

OPINION NO. 87-052**Syllabus:**

The holder of a valid real estate broker's license, issued pursuant R.C. 4735.08, who wishes to engage in or who by advertising or otherwise wishes to hold himself out as being able to engage in, the calling for, recognition of, and the acceptance of, offers for the purchase of real property at auction must, pursuant to R.C. 4707.01 and .02, secure a license as an auctioneer. (1927 Op. Att'y Gen. No. 960, vol. III, p. 1680 and 1928 Op. Att'y Gen. No. 2154, vol. II, p. 1249, overruled in part.)

To: Kenneth R. Cox, Director, Ohio Department of Commerce, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 10, 1987

I have before me your request for my opinion concerning the applicability of R.C. Chapter 4707 to persons holding a real estate broker's license. Specifically, you ask whether a person who is licensed as a real estate broker is required to

also obtain an auctioneer's license before he may conduct an auction of real property.¹

Before turning to your question, I find it necessary to address one prefatory consideration. In your correspondence you note that the issue which you present has arisen as a result of an ongoing exchange between the Department of Commerce and a particular individual. As a member of the executive branch of state government, I have, in order to preserve the separation of powers between the executive and judicial branches of government, refrained from using the opinion-rendering function to make specific determinations of the rights or duties of particular individuals. See generally 1986 Op. Att'y Gen. No. 86-039; 1983 Op. Att'y Gen. No. 83-087; 1983 Op. Att'y Gen. 83-057. I therefore must emphasize that in addressing the issue which you present, I attempt only to advise you of the requirements of state law as they relate to your official duties. I do not attempt in any way to determine the rights or duties of a particular individual.

Your question concerns whether a real estate broker must also obtain an auctioneer's license if he wishes to conduct an auction of real property. R.C. 4707.02 provides that:

No person shall act as an auctioneer, apprentice auctioneer, or auction company within this state without a license issued by the department of commerce. No auction shall be conducted in this state except by an individual licensed as an auctioneer by the department.

R.C. 4707.01(B) defines the term "auctioneer" to include:

[A]ny individual who is engaged, or who by advertising or otherwise holds himself out as being able to engage, in the calling for, recognition of, and the acceptance of, offers for the purchase of real or personal property, goods, or chattels at auction. (Emphasis added.)

It is a well-established tenet of statutory interpretation that plain and unambiguous language leaves no occasion to resort to rules of construction. See State ex rel. Stanton v. Zangerle, 117 Ohio St. 436, 159 N.E. 823 (1927); McCormick v. Alexander, 2 Ohio 66 (1825). In this instance, the plain language of R.C.

¹ In your letter of request and accompanying documents, you make several references to "mini-auctions." R.C. Chapter 4707 does not distinguish between mini-auctions and other auctions. R.C. 4707.01(A) provides only that:

"[a]uction" means a sale of real or personal property, goods, or chattels by means of verbal exchange or physical gesture between an auctioneer or apprentice auctioneer and members of his audience, the exchanges and gestures consisting of a series of invitations for offers made by the auctioneer and offers by the members of the audience, with the right to acceptance of offers with the auctioneer or apprentice auctioneer.

Thus, for the purpose of this opinion I shall presume that the auctions to which you refer fall within this definition.

4707.01 and .02 compels the conclusion that any person who wishes to engage in, or hold himself out as being able to engage in the practices specified by R.C. 4707.02 must first secure an auctioneer's license from the Department of Commerce.

In conversations with your staff it was suggested that the provisions of R.C. Chapter 4735 regarding the licensure of real estate brokers might constitute an independent grant of authority to real estate brokers to engage in the auction of real property without first obtaining an auctioneer's license pursuant to R.C. 4707.02. The particular language in question is located in R.C. 4735.01(A), which provides:

As used in this chapter:

(A) "Real estate broker" includes any person, partnership, association, or corporation, foreign or domestic, who for another, whether pursuant to a power of attorney or otherwise, and who for a fee, commission, or other valuable consideration, or with the intention, or in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:

...
(3) Lists, or offers, attempts, or agrees to list, or auctions, or offers, attempts, or agrees to auction, any real estate.

