



A REVIEW OF THE OPERATIONS OF THE SOUTH CAROLINA AUCTIONEERS' COMMISSION

BACKGROUND

The S.C. Auctioneers' Commission was created in 1977 to license auctioneers and enforce laws concerning their practice. Auctions are defined in S.C. Code §40-6-20(2) as "the sale of goods or real estate by means of exchanges between an auctioneer and a member of an audience." Certain auctions, such as those conducted by a charitable organization or pursuant to a judicial order, are excluded from regulation by the commission. The commission issues three types of licenses and had 1,270 licensees as of June 30, 2006: 1,100 auctioneers; 167 auction firms; 3 apprentice auctioneers.

To be licensed, candidates must meet education or experience requirements and pass a written examination. The commission also offers reciprocity to auctioneers licensed in 15 other states.

The commission is composed of five members appointed by the Governor to three-year terms. Three members must be licensed auctioneers who are active in the profession. One member must not be connected with the auction business. In February 1994, the commission came under the jurisdiction of the newly created Department of Labor, Licensing and Regulation (LLR). While the commission retained its authority as a professional licensing entity, LLR has responsibility for administration of the agency.

The commission may investigate incompetence, misconduct and complaints, and suspend or revoke a person's license. The commission also maintains an Auctioneer Recovery Fund to pay claims to persons injured by licensees.

AUDIT OBJECTIVES

Members of the General Assembly requested that the Legislative Audit Council conduct a financial and management review of the Auctioneers' Commission. We reviewed the commission's licensing process, investigations, and revenues and expenditures to determine that the operations were efficient, appropriate, and in compliance with the law. Our audit objectives were:

- Review the Auctioneers' Commission's licensing process to determine if the process operates efficiently and in compliance with the law.
- Review the investigative process used by the Department of Labor, Licensing and Regulation and the Auctioneers' Commission to determine whether complaints are handled efficiently and in compliance with the law.
- Review the Auctioneers' Commission's revenues and expenditures to determine if funds have been used efficiently and appropriately.

SUMMARY

We generally found that the operations of the commission were handled appropriately and in compliance with the law. We did identify some areas where changes could be made to improve the services of the commission.

- The verification of continuing education credits could be improved. We found one case where the course was not completed during the time period being reviewed. We also found that invoices were accepted as documentation for the completion of courses rather than certificates or other evidence of attendance.
- The biennial license fee of \$300 for auctioneers could be lowered by \$50. The commission collects \$50,000 a year above its expenses and carries forward a substantial cash balance. Additionally, only 1 of the 15 states with similar licensing requirements has a higher annualized license fee than South Carolina.
- We found one complaint investigation that was not concluded as decided by the Auctioneers' Commission. The complaint was dismissed prior to the commission's decision.
- The documentation of actions and decisions concerning complaint investigations was inconsistent. In two-thirds of the cases investigated from 2004 through 2006, there was no documentation of the commission's final decision. Many of the actions taken by the investigator were not documented in the files.
- The Auctioneer Recovery Fund pays claims to persons injured by licensees. The fund routinely goes over the \$125,000 limit set by law, and the excess is deposited in the state's general fund. We found that the \$100 fee paid into the fund by new licensees could be reduced to \$50 or the maximum claim amount paid from the fund could be increased from \$10,000 to \$20,000.

We generally did not find major problems with the financial transactions of the commission. We found that the commission was paying for a leased car prior to FY 06-07 that was not exclusively for the commission's use. We also found that the commission is paying for phones for Department of Labor, Licensing and Regulation employees who do not work directly for the commission.

LICENSING

We reviewed the SCAC's licensing process to determine if the commission issues licenses efficiently and in compliance with the law. We found no material problems with how the licensing process was handled. However, documentation of continuing education credits could be improved. We also reviewed the commission's license fee and reciprocal licensing agreements and found that the biennial license fee could be lowered by \$50. The SCAC issues three types of licenses:

AUCTIONEER — A person who conducts or offers to conduct auctions.

APPRENTICE AUCTIONEER — A person who conducts or offers to conduct auctions under the supervision of a licensed auctioneer.

