

Opinion No. 77

Auctions and Auctioneering—"Public Auction Law"

Held: 1. An auctioneer by having new merchandise assessed and by paying personal property tax thereon as provided in Section 66-229, RCM, 1947, as amended, is not subject to the other provisions of Section 66-220 through 66-230, RCM, 1947, inclusive.

2. In order to serve as an auctioneer in this state a person must be a citizen of Montana and post a performance bond in the amount of five thousand dollars, as provided by Section 66-204, RCM, 1947.

3. Persons who are exempt from the provisions of the Public Auction Law, Sections 66-220 through 66-230, RCM, 1947, may not be prosecuted for violation of those sections, but are subject to prosecution under Section 94-1512, RCM, 1947, for any violation of Sections 66-201 through 66-219, RCM, 1947.

October 3, 1958

Mr. Otis L. Packwood
Special Deputy County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Packwood:

You have requested my opinion on three questions which have arisen in connection with the interpretation of statutes relating to auctions and auctioneering.

The Questions raised are as follows:

"1. May an auctioneer by having new merchandise assessed and by paying personal property tax thereon as provided in Sec. 66-229, RCM, 1947, as amended, avoid the other provisions of Secs. 66-220 Through 66-230, RCM, 1947, as amended, inclusive?

"2. Is it unlawful for a non-resident of the State of Montana to serve as an auctioneer?

"3. Is there any criminal penalty for failing to comply with any of the auctioneering laws if Secs. 66-220 through 66-230, supra, do not apply?"

The "Public Auction Law" (Secs. 66-220 through 66-230, RCM, 1947, inc.) provides for the licensing of public auctions of all new goods, wares or merchandise, and in addition provides for the bonding of those conducting such auctions, as well as other regulations pertaining to such auctions. Exempted from the provisions of the "Public Auction Law," however, are auction sales of new merchandise upon which a personal property tax has been assessed in the county in which the sale is to be had. (Secs. 66-229, RCM, 1947) As the result of this exemption an auctioneer having new merchandise which has been assessed and upon which the personal property tax has been paid is not subject to all of the other provisions of the "Public Auction Law," including the licensing and bonding provisions.

In connection with your second inquiry, Section 66-203, RCM, 1947, provides:

"Any citizen of this state may become an auctioneer, and be authorized to sell real or personal property at public auction in

any county in this state, on giving a bond in accordance with the provisions of this chapter for the faithful performance of his duties."

The above quoted statute places a limitation upon those persons who may serve as auctioneers in this state. In addition to the requirement of posting a performance bond in the amount of five thousand dollars, (Sec. 66-204, RCM, 1947) a person must be a citizen of Montana before he can become an auctioneer and be authorized to sell real or personal property at auction.

Your third inquiry concerning a criminal penalty for the violation of any of the laws relating to auctioneering is answered by Section 94-1512, RCM, 1947, which provides:

"Every person who acts as an auctioneer in violation of the laws of this state relating to auctions and auctioneers, is guilty of misdemeanor."

Although Section 94-1512, supra, would not apply to any person who by the terms of Section 66-229, RCM, 1947, is exempt from the provisions of the "Public Auction Law" relating to the sale of new merchandise, would, in my opinion, apply it to any person violating the provisions of Section 66-201 through 66-219, RCM, 1947, inclusive.

Based upon the foregoing it is my opinion that:

1. An auctioneer by having new merchandise assessed and by paying personal property tax thereon as provided in Section 66-229, RCM, 1947, as amended, is not subject to the other provisions of Section 66-220 through 66-230, RCM, 1947.

2. In order to serve as an auctioneer in this state a person must be a citizen of Montana and post a performance bond in the amount of five thousand dollars, as provided by Section 66-204, RCM, 1947.

3. Persons who are exempt from the provisions of the Public Auction Law, Sections 66-220 through 66-230, RCM, 1947, may not be prosecuted for violation of those sections, but are subject to prosecution under Section 94-1512, RCM, 1947, for any violation of Sections 66-201 through 66-219, RCM, 1947.

Very truly yours,
FORREST H. ANDERSON
Attorney General