			£	Approved	Date	
MINUTES OF THE _Se	enate COM	IMITTEE ON	N <u>Local</u>	Governme	ent	
The meeting was called to	order by	Senato	C Don Mon	tgomery Chairperson		at
<u>9:11</u> а.т./р хи . on _		February	11	, 19 88 i	n room <u>531-N</u>	_ of the Capitol.
All members were present	except:					
Committee staff present:	Mike Heim,	Emalene	Correll,	Theresa	Kiernan and	Lila

Conferees appearing before the committee:

Rebecca Rice, Kansas Auctioneers Association Bob Wilson, Director, Kansas Auctioneer's Association Bob Thummel, Past President, Kansas Auctioneer's Association Harley Duncan, Secretary of Revenue Pat Barmes, Kansas Motor Car Dealer's Association

The hearing on $\underline{\text{S.B.}}$ 558 was opened. S.B. 558 concerns vehicle dealers; relating to auctioneers. This bill was introduced by Senator Montgomery, at the request of an auctioneer from Manhattan, Kansas. Senator Montgomery reviewed the situation leading up to the request for legislation. He also, reviewed a ruling from the Kansas Department of Revenue regarding collection of sales tax on items auctioned (Attachment I).

He called on Rebecca Rice, representing the Kansas Auctioneer's Association.

Ms. Rice presented written testimony in support of S.B. 558. She stated the legislation arose from a problem experienced by a few auctioneers, whereby, cease and desist orders, were issued directing these auctioneers to no longer sell at auction any motor vehicles (Attachment II).

Bob Wilson, Director, Kansas Auctioneer's Assn, and owner of Wilson Auction Company, of Manhattan sited an experience he had this past fall.

Bob Thummel, also representing the Kansas Auctioneer's Assn., stated they would like to continue to do what they have been doing, this legislation would allow them to do it legally.

Harley Duncan, Secretary of Revenue, presented written testimony opposing S.B. 558. He stated in the course of a year, hundreds of consigned vehicles could be sold without being subject to the various regulatory provisions of the Dealers Licensing Act, this legislation would in effect permit auctioneers to go unchecked into the vehicle business. He proposed an amendment to S.B. 558 (Attachment III).

Mr. Duncan responded to questions, he stated they are not charged with regulation of other expensive equipment such as tractors and there is less chance of them being stolen, with cars they have to think of the protection of the buyers regarding titles and odometers.

CONTINUATION SHEET

2-11

MINUTES OF THE _	Senate (COMMITTEE ON	Local (Government		
						,
room 531-N Stateho	ouse, at9:11	a.m./ p^x.Y n. on	F'ek	oruary ll	, 19 <u>88</u>	3

Harold Turntine, vehicle service administrator, Department of Revenue, responded to questions concerning why the number 5 was picked. He stated if you are selling more than 5 cars, it creates the assumption you are a dealer and should be under those guidelines. He responded to questions concerning the requirements to get a dealers license.

Pat Barnes representing the car dealer's association, presented written testimony. He stated their concerns could probably be addressed by further tightening the language in this bill, to insure that the average auctioneer can sell an occasional car or a number of cars for his customer, much like the customer himself would, but still preserve the motor vehicle industry and the present regulatory scheme, which is designed to protect us all. He suggested some amendments. (Attachment IV)

The chairman asked Mr. Barnes to present his amendments in written form to the committee.

Next meeting will be 9:00 a.m., February 17, 1988. The meeting adjourned at 10:02 a.m.

Chairman, Senator Don Montgomery

Date: February 11, 1988

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

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KANSAS DEPARTMENT OF REVENUE

Division of Taxation

Robert B. Docking State Office Building
Topeka, Kansas 66625-0001

REVENUE RULING 19-87-5

Persons who receive and sell tangible personal property on consignment or persons who operate a sale or auction where tangible personal property is sold for their own account or for others are retailers. Such persons shall collect sales tax on the total selling price of such tangible personal property, regardless of the location of the sale, unless: 1) the purchaser is able to claim an exemption under the Kansas Sales Tax Act (i.e., a farmer is purchasing used farm machinery); or, 2) the sale is on behalf of a single principal if such sale is nonrecurring and is made at the principal's place of residence (i.e., an estate sale); or 3) the sale is a liquidation of non-inventory tangible personal property and is on behalf of a single principal if the sale is nonrecurring and is made at the principal's place of business. It is immaterial whether such a retailer sells tangible personal property on a commission or percentage basis, or on a fixed fee or charge basis. For sales tax purposes, tangible personal property sold either on a consignment basis, by an auctioneer, or by one who operates a community sale is a sale at retail.

