

OFFICE OF THE INSPECTOR GENERAL CITY OF BALTIMORE



Isabel Mercedes Cumming
Inspector General

Investigative Report Synopsis

Case # 19-0062-I

Issued: May 19, 2020



OFFICE OF THE INSPECTOR GENERAL
Isabel Mercedes Cumming, Inspector General
City Hall, Suite 635
100 N. Holliday Street
Baltimore, MD 21202



May 19, 2020

Dear Citizens of Baltimore City,

The Office of the Inspector General (OIG) received a complaint that the Chairman of the Auction Advisory Board (AAB) for the City of Baltimore (City) might have violated the City's auction regulations. Specifically, the OIG received a copy of a letter sent by the Chairman in which he offered the use of his own City auction license to the company (the Vendor) recently awarded a contract to conduct the City's vehicle auctions, in exchange for financial compensation. It was alleged that the Chairman offered the use of his own license to the Vendor because, upon being awarded the City's vehicle auction contract, the Vendor was not licensed in the City and could not meet the residency requirement to become licensed to perform auctions.

AAB Background

The City Code establishes the AAB as a three-person board with members appointed by the Mayor to: review the qualifications of applicants for City auction licenses and make recommendations for appointment to the Mayor; investigate any act in violation of the Auctions Code and recommend that a licensee have his or her license suspended or revoked; and render advice to the Mayor on any question relating to the auction profession.¹

The Chairman has been a member of the AAB for approximately 35 years and has been a licensed City auctioneer since 1974. According to the Chairman, the AAB has not held a formal meeting in over 10 years and the Chairman has had no communication regarding his role on the AAB from the past three mayoral administrations. The Chairman told the OIG that there is a second member of the AAB, who is usually out-of-state and non-responsive to communication from the Chairman. According to the Chairman, the third position on the AAB is vacant and has been vacant for over 20 years.

Use of the Chairman's License

On September 26, 2018, the City finalized an agreement with the Vendor to conduct the abandoned vehicle auctions and City-owned vehicle auctions via an online platform.² At the time of the agreement, the Vendor did not have a City auction license and began the process of trying to obtain one. The Vendor told the OIG that the City referred one of its employees to speak with the Chairman about the licensing process. The employee of the Vendor then reached out to the Chairman directly to inquire about procuring a license for the Vendor.

¹ Baltimore City Code, Article 2 §§ 1-1(a), 1-2(1)(2)(3).

² Contract Number 06000 - Online Auction Services. The contract period is August 15, 2018 through August 14, 2021. The Vendor did not commence performing City auctions until after it was given a license in March 2019.

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As the chair of the AAB, the Chairman is responsible for reviewing the Vendor's application for an auction license and ensuring the company meets the requirements set forth by Article 2, § 1-5 of the City Code. A qualification for appointment is to "verify that he has been a resident of the State of Maryland for 2 years immediately preceding the application."³ The Chairman told the employee of the Vendor that the company could not be given a City license because it did not have any employees who could satisfy the residency requirement. The conversation then shifted to allowing the Vendor to use the Chairman's own City license to conduct the City auctions.

Neither the Vendor's employee nor the Chairman could definitively state who initiated the discussion of the Vendor using the Chairman's City license. However, both parties agreed that there was an arrangement for the Vendor to financially compensate the Chairman for the use of his license. The OIG obtained a February 7, 2019 letter sent by the Chairman to the Vendor's employee outlining an agreement and compensation structure. The letter states that the Vendor would pay the Chairman \$1.00 per vehicle auctioned for the City (approximately \$400 per month), plus a \$1,600 per year flat fee (the City's fee for a one-year auction license), equating to approximately \$6,400 per year.

The Chairman told the OIG that he has operated for many years with the understanding that he could allow others to operate under his license, so long as he accepted total liability during the auctions. Moreover, the Chairman said he did not offer his license to make money, but to help the Vendor because it had just been awarded the City auction contract. The Chairman stated that he did not intend to include the Vendor as a "co-licensee," rather his intention was to conduct the auctions on behalf of the Vendor. The Chairman told the OIG he intended on showing up at the Vendor's auction site and did not intend to collect fees from the Vendor without performing any work. The Chairman also said that there would not be much work for him to perform under the deal because the auctions are done online but he thought the financial compensation was justified.