This provision is, however, a definitional section only. A definitional section is intended to limit and clarify the meaning of terms as employed within other substantive provisions. See 1982 Op. Att'y Gen. No. 82-021, n.2. For example, the definition of "auctioneer," as provided by R.C. 4707.01(B) does not independently confer any right or impose any duty. Rather, the substantive provisions of R.C. 4707.02, through the use of the defined term, impose the requirement that persons who act as auctioneers be licensed. Further, where the activities of one profession coincide with those of another profession, the practitioner is not, absent statutory provisions to the contrary, exempted from complying with the licensing requirements of both professions. See e.g., Fanning v. College of Steubenville, 31 Ohio Op. 2d 495, 197 N.E.2d 422 (1961)(a licensed engineer is required to also obtain an architect's license in order to provide architectural services which are not incidental to engineering); 1947 Op. Att'y Gen. No. 2071, p. 406 (a licensed auctioneer must also obtain a motor vehicle salesman's license to auction motor vehicles); 1927 Op. Att'y Gen. No. 960, vol. III, p. 1680 (a person who holds a valid auctioneer's license is also required to obtain a real estate broker's license to auction real property); but cf., R.C. 4735.01(K)(4)(an attorney at law in the performance of his duties is exempt from the provisions of R.C. Chapter 4735 requiring the licensure of real estate brokers); R.C. 4749.01(H)(2)(attorneys at law are exempt from the provisions of R.C. Chapter 4749 requiring the licensure of private investigators). I am unaware of any substantive provision which exempts real estate brokers from the requirements of R.C. 4707.02. Thus, I must conclude that the General Assembly did not intend, through the enactment of R.C. 4735.01(A)(3), to provide such an exemption.

Finally, I recognize that in 1927 Op. Att'y Gen. No. 960, vol. III, p. 1680 and 1928 Op. Att'y Gen. No. 2154, vol. II, p. 1249, one of my predecessors determined that:

[B]y the specific language of [G.C. 5866] it is unnecessary to secure an auctioneer's license to sell

real estate. Manifestly, therefore, the licensing section has no application to sales of real estate at auction and the fact that, by reason of other activities of the auctioneer, he may be amenable to the auctioneer's license law and so must secure a license, does not extend the licensing provision to his activities in connection with the sale of real estate.

1927 Op. No. 960, vol. III, at 1681; 1928 Op. No. 2154, vol. II, at 1250. At the time that these opinions were issued, however, G.C. 5866, a statutory predecessor of R.C. 4707.01, provided:

A person shall not exercise the occupation of auctioneer or sell by public auction, vendue or outcry, any property or effects, except utensils of husbandry, household furniture, real estate, produce, horses, sheep, hogs and meat cattle, without a license as herein provided. Whoever exercises such occupation or sells or attempts to sell, by public vendue, auction, or outcry, any property or effects, except as herein provided, without such license, shall forfeit and pay not more than five hundred dollars nor less than one hundred dollars, to be recovered in the name of the state. (Emphasis added.)

It is a general rule of statutory construction that amendments to a statute are presumed to have a substantive effect. R.C. 1.30; Dennison v. Dennison, 165 Ohio St. 146, 134 N.E.2d 574 (1956); Lytle v. Baldinger, 84 Ohio St. 1, 95 N.E. 389 (1912). Such statutory modifications may properly be considered in the construction of statutory language. See State v. Schmuck, 77 Ohio St. 438, 83 N.E. 797 (1908); Heck v. State, 44 Ohio St. 536, 9 N.E. 305 (1886). The successor statute to G.C. 5866, R.C. 4707.01, was amended in 1965. See 131 Ohio Laws p. 1171 (Am. H.B. 369, eff. Sept. 15, 1965). As quoted above, R.C. 4707.01 and .02 no longer specifically exempt persons who auction real property from obtaining an auctioneer's license. The amended statute instead plainly states that such persons are required to obtain an auctioneer's license before they may engage in the practices specified by R.C. 4707.01(B). Thus, to the extent that 1927 Op. Att'y Gen. No. 960, vol. III, p. 1680 and 1928 Op. Att'y Gen. No. 2154, vol. II, p. 1249 conclude that a person who auctions or holds himself out as being able to engage in the calling for, recognition of, and the acceptance of offers for the purchase of real property at auction need not secure an auctioneer's license before doing so, those opinions are overruled.

Accordingly, it is my opinion, and you are hereby advised that the holder of a valid real estate broker's license who wishes to engage in or who by advertising or otherwise wishes to hold himself out as being able to engage in, the calling for, recognition of, and the acceptance of, offers for the purchase of real property at auction must, pursuant to R.C. 4707.01 and .02, secure a license as an auctioneer. (1927 Op. Att'y Gen. No. 960, vol. III, p. 1680 and 1928 Op. Att'y Gen. No. 2154, vol. II, p. 1249, overruled in part.)