"Consignment" as used herein shall mean to commit, entrust or otherwise give over control of tangible personal property either physically or constructively to: (1) A person for the purpose of selling said tangible personal property; or (2) a consignee who is not an employee of the consignor but who has the authority to determine: (A) the selling price of said property; (B) the person(s) to whom it is sold; and, (C) that the offer to purchase from a buyer is accepted, regardless of the time of the sale or its location.

This Revenue Ruling shall be effective on and after February 1, 1988, and supersedes all previous Revenue Rul-

ings, opinions and decisions.

Harley T. Dáncap Secretary of Revenue

(ATTACHMENT I) Local Go 2/11/88

(AI) 3/11

TESTIMONY TO THE
SENATE COMMITTEE ON LOCAL GOVERNMENT
BY REBECCA S. RICE
ON BEHALF OF THE KANSAS AUCTIONEERS ASSOCIATION
SENATE BILL 558
February 11, 1988

Mr. Chairman, and members of the committee:

I am Rebecca Rice, legislative counsel for the Kansas Auctioneers Association who is in support of S.B. 558. This legislation arose from a problem experienced by a few auctioneers whereby cease and desist orders were issued directing such auctioneers to no longer sell at auction any motor vehicles. The reason for these cease and desist orders is unclear and, in at least one instance, have been revoked.

The Kansas Auctioneers Association has asked the Department of Revenue for a clear statement of the Department's position regarding who must have a vehicle dealers license to sell a vehicle. The section of the statute which this bill will amend is the statute which defines which individuals who sell vehicles must be licensed. K.S.A. 8-2404, which is not reproduced in this bill, enumerates the requirements for those who are seeking a vehicle dealers license.

I bring that section of the statutes to your attention because the typical initial reaction to this problem is to simply have auctioneers obtain vehicle dealers licenses. A license is fifty dollars (\$50.00) for a used vehicle dealer's license and it would seem a cheaper and more logical solution to obtain a license than to come to the Legislature and attempt to get this statute amended. However, in reviewing the requirements to receive a license (K.S.A. 8-2404), it becomes clear that most auctioneers would not qualify for a license because they are not in the business of selling vehicles. Auctioneers are in the pusiness of conducting sales of personal property for other individuals. As you have ascertained, this is a Catch-22 problem.

The Department tells auctioneers they can not sell vehicles because they do not have licenses. Auctioneers can not obtain a license because they are not in the business of selling vehicles. Upon reading the licensing requirements, it becomes clear the licensing statute is designed for those business which are traditional car dealerships. Rather, an auctioneer's business involves occasionally selling vehicles. I have not yet received a ruling from the Department of Revenue so I am uncertain at what point the Department of Revenue makes the determination that an auctioneer has gone from being an auctioneer who conducts sales of personal property for an individual to a vehicle dealer who must obtain a license. In any event, there are those

auctioneers who are conducting sales of farm machinery which have included motor vehicles and have subsequently had cease and desist orders issued to them which effectively also prevents the sale of used vehicles by those auctioneers at estate or farm auctions.

I have assisted in drafting the language for this short amendment to K.S.A. 8-2401 and will explain the language as we intend it. It is possible that others will interpret the language differently. However, the language was drafted carefully and we believe it accomplishes the needed clarification which is to allow auctioneers to occasionally sell motor vehicles without a vehicle dealers license. There is no attempt on the part of the Kansas Auctioneers Association to allow individuals who are conducting vehicle auctions on a regular basis, where the auction consists solely of vehicles and the auctioneers business consists primarily of selling vehicles, to be exempt from obtaining a license.

The first part the amendatory language deals with is auctioneers assisting those individuals who are exempt under (i), (ii) and (iii), which includes administrators, executors, receivers, trustees etc. This will reach most estate sales as an estate typically is held under the authority of an administrator or an executor. This also will allow a guardian to liquidate the personal property of an individual who can no longer care for themselves or who needs to liquidate their assets. Certainly these sales will typically include vehicles. I would like to reiterate that the Kansas Auctioneers Association believes that they have always been allowed to conduct auctions for these individuals whether or not that personal property would, by chance, include a used vehicle.

