Clerks of Court, fee for electronic sale

Number: INFORMAL

Date: September 22, 2008

The Honorable Marcelo Llorente
Representative, District 116
13701 Southwest 88th Street
Suite 201
Miami, Florida 33186

Dear Representative Llorente:

You have asked whether an amendment to section 45.035(3), Florida Statutes, allows the clerk of court to collect an additional $60.00 if conducting an electronic sale. Regrettably, while this office may not comment upon the authority of a public official at the request of someone other than the official whose powers are questioned, the following general observations are offered.

During the 2008 Legislative Session, section 45.035(3), Florida Statutes, was added by Chapter 2008-194, Laws of Florida (CS/HB 773). As originally filed, House Bill 773 amended subsection (1) of section 45.035, Florida Statutes, by inserting the underlined language:

"45.035 Clerk's fees.—In addition to other fees or service charges authorized by law, the clerk shall receive service charges related to the judicial sales procedure set forth in ss. 45.031-45.034 and this section:

(1) The clerk shall receive a service charge of $60 for services in making, recording, and certifying the sale and title, which service charge shall be assessed as costs and shall be advanced by the plaintiff before the sale; however, if the sale is to be conducted by electronic means as authorized in s. 45.031(10), the fee shall be $100."

A committee substitute for House Bill 773 addressed the situation by adding a new subsection (3) to section 45.035, as follows:

"(3) If the sale is conducted by electronic means, as provided in s. 45.031(10), the clerk shall receive an additional service charge of $40 for services in conducting or contracting for the electronic sale, which service charge shall be assessed as costs and shall be advanced by the plaintiff before the sale. If the clerk requires advance electronic deposits to secure the right to bid, such deposits shall not be subject to the fee under s. 28.24(10). The portion of an advance deposit from a winning bidder required by s. 45.031(3) shall, upon acceptance of the winning bid, be subject to the fee under s. 28.24(10)."

This language was subsequently stricken by an amendment,[1] inserting the language which was contained in the final bill:

"(3) If the sale is conducted by electronic means, as provided in s. 45.031(10), the clerk shall

receive a service charge of $60 as provided in subsection (1) for services in conducting or contracting for the electronic sale, which service charge shall be assessed as costs and shall be advanced by the plaintiff before the sale. If the clerk requires advance electronic deposits to secure the right to bid, such deposits shall not be subject to the fee under s. 28.24(10). The portion of an advance deposit from a winning bidder required by s. 15 45.031(3) shall, upon acceptance of the winning bid, be subject to the fee under s. 28.24(10)."

There was an apparent evolution from initially charging an additional amount for conducting an electronic sale ($40, as reflected in the original $100 charge and subsequently indicated as an additional charge to the $60), to charging the same fee as provided in subsection (1), *i.e.* $60. The audio recordings of the meeting at which the final amendment to the bill were adopted have not been reviewed by this office. You may wish to listen to the recording for more information.

I trust that these informal comments will be of assistance to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Amendment 283225 to CS/HB 773 by Rep. Dorworth, April 24, 2008, 4:58 p.m.