

State buyout plan

The State of Tennessee is expecting a fall in tax revenue for 2008-9 and is making a big show of trimming the budget. Horror stories of cuts and layoffs abound. Our brave legislators are hunkering down for a big money squeeze, being fiscally responsible and not screaming too loud, they are true statesmen, public heroes. The cloud has settled over Nashville and Governor Phil Bredesen is rallying his troops for the heroic battle to run state government on the pittance the failing economy has allowed them to take from Tennessee families. But the bright side is your scant tax dollars are in competent hands, being spent only on essentials. Pork is not on the menu. This is a potatoes and cabbage with no gravy diet for state management. Hooray for the governor and the Tennessee Legislature.

Okay, I admit to being facetious. If you believed what I said, then you deserve

to be thrown to the wolves. It is all bunkum. There will be no cuts, not real ones that are lasting. There will be no layoffs. Giving people who are due for retirement anyway a large hunk of change is not a buyout, and next year, who's to say each job will not be refilled, two for one. You can't have perpetual growth in government without continually hiring people and history has proven government never decreases in size. I personally don't care if they rip me off occasionally, it is one of the costs of life and life in Tennessee is just about as good as it gets, but I don't have to endure their b-s on how heroic they are.

Next year, all this year's fiscal conservatism will have been forgotten. The State of Tennessee will still employ too many people to be efficient. This year's cuts will have disappeared. Those that

take the buy-out cash will likely be driving to work somewhere else in government, only this time in a new car paid for by you. Pork will still be on the menu only the trough will be a little larger.

Nothing will have changed except their decreasing ability to fool us.

That's what I think. What do you think?

Gobble lawsuit

Sheriff Tim Gobble and the Bradley County Sheriff's Office are being sued by a former employee after she was fired for divulging to the county mayor that the sheriff was making inappropriate credit card expenditures and had hired his wife who was not qualified for the job. This editor likes people who are prepared to risk everything for a princi-

ple. It takes the kind of guts lacking in the majority of the population and in my eyes sets them apart. But, was Sheriff Gobble justified in firing her?

Had I been elected sheriff after ousting a man who had been sheriff for as long as Dan Gilley had, almost 20 years, I would have been concerned about conflicts in loyalty of the staff I inherited. The new kid on the block is vulnerable and having a person by his side that can be relied on 100% is an asset to the rookie sheriff and the smooth transition of the department. In this situation the main qualification is loyalty and reliability, which a wife would have. Also, it turned out that it was not permanent employment, so seemed to me to be completely justified. An employee doesn't question the new boss's spending

habits if they want to stay employed and loyalty is an elevated attribute.

Although I respect the courage of the whistleblower, I find I support Gobble's actions under the circumstances. Alerting the public to mismanagement is a valuable asset to help keep government honest and a whistleblower must be protected at all cost so I find myself in a quandary on this issue.

It will be interesting to witness the result of this lawsuit and the wisdom, or lack of, it promotes.

That's what I think. What do you think?

Not so Grand Jury

Again a southern Grand Jury has used its power to try to protect a law enforcement officer for being held accountable for wrongdoing.

ing. It is becoming an undeniable fact that here in Southeast Tennessee grand juries are being used by public officials to avoid prosecution for misconduct. The Grand Jury, an anonymous group appointed by a county judge to preside over his district, was originally conceived to prosecute mobsters. The juries were formed and names kept secret because regular court jury members were being bribed or threatened by the crime syndicates. Today their usefulness is in question because of their failure to indict police officers even though the case against them is substantial. In Athens, Tennessee, a McMinn County Grand Jury refused to indict former Athens Chief Detective Bill Matthews, despite hearing his confession from the TBI and State Comptrollers Office of stealing at least \$8,900 that was in police custody.

The Grand Jury is increasingly being abused and it may be time for its usefulness to be reassessed.

That's what I think. What do you think?

Is real estate bidding by Auctioneer legal?

By Pete Edwards

You only have to scan the legal announcements in the Cleveland Daily Banner to confirm that the housing market is in shambles. The credit crunch has made it more difficult to get a mortgage unless the downpayment is significant, because lending institutions are reducing their financial risk. The downturn of the US economy has forced many American homeowners to default on their mortgage payments requiring lenders to foreclose on the property to protect their investment.

