and expenses for the year.

Section 42—Audit.

(1) The books and account of the Board shall be audited each year by the Auditor-General or by an auditor appointed by him.

(2) The Auditor-General or the auditor appointed by him shall examine the statement of income and expenses of the Board and certify whether they are in conformity with the Board's records.

(3) The Auditor-General or the auditor appointed by him shall submit his report on the audit done by him under this section to the Secretary within three months after the end of each year.

Section 43—Financial Year of the Board.

The Financial year of the Board shall be the same as the financial year of the Government.

Section 44—Interpretation.

In this Law unless the context otherwise requires—

"Council" means the Provisional National Defence Council;

"Court" includes Public Tribunals;

"Secretary" means the Provisional National Defence Council Secretary for the Interior;

"Tribunal" means the National, Regional or District Public Tribunals.

Section 45—Regulations.

The Secretary for Interior may, by legislative instrument, make regulations prescribing all matters that by this Law are required or permitted to be prescribed for carrying out or giving full effect to this Law.

Section 46—Repeal.

(1) The Auction Sales Ordinance (Cap. 196) and the Auction Sales Ordinance (Amendment) 1983 (P.N.D.C.L. 56) are hereby repealed.

(2) Notwithstanding the repeals in subsection (1) of this section—

(a) any regulations made thereunder and in force immediately before the commencement of this Law shall so far as they are consistent with the provisions of this Law remain in force; and

(b) any licence issued under the repealed enactment and in force immediately before the commencement of this Law shall continue in force until the expiration of such licence.

FIRST SCHEDULE

(Section 7)

AUCTIONEER'S LICENCE

LICENCE is hereby granted to.....

Dated at this day of 19

Fee paid ¢.....

.....

Chairman of the Board

SECOND SCHEDULE

(Section 9)

BOND

KNOW ALL MEN BY THESE PRESENT that We.....are held and firmly bound unto the Republic of Ghana in the sum of ¢.....to be paid to the Republic to which payment we bind ourselves and each and every one or us jointly and severally our heirs, executors, and administrators, and every one of them firmly by these presents.

Sealed with

our Seals.).....

Dated this..... day of 19

WHEREAS the above bounded has applied for a licence under the Auction Sales Law, 1989 (P.N.D.C.L. 230) authorising him to carry on the business of an auctioneer from the day of until next and the application has been approved, and the above bounded has (or have) been also approved as the surety (or sureties) of the said Now the condition of this obligation is such, that if the above-named complies with the provisions of the Auction Sales Law, 1989 (P.N.D.C.L. 230) then this obligation shall be void, otherwise it shall remain in full force.

Signed, sealed and)

delivered by the said) L.S

.....)

In the presence of)

.....)

Signed, sealed and)

delivered by the said) L.S

.....)

In the presence of)

.....)

Signed, sealed and)

delivered by the said) L.S

.....)

In the presence of)

.....)

Made this 25th day of July, 1989.

FLT.-LT. JERRY JOHN RAWLINGS

Chairman of the Provisional National Defence Council

Date of Gazette Notification: 22nd June, 1990.