

BROADCASTERS HAVE A DUTY IN THE ADVERTISEMENT OF GOING OUT OF BUSINESS SALES

Although the law governing the advertisement of “going out of business” or similarly titled sales has been in effect for nearly twenty-five years, it is a common issue that broadcasters must address. This law was first enacted in 1967 because the West Virginia legislature found that these kind of sales had often been conducted in such a manner that mislead and defrauded the public. Since the enactment of the law, persons who wish to conduct and advertise these kinds of sale in West Virginia must file an application with the State Commissioner of Labor and receive a license before advertising or beginning the sale. There are criminal implications for broadcasters who advertise such sales when they know the retailer does not have the requisite license.

Prudent broadcasters should take steps to make sure businesses who wish to advertise a “going out of business,” or other regulated sales such as the sale of damaged goods, are properly licensed. All published advertisements, including television spots, must display the license number, its expiration date, and, if applicable, the new location of the business. While not specifically mandated by the statute, radio advertisers should announce this information in any advertisements for such sales. Any broadcaster advertising a “going out of business” or similar sale is on notice that the

sale violates the article when they advertise the sale without displaying or disclosing the license number on the advertisement. There is a limited exception in the law for broadcasters who run advertisements in good faith and without knowledge that the advertisement violates the law or is otherwise false, deceptive, or misleading. Therefore, it is important for broadcasters to determine whether such a sale is licensed and to refuse to run any advertisement for a regulated sale that is not licensed or that the broadcaster knows is false or misleading to the public in any way.

Going out of business and other licensed sales are initially licensed for a thirty day period. After thirty days the business owner can apply for one thirty day renewal. Broadcasters should be aware if a going out of business advertising campaign is lasting longer than the statutory period and should promptly discontinue such advertisements. Penalties for violations of these laws can include a fine of up to one hundred dollars and thirty days imprisonment. Each day a prohibited sale continues is a separate violation. If you have any questions about advertising a going out of business sale, or other broadcasting questions, please contact David Barnette or Christina Brumley of Jackson Kelly PLLC at 304-340-1000.

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