The balance of the amendment will allow an auctioneer to conduct auctions of tangible personal property for an individual even if that tangible personal property would include used vehicles without the auctioneer being required to obtain a vehicle dealer license. The amendment includes the statement that the auctioneer can not be engaged primarily in the business of auctioning or selling vehicles. I have used the term "primarily" as I understand the Department of Revenue to define "primarily" as meaning more than fifty percent (50%). Certainly if the department would prefer a different term than "primarily" which would have the definition of more than fifty percent (50%), we would be open to that suggestion. We are extremely concerned, however, about any attempt to change this language to put a number in the statute. Especially any attempt to limit the number of vehicles or number of principals involved in any one auction.

I would like to thank the Committee for considering this legislation and I would be happy to answer any questions.

MEMORANDUM

To: Harley T. Duncan

Secretary of Revenue

Date: February 10, 1988

From: Mark E. Wettig*

Legal Services Bureau

Re: Senate Bill No. 558

Currently K.S.A. 1987 Supp. 8-2401(a)(4) permits the <u>public</u> auctioning of motor vehicles by: (A) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, or any bank, trustee or lending company or institution which is subject to state or federal regulations as such, with regard to its disposition of repossessed vehicles; or (B) public officers while performing their official duties; or (C) employees of persons enumerated in (A) and (B), when engaged in the specific performance of their duties as such employees.

Subject to K.S.A. 1987 Supp. 8-2401(jj), the only other <u>public</u> auctions allowed are those held by auction motor vehicle dealers, licensed and operating under the Dealer Act prior to June 30, 1980.

Senate Bill No. 558 would make two changes in regard to the auctioning of motor vehicles. First, it would allow auctioneers to conduct auctions on behalf of those listed in A, B & C, above who are currently allowed to publicly auction the vehicles themselves. The Department would have no problem with this change.

Additionally, the Bill would permit auctioneers who are <u>primarily</u> in the business of conducting auctions of isolated and occasional sales of tangible personal property for others and are not engaged <u>primarily</u> in the business of auctioning or selling vehicles, to publicly auction vehicles on behalf of anyone, not just on behalf of those listed in A, B, & C above. This proposal could very easily lead to auctioneers (who legally could be considered to be engaged <u>primarily</u> in the sale of personal property <u>other</u> than vehicles, because less than 1/2 of the property they sell are vehicles), publicly auctioning hundreds and hundreds of consignment vehicles over the course of a year, without being subject to the various regulatory provisions of the Dealer Licensing Act.

TO: Harley T. Duncar RE: Senate Bill No. 558

February 10, 1988

Page 2

To combat what would in effect permit auctioneers to go unchecked into the motor vehicle business, I would propose the following amendment to Senate Bill No. 558:

or (iii); or who are engaged primarily in the business of conducting auctions of isolated and occasional sales of tangible personal property for others and are not engaged primarily in the business of auctioning or selling vehicles. (v) auctioneers who while engaged in conducting an auction of tangible personal property for others, offer for sale vehicles belonging to no more than one principal, household or business per auction.

Mark E. Wettig

Attachment

Fall Farm Consignment **AUCTION**

Wednesday, October 14, 1987

Commencing at 10:00 A.M.
LOCATION: LARNED, KANSAS--At T
West Edge Of Larned On Highway 156. **TRACTORS**

IRACIURS

(25) Tractors Including: Terex 3 yard articulating loader; '74 JD 4630, '78 IHC 1486,' 77 MF 2775, (2) IHC 4366's, IHC 666, (4) JD 4020's, 3020's & 4010's; 930 and 830 Case, (2) Fords 851 & 853, (2) JD Model D's, Adams Motor Grader and a couple of like new Front End Loaders, '17 Fordson Tractor, completely restored.