Although this is an unenviable position to be in as a defaulting homeowner, it provides those with sufficient funds an opportunity to invest in property while prices are low and provides buyers for properties that have few traditional customers. To attract buyers, many property owners and lending institutions are using auction companies instead of a real estate broker to sell

homes quickly, but this has opened auction bidders to abuse and fraud.

An auctioneer should sell the property to the highest bidder unless there is a reserve price placed by the seller, under which there will be no sale. It has been noticed that at some local auctions the selling price is being artificially inflated with ghost or shill bids by the auction company, and bidders are being duped into thinking they are bidding against a rival bidder, when in fact there are none. Also, because callers employed by the auction company work the crowd looking for bids it is sometimes almost impossible to detect misconduct.

I was asked to alert our readers to this practice and give an explanation. The following is from the National Auctioneer's Association website, www.auctioneers.org/core/contentmanager/uploads/PDFs/LegalColumns-Mag.pdf

Question - I currently work

for a firm that is involved in the sale of real property. I observed at an auction that the Auctioneer selling the property reached a peak of a \$200,000 high bid. He then "threw" a bid to the crowd of \$210,000 at which time he was the high bidder. He then "worked" the crowd to get them to bid a \$211,000 bid so as to avoid being the purchaser of the property and was successful at getting a bidder to the \$211,000. Is this an illegal practice? I have a real moral issue with this practice and wanted to get a second opinion on the matter.

Answer - According to the NAA Code of Ethics, Article 2, "Members must, in conducting an auction, deal with customers in a manner exhibiting the highest standards of professionalism and respect. Members owe the customer the duties of honesty, integrity and fair dealing at all times." The NAA Code of Ethics defines customer as "The party who attends the auction for the purpose of

buying the property offered for sale." The obligation to deal fairly and honestly with the customer would generally prevent an Auctioneer from submitting a bid. State law may also prevent an Auctioneer and the Auctioneer's agents from bidding during an auction in which the Auctioneer is crying for bids. The law prohibits an Auctioneer from bidding in an absolute auction he/she is conducting. In addition, some states prohibit Auctioneers from bidding in a reserve auction. The majority of states permit the Auctioneer to bid at his or her own auction only after the seller consents and adequate disclosure of the Auctioneer's intent to bid has been made. The agency relationship between the Auctioneer and the seller creates a fiduciary duty in which the Auctioneer owes the seller loyalty. This duty of loyalty is called into question when an Auctioneer wants to bid at his or her own auction, which means the seller must

consent to the Auctioneer's bidding prior to the auction being conducted. After the seller consents, the Auctioneer should announce his or her intent to bid on items prior to the sale. Whether or not this practice is permitted is generally an issue of state law.

In addition to Auctioneer bidding, this may also be considered a shill bid. A shill bid is a bid where the person submitting the bid has no expectation of purchasing the item or property being auctioned. Shill bidding may also be referred to as ghost bidding or by-bidding. The sole purpose of the shill bid is to artificially increase the price of the item or property being sold. In the context of an absolute auction, the effect of a shill bid is that the qualified bidder may be unknowingly bidding against himself or herself. For example, if a bidder submits a bid of \$10,000 and a shill bid of \$15,000 is made and the qualified bidder then bids \$16,000, the legitimate bid-

der was bidding against his or her own bid because the shill bidder had no intent to purchase the property. If the Auctioneer has knowledge of such a bid or knowingly participates in attracting a shill bid, then the Auctioneer has violated the NAA Code of Ethics, most likely violated states law, and may have committed fraud. Even if state law permits the Auctioneer to bid on property he or she is selling (after the seller consents and the Auctioneer makes the disclosure to the bidders), the Auctioneer should only submit legitimate bids when he or she intends to purchase the property. When conducting auctions, Auctioneers must remember that they are bound by ethical considerations and that engaging in unethical practices is a negative reflection on them and on the Auctioneer profession generally. In states that allow Auctioneers to bid at auctions they are conducting, it is important to uphold the professional standards.