The Vendor admitted the company was in discussions with the Chairman to pay him for the use of his City license. The Vendor said it was never told directly that the company would be denied a City license, but that there was discussion it may not be able to receive one. According to the Vendor, it discussed "hiring" the Chairman to be the "auctioneer of record," but the company was unsure who initiated the discussion on compensation. The OIG requested an interview with the Vendor's employee, however, the Vendor declined to make its employee available and instead asked the OIG to submit any questions to the Vendor's legal department. The Vendor's legal department submitted written responses to an OIG subpoena.

The investigation found that this instance was not the first time the Chairman profited from allowing the use of his auction license to unlicensed individuals or entities. During his OIG interview, the Chairman admitted to allowing unlicensed auctioneers to conduct auctions under the cover of his own license on at least five different occasions. The Chairman said he was given multiple \$500 gift cards and was paid between \$250 to \$500 in cash for allowing others the use of his license. The Chairman contended that he never requested the compensation but did not turn it down when it was offered. Upon being questioned by the OIG, the Chairman said if the City wanted him to resign from the AAB, he would be happy to do so.

³ Baltimore City Code Article 2, § 1-5(7).

Vendor Procurement of a City License

According to both the Chairman and the Vendor, the agreement for the use of, and compensation for, the Chairman's license was never executed. The Chairman said he never received money from the Vendor, and that the Vendor's employee never got back to him after sending the Chairman's letter to the Vendor's legal department. In the Vendor's written response to the OIG, it stated, "While [the Vendor] was discussing terms with [the Chairman] the City's procurement, finance and, legal departments were working on a solution that would allow [the Vendor] to obtain its own license without using [the Chairman]."

Violations of the City Code

The City Code provides that no individual or business can conduct an auction in the City without a license.⁴ When the Vendor was awarded the City auction contract, it was unlicensed, and, therefore, could not conduct a legal auction. The Chairman offered his own license and regular performance to the Vendor, and, by doing so, violated the City Code by seeking to evade the provisions requiring the Vendor to be independently licensed by the City.⁵ By his own admission, the Chairman allowed other unlicensed auctioneers to perform auctions using his license and for which he received financial compensation.

Additionally, the City Charter provides that the Mayor may remove members of boards and commissions by a majority vote of members of the City Council.⁶ However, the Charter also provides that no person shall serve more than two consecutive full terms on the same board or commission, and that each term is four years or at the end of the Mayor's term of office. The Chairman's continued membership of over 30 years on the AAB is far beyond the term limits established by the Charter.

The Law Department found that the second member of the AAB identified by the Chairman was never officially sworn-in and is not a legitimate member of the AAB. The investigation found that the most recent swearing-in of AAB members occurred in 1996, when three members were sworn-in, including the Chairman. All three of those members' terms expired on December 31, 1999. Currently, there does not appear to be anyone legally appointed to the AAB, however, the Chairman has been allowed to operate the AAB for decades.

Conclusion

The OIG investigation determined that around February 2019, the Chairman of the AAB offered his City auction license to the Vendor, an unlicensed auctioneer at the time, in return for financial compensation, a violation of the City Code. Through emails and official letters, the Chairman outlined an agreement to allow the Vendor to fulfill its contractual obligations to the City by offering the use of his license in exchange for approximately \$6,400 per year. Although the Vendor was ultimately awarded its own license, regardless, the Chairman attempted to profit off his own license and with his role as AAB Chair.

⁴ Baltimore City Code, Article 2, § 1-3.

⁵ Baltimore City Code, Article 2, § 1-12

⁶ Baltimore City Charter, Article IV, § 6(d).

Furthermore, the Chairman admitted to the OIG that on multiple occasions he accepted \$500 in gift cards and between \$250 and \$500 in cash for allowing other unlicensed auctioneers to use his own City license. These instances were successful acts to profit off his City license and position on the AAB. Such acts are violations of the City Code and appear to violate his position of trust as chair of the AAB, the board responsible for carrying out the auction regulations and investigating the same type of behavior.

The investigation also found the Chairman is in violation of the term limits established by the City Charter for members of boards and commissions. The Chairman has been a member on the AAB for over 30 years, while no board member is permitted to serve more than two consecutive terms. The Chairman's time on the AAB is decades beyond the term limit. The investigation determined that the City Code requires three members be appointed to the AAB, however, this requirement has not been satisfied for 20 years. The investigation's findings were referred to the Office of the Mayor and the response received is attached to this letter. The Chairman is no longer a member of the AAB.

Sincerely,



Isabel Mercedes Cumming
Inspector General

Cc: Hon. Mayor Bernard C. "Jack" Young
Hon. City Council President Brandon M. Scott
Hon. Comptroller Joan M. Pratt
Honorable Members of the City Council
Acting City Solicitor Dana P. Moore

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