TRICKS, PICKUPS MOTOR HOME AND CARS

(78) Trucks, Pickups and Cars including: 25' KunTry Aire Travel Trailer, fully self contained; 1977
Ford F-700 truck w/like new Knapheide 18' bed and
lift, 5 speed w/2 speed, dual tanks, 10.00 x 20 tires;
1975 IHC Model 1800 truck w/18' grain bed and lift,
40,000 actual miles, 5 speed w/2 speed; 1973 IHC 1710
truck w/60 stack mover bed, 4 speed w/2 speed; 1973
Ford XT9000 V-8 71 Detroit Diesel, 13 speed, full
screw, cabover w/fifth wheel; 1972 Ford F-600 w/16'
bed and lift; 1974 Dodge w/20' bed and lift, tandem
axle, 5 speed, w/2 speed, 37,000 miles; 1967 Chev. C-60
w/16' bed and lift, 5 speed, w/2 speed; 1955 Chev. C-60
w/16' bed and lift, 4 speed w/2 speed; 1955 Chev. C-60
w/16' bed and lift, 4 speed w/2 speed; 1955 Chev.
truck w/bed and lift; 1952 Ford w/13½' bed and lift;
1948 Chev. 1½ ton w/12½' bed and lift; 1947 Chev.
½-Ton w/13½' bed and lift; 1983 Chev. 4x4 ¾-Ton;
1982 Ford F-250 ¾-Ton; 1980 Chev. C-20 4x4 Scottsdale ¾-Ton; 1986 Chev. Cargo Van, 350 V-8 Gas,
Dual Rear Wheels, 10' long box x 8' wide x 7' high,
1,516 miles; 1976 Eord F-259 And-Others.

IRRIGATION EUUPMENT TRUCKS PICKUPS MOTOR HOME AND CARS

IRRIGATION EQUIPMENT Including (150) joints of

PLOWS

JD 2350-2450 7-18 & 8-18 Semi Mount Plows, on land, like new; Massey 8-18 pulltype, On Land; Massey 8-80 7-18, Spring Trip; Semi Mount 880 Massey 6-18, On Land, Hyd. Trip; Case 6-18, On Land, Hyd. Trip; (2) JD 5-16's; M & M 5-18; JD 4-16 Pulltype.

Farming Profession of the Color of the Color

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1972 Hesston 620 Self-propelled swather w/14' header, dbl. windrow attach.; JD model 880 gas swather w/14' header, 1920 hrs; (2) 60A, (1) 30A StackHands; Farmhand Bale Accumulator w/nyd. pump; 34' Hay trailer, fifth wheel; (3) FarmHand Bale Forks; Roto Grind Tub Grinder; PTO; FarmHand XG30 Tub Grinder, 392 hrs.

DISCS

1974 28 ft. Crustbuster offset dics, hydraulic fold;
Miller 30' Series I Heavyduty Flex Tandem disc, hyd.
fold; Krause 28' disc, hyd fold; 25' Heavyduty Miller
Tandem disc hyd. fold; JD 25' 331 disc, hyd. fold; IHC
25' Tandem disc, hyd. fold; IHC 390 Flex Tandem
disc, 24', 10"; 23½' BushHog tandem disc, new
blades; 21' Crustbuster, dbl. offset disc; (4) Miller
& Wilbeck offset discs, 18' & 16'; (3) Krause & IH
discs 16' & 14'; 16' of packers.

CULTIVATORS

47' Glencoe field cultivator w/new 9" sweeps, hyd. fold, 2-bar coil tine harrow; AC field cultivator 33' w/harrow & 10" sweeps; 28' AC field cultivator; 24', 28' & 32' Crustbusters w/harrows and 3-rows of teeth.

COMBINES

1980 Gleaner N-6 with 24' header all undates 1200

COMBINES
1980 Gleaner N-6 with 24' header, all updates, 1130
separator hrs., shedded; 1975 JD 7700 combine w/24'
header, 1800 hrs.; 1976 MF 750 diesel combine, 24'
header, cab, air, hydrostat, approximately 4000 hrs.;
1968 Gleaner G combine LP w/cab, 20' header, water
cooler, like new; 1968 Gleaner G combine w/20'
header, cab, diesel, air; IHC 403 combine w/cab, 16'
header; (4) sets of Hesston head hunters.

DRILLS & PLANTERS

Oorthman 8-row bedder w/JD 71 Flex planter, Acra plant runners, hyd. markers; 12-row 30".500 Cyclo planter; JD 6-row toolbar/planter; 1970 JD 16-108 disc drill, hyd., rubber press wheels; (5) 510 Grain drills, 20-8, 16-10; (2) IHC Hoe drills, 16-10, 14-10.

Also selling shop equipment, tanks and other equipment equipment.

equipment.
Partial listing only.
Call or write for more complete brochure.

CARR auction & real estate

LARRY CARR Home:

Office 316-285-3148 123 East 5th Street LARNED, KANSAS 67550

MIKE NIEDENS.

