



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

NOV 28 2000

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708-8935
Website: <http://www.drl.state.wi.us>
E-Mail: dorl@mail.state.wi.us
(608) 266-2112
FAX#: (608) 267-0644
TTY#: (608) 267-2416
TRS#: 1-800-947-3529

November 20, 2000

The Honorable Robert Wirch, Chair
Senate Committee on Economic Development,
Housing and Government Operations
State Capitol, 310 South
Madison, WI 53702

Representative Lorraine Seratti, Chair
Assembly Committee on Small Business
and Economic Development
State Capitol, 18 North
Madison, WI 53702

Re: Clearinghouse Rule 00-106, Relating to the Regulation of Auctioneers and Auction Companies

Dear Senator Wirch and Representative Seratti:

Thank you for your letter of October 18, 2000, regarding the above-referenced rule. We appreciate the approach that you have taken to resolving concerns about the statutory authority for several provisions in the rule. The department and the Auctioneer Board are convinced that the provisions are designed to protect members of the public who attend auctions and contract with auctioneers. For that reason we made some modifications to our hearing draft, to address the concerns of the Clearinghouse reviewer, and we kept some of the less questionable provisions in the final draft sent to your committees.

The department's General Counsel, William Dusso, continues to believe that a strong argument can be made that the department does have statutory authority for the proposed rules. However, the department will follow your recommendation and will seek a statutory clarification of this issue. We look forward to receiving your proffered assistance in developing appropriate legislation and shepherding it through the legislative process.

Since you and your committees have chosen to not formally seek modifications of the rule, or to object to it, the department will proceed with promulgation of the rule in the form that it was submitted to your committees.

With respect,

Marlene A. Cummings, Secretary
(608) 266-8609

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors; Professional Geologists, Hydrologists and Soil Scientists; Auctioneer; Barbering and Cosmetology; Athletic Trainers; Chiropractic; Controlled Substances; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Podiatry; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.



WISCONSIN LEGISLATURE

**STATE CAPITOL
Madison, Wisconsin 53702**

October 18, 2000

Marlene A. Cummings, Secretary
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Re: Clearinghouse Rule 00-106, Relating to the Regulation of Auctioneers and Auction Companies

Dear Secretary Cummings:

We are writing in regard to the above-captioned rule, which has been referred for legislative review to the standing committees which we chair. It appears that portions of this rule may exceed the statutory authority of the department to regulate auctions and auctioneers, as set forth in ch. 480, Stats.

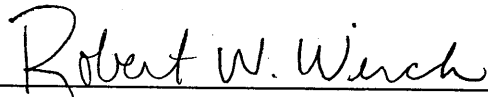
The specific rule provisions which are of concern are s. RL 126.03 (2) (e) 1. and 5., which provide that an auctioneer or auction company whose registration has been suspended or revoked by the board may not "call for bids at any type of auction, including auctions under s. 480.02 (2) (a) to (h), Stats." or "participate in any form of auctioneer-related bid calling" during the term of the suspension or revocation. It is not clear whether the department has statutory authority to enact these provisions because the types of auctions enumerated in s. 480.02 (2) (a) to (h), Stats., are exempt from the provisions of ch. 480, Stats. Because of this exemption, it appears that the department may lack authority to regulate any activities taking place at the types of auctions listed in s. 480.02 (2) (a) to (h), Stats.

Although it is unclear whether the department has authority to enact the provisions discussed above, we agree with the department that these provisions are designed to protect the public who attend auctions and contract with auctioneers. In that regard, the provisions meet the broad intent of ch. 480. Therefore, rather than formally seeking modification of or objecting to the rule, we instead strongly urge the department

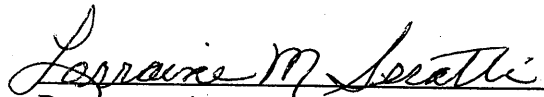
to seek a statutory clarification of this issue. Specifically, we urge you to develop legislation that clearly states that the department may prohibit an auctioneer or auction company from engaging in activities related to auctions under s. 480.02 (2) (a) to (h), Stats., during the term of license suspension or revocation. As chairs of the committees, we will be happy to work with you to develop appropriate legislation.

Thank you for your attention to this matter. Please feel free to contact either of us if you have any questions or concerns.

Sincerely,



Senator Robert Wirch, Chair
Senate Committee on Economic
Development, Housing and
Government Operations



Representative Lorraine Seratti, Chair
Assembly Committee on Small Business
and Economic Development



Judith B. Robson

Wisconsin State Senator

October 4, 2000

Senator Robert Wirch
Chair, Committee on Economic Development, Housing and Government Operations
Room 310 South

Representative Lorraine Seratti
Chair, Committee on Small Business and Economic Development
Room 18 North

Re: Clearinghouse Rule 00-106 (relating to the regulation of auctioneers and auction companies)

Dear Senator Wirch and Representative Seratti:

I am writing in regards to the above captioned rule, which has been referred to your committees for review.

A portion of this rule appears to exceed the authority of the Department of Regulation and Licensing to write administrative rules. An explanation of how the rule exceeds its statutory authority is provided in the Legislative Council Rules Clearinghouse report on this rule. The Department's response to the Legislative Council comments, contained in the final version of the rule, does not address the issues originally raised by the Legislative Council.

Our state constitution gives the Legislature sole authority to write state law. We sometimes delegate that authority to agencies, giving them authority to write administrative rules. However, we retain oversight and control over the rules promulgated by agencies. We do this by ensuring that rules are actually based on statutes and that they properly interpret the statutes on which they are based. Rules failing to meet these criteria undermine the integrity of the legislature by allowing agencies, rather than the Legislature, to make law.

I therefore urge you to look carefully at Clearinghouse Rule 00-106, relating to the

15 South, State Capitol, Post Office Box 7882, Madison, WI 53707-7882 • Telephone (608) 266-2253

District Address: 2411 East Ridge Road, Beloit, WI 53511

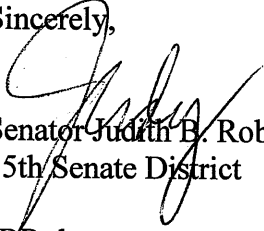
Toll-free 1-800-334-1468 • E-Mail: sen.robson@legis.state.wi.us

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regulation of auctioneers and auction companies, to see if the rule exceeds the statutory authority of the Department of Regulation and Licensing.

If you have any questions about this matter, please let me know.

Sincerely,



Senator Judith B. Robson
15th Senate District

JBR:da

staffed by [unclear]
[unclear]

addressed 2 of 3
stat. comments

if license is suspended or
revoked, they can prohibit
them from auctions not
covered by their shop.
protecting public

looks like exceeding
won't object
request to stat. change
to clarify

Mary Matthias
Leg. Coun.
6-3830

review ends

Oct. 26th
by Oct 12th

Post-it® Fax Note	7671	Date	10-9-01	# of pages	1
To	Mary Matthias	From	Amber		
Co./Dept.	Leg Council	Co.	Sen. Wirth		
Phone #		Phone #	267-8929		
Fax #	264-3830	Fax #			