

OPINION NO. 786

**Syllabus:**

1. Examinations to be held by the department of commerce pursuant to Section 4707.08, Revised Code, are for auctioneers' licenses and there is no authority in Chapter 4707, Revised Code, permitting the department of commerce to require an examination of applicants for an apprentice auctioneer's license.

2. Section 4707.09, Revised Code, sets forth the only requirements which the department of commerce can consider in granting an apprentice auctioneer's license.

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To: J. Gordon Peltier, Director of Department of Commerce, Columbus, Ohio  
By: William B. Saxbe, Attorney General, January 15, 1964

Your request for my opinion reads as follows:

"Section 4707.08, Revised Code of Ohio, provides for examination of auctioneer applicants. Chapter 4707, of the Revised Code of Ohio, also provides for licensing of apprentice auctioneers, but no specific provision is made for examining apprentice auctioneers, even though the Department of Commerce charges the same fee for a license from an apprentice as from an auctioneer.

"The Division of Licensing, Department of Commerce, requests your opinion with respect to the following:

"1. May the Department of Commerce require an applicant for an auctioneer license to take an examination under authority of the last sentence of paragraph one, Section 4707.08, Revised Code of Ohio, which states 'All other applicants must pass the examination according to the standards set by the department in order to receive a license'?

"2. If the Department of Commerce may not require an examination for applicants for apprentice auctioneer licenses under the language quoted in 1 above, may such be done under any other provisions of Chapter 4707, Revised Code of Ohio?"

The provisions of Chapter 4707, Revised Code, which are applicable to the questions which you have raised are contained in Sections 4707.07, 4707.08 and 4707.09, Revised Code.

Section 4707.07, Revised Code, reads:

"The department of commerce shall have the power to grant auctioneers' licenses to those persons deemed qualified by the department. Every applicant for an auctioneer's license shall furnish to the commission, on forms provided by the department, satisfactory proof of the following:

\* \* \* \* \*

"(F) That such applicant has a general knowledge of the following:

"(1) The requirements of the Revised Code relative to auctioneers;

"(2) The auction profession;

"(3) The principles involved in conducting an auction."

Section 4707.08, Revised Code, provides:

"The department of commerce shall hold written examinations four times each year for the purpose of testing the qualifications re-

quired for obtaining a license under section 4707.07 of the Revised Code. An examination shall not be required for the renewal of any license unless such license has been revoked, suspended, or is allowed to expire without renewal, in which case the applicant shall take and pass any written examination offered by the department. All other applicants must pass the examination according to the standards set by the department in order to receive a license.

"An examination fee of twenty-five dollars shall be collected from each person taking such examination in order to defray expenses of holding such examinations.

"All applications and proofs must be filed by each applicant before the scheduled date of examination and must be accompanied by a bond and license fee.

"All persons who are or have been licensed as auctioneers prior to January 1, 1964, shall be relicensed as such without examination and subject to the requirements in effect prior to that date, by making application for such license on forms provided by the department and paying the required fee."

Section 4707.09, Revised Code, reads:

"The department of commerce shall have the power to grant apprentice auctioneers' licenses to those persons deemed qualified by the department. Every applicant for an apprentice auctioneer's license shall furnish to the department, on forms provided by the department, satisfactory proof of the following:

"(A) That such applicant has a good reputation;

"(B) That such applicant is of trustworthy character;

"(C) That such applicant has attained the age of at least eighteen years;

"(D) That such applicant is a citizen of the United States or Canada.

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It is clearly provided that a person desiring to qualify for an auctioneer's license must possess certain general knowledge as prescribed in Section 4707.07 (F), supra. It is further provided under Section 4707.08, supra, that the department of commerce shall hold written examinations in order to determine whether the applicant meets the qualifications as required in Section 4707.07, supra, for an auctioneer's license.

The reference to Section 4707.07 of the Revised Code in the first sentence of Section 4707.08, supra, in my opinion limits the requirement of an examination only to applicants for auctioneers' licenses. This limitation is further supported by the third paragraph of Section 4707.08, supra, which requires that an application must be filed before the examination date and must be accompanied by a bond. Section 4707.11, Revised Code, only requires a bond for the following:

"Each application for an auctioneer's license shall be accompanied by a bond in the sum of three thousand dollars..."  
(Emphasis added)

The concluding sentence of the first paragraph of Section 4707.08, supra, to which you refer in your request is limited by the reference in that paragraph to Section 4707.07, supra, and in my opinion merely clarifies that unless a person is applying to renew an otherwise active license such person must take an examination in order to be granted an auctioneer's license. It is to be further noted that Section 4707.09, supra, setting forth the authority to grant an apprentice's license follows the section authorizing examinations and in reading the provisions of Chapter 4707, supra, in consecutive order Section 4707.08, supra, could only refer to auctioneers' licenses as set forth in Section 4707.07, supra. For these reasons stated, it is my opinion that Section 4707.08, supra, does not require nor authorize the giving of examination to applicants for an apprentice's license.

Section 4707.09, supra, in setting forth the requirements for an apprentice's license requires no specific knowledge of the business nor makes any provision for an examination. Although Section 4707.09, supra, states that the department of commerce shall have the power to grant apprentices' licenses "to those persons deemed qualified," it is my opinion that the department of commerce cannot impose an examination or any further requirements than those provided for in Section 4707.09, subsections (A) through (D), supra. In reviewing all of Chapter 4707, supra, I can find no language which would authorize the department of commerce to require an examination be taken by an applicant for an apprentice's license. It is a well settled rule of law that an administrative department can exercise only such powers as are conferred upon it by the statute which created it and vested it with power. It is therefore my opinion that in the absence of any specific authorization the department cannot require apprentices to take an examination covering the general knowledge required in Section 4707.07 (F), supra. It would appear to be contrary to the whole purpose of apprenticeship to require a person to have knowledge of a business before he is permitted to engage in such business for the purpose of learning. Furthermore, I cannot attribute to the legislature the intent that the department of commerce has authority to give a general aptitude or intelligence test where the legislature has omitted any such requirement in either of the licensing provisions.

In your letter you referred to the fact that both the auctioneer's license and apprentice auctioneer's license carry the same license fee as provided in Section 4707.10, Revised Code. I merely point out in passing that this does not support the conclusion that an examination is to be given both type of appli-

cants since Section 4707.08, supra, specifically provides for an examination fee. The examination fee is in addition to the license fee set forth in Section 4707.10, supra, and this distinction is covered in paragraphs two and three of Section 4707.08, supra.

Therefore, it is my opinion and you are hereby advised, that examinations to be held by the department of commerce pursuant to Section 4707.08, supra, are for auctioneers' licenses and there is no authority in Chapter 4707, supra, permitting the department of commerce to require an examination of applicants for an apprentice auctioneer's license. Section 4707.09, supra, sets forth the only requirements which the department of commerce can consider in granting an apprentice auctioneer's license.