PUBLIC AUCTION

PUBLIC AUCTION

REAL ESTATE-CARS-HOUSEHOLD-TOOLS

Sat. October 17, 1987, 10 a.m.

LOCATED: 525 So. Main, Kingman, KS.

Real Estate Sells First

40x50 Delta All Steel Building, on 6 Lots w/2 Offices, Showroom, Bath, Shop Space, Approximately 10 Years Old, City Water, Gas, and Sewer. Good Location With A Lot of Possibilities.

TERMS: 20% Down Day of Sale, Balance Upon Closing or Land Contact \$10,000 Down. Balance Over 5 ing or Land Contact \$10,000 Down. Balance Contact \$10,000 Down. Balan

HOUSEHOLD GOODS

8 ft. Satellite dish, fully equipped, remote, years ald;
2 Parking Meters; Queen Size Waten Bed (Brand;
2 Parking Meters; Queen Bed & Dresser, 2 nite stands,
new.); Stanley Queen Bed & Dresser, 2 nite stands,
like new; Regular bed, dresser, chest; Sears Stereo,
like new; Regular bed, dresser, chest; Sears Stereo,
like new; Retack, cassette; Frigidaire refrigerator
AM/FM, 8 track, cassette; Frigidaire refrigerator
Wice
(Apartment Size); Kenmore refirgerator Wice
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Wice
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chen table; Bookcase; Lamps; Kitchen Appliances; Cream
table; Bookcase; Lamps; Kitchen Appliances; Cream
cans; C.B. Radios & Base Station; File cabinets & typcans; C.B. Radios & Base Station; File cabinets & typing table; Phone Answering set; 2 AC-DC Convertors
H.D.
TERMS: Cash

TERMS: Cash Not Responsible For Accidents. Nothing Removed Until Settled For.

SELLERS

MR. & MRS. ARNOLD SCHINDLER

Clerk & Cashier (316) 532-3961

STATEMENT BEFORE THE

SENATE COMMITTEE ON LOCAL GOVERNMENT BY THE KANSAS MOTOR CAR DEALERS ASSOCIATION

Thursday, February 11, 1988

RE: Senate Bill 558 concerning automobile auctions

Mr. Chairman and Members of the Committee, I am Pat Barnes, legislative counsel for the Kansas Motor Car Dealers Association, representing our member franchised new car and truck dealers.

I am here today for the purpose of sharing the concerns our members have with SB 558. As you are aware, this bill would amend the present dealer licensing act to allow motor vehicles to be auctioned without the necessity of obtaining the regulatory license mandated by K.S.A. 8-2404 et. seq. for one to engage in the business of auctioning vehicles.

Presently one may auction motor vehicles without obtaining a license to do so in instances where the sale is on behalf of an estate, for purposes of disposing of repossessed vehicles, and by public officials as part of their official duties.

KMCDA understands the purpose of SB 558 is to clearly allow the average auctioneer to conduct an occasional auction sale of vehicles in the course of a liquidation, consignment or other general sale without running afoul of the law. However, we fear eroding the regulatory scheme without further limiting the present language in the bill could allow harmful motor vehicle auctions to spring up unregulated.

This would serve to avoid some of the regulatory powers which currently exist to curb fraudulent and unscrupulous practices. For example, an unregulated auto auction could serve to convey stolen, defective, or otherwise altered vehicles to unsuspecting consumers, including our members. The auction itself could be fairly mobile and hard to trace. It would provide an excellent method of laundering a vehicle with an altered odometer.

It is our understanding that in some areas of Kansas large consignment sales have taken place. Specifically, we have heard reports of up to thirty (30) vehicles being auctioned by one auctioneer at a consignment sale. This type of activity could conceivably fall within the exception proposed on page two (2), line forty-five (45) of SB 558 when, in fact, this type of activity is essentially a motor vehicle auction business.

We are faced with increasing pressures from outside sources such as "Sam's Sales," a division of Walmart, Amway, and other similar large operations who seek to dump new vehicles on the market without providing proper service to their consumers. We fear that this particular bill would also serve to open the floodgates to this type of activity and with used vehicles the harm to the consumer would be even greater.

Our concerns can probably be addressed by further tightening the language in this bill to insure that the average auctioneer can sell an occasional car or a number of cars for his customer, much like the customer himself would, but still preserve the motor vehicle industry and the present regulatory scheme, which is designed to protect us all.

If their are any questions, I will be more then happy to answer them for you.