AUCTION FIRM — A business entity which engages in the business of conducting or offering to conduct auctions.

In order to become a licensed auctioneer, applicants must have satisfactorily completed one year as an apprentice auctioneer or 80 hours of instruction in auctioneering at an institution approved by the commission. They must also pass a written examination. An applicant must also have a satisfactory credit report, an acceptable criminal background check, and pay the required license and recovery fund fees. The recovery fund pays claims to persons injured by licensees.

We reviewed a random nonstatistical sample of 14 new licenses issued during FY 05-06 and FY 06-07 for compliance with state law and Auctioneers' Commission policies. Most of the new license files and the information in the licensing database had the required information. There were a few minor discrepancies, such as missing documentation. However, overall we found that the new licenses were issued in compliance with requirements.

To renew a license, a licensee must complete four hours of continuing education credits annually and submit the renewal forms and fees. We also reviewed a random nonstatistical sample of 15 licenses renewed during FY 05-06 and FY 06-07 for compliance with state law and Auctioneers' Commission policies. All of the renewals included the required information and were issued in compliance with requirements.

To verify the continuing education credits, the commission does random audits of 10% of licenses. We reviewed a random nonstatistical sample of 11 (12%) of 93 audited renewal licenses for FY 05-06 for compliance with the four-hour continuing education requirement. All of the audited licensees submitted proof of their four hours of continuing education credits. We found one case where the course was not completed during the fiscal year as required. We also identified problems with the documentation of completion of courses. In 5 of the 11 audits we reviewed, the licensee submitted a copy of the invoice for the class rather than a certificate of completion. Invoices do not document the

completion of continuing education units, only that an individual signed up to take a course.

The commission should require that licensees submit documentation of the completion of a course as proof that they met the continuing education requirement. If invoices are to be used as documentation for completion of continuing education units, then invoices should clearly state that an instructor's signature serves as verification of an individual's attendance. Also, if continuing education units are verified by means of a master attendee list, a copy of the list should be included in the licensee's file.

RECOMMENDATION

1. The S.C. Auctioneers' Commission should require documentation, such as certificates or an appropriate signed letter or invoice from the school or instructor, to verify that a licensee has completed continuing education courses. The commission should also ensure that all documentation used as verification is included in the licensee's file.

Licensing Fees

S.C. Code §40-1-50(D) requires that the fees charged by a board be sufficient but not excessive to cover expenses for the board's operations. Licensing boards are also required by a proviso in the appropriations act to remit an amount equal to 10% of expenditures to the general fund. Fees may be adjusted biennially to ensure that they are sufficient to cover expenses. The commission collects about \$50,000 a year above its expenditures and carries forward a substantial cash balance each fiscal year (see p. 5). According to an LLR official, the commission's biennial license fees of \$300 have not changed since SCAC became part of LLR in 1994.

We also examined other states' fee structures to determine if South Carolina's auctioneer licensure fees are comparable to other states. The following table lists the fee amount to become an auctioneer in the states that have reciprocity with South Carolina.

We found that only one state, Rhode Island, has a higher annualized license fee than South Carolina. Two states, Louisiana and North Carolina, charge the same annualized license fee as South Carolina. We could identify no reason why South Carolina's license fee should be higher than that of most states. Because the commission has a substantial cash balance and excess revenue each year, the biennial license fees could be lower by \$50. LLR has indicated that the license fee will be reduced by \$20 beginning with the next licensing period.

RECOMMENDATION

2. The Department of Labor, Licensing and Regulation should reduce the S.C. Auctioneers' Commission biennial license fee by \$50.

LICENSE FEES IN RECIPROCAL STATES			
RECIPROCAL STATES	TERM OF LICENSE (IN YEARS)	LICENSE FEE	ANNUALIZED LICENSE FEE
Alabama	1	\$100	\$100
Florida	2	\$150	\$75
Georgia	2	\$200	\$100
Indiana	4	\$70	\$17.50
Kentucky	1	\$100	\$100
Louisiana	1	\$150	\$150
Mississippi	2	\$200	\$100
North Carolina	1	\$150	\$150
Ohio	2	\$200	\$100
Pennsylvania	2	\$200	\$100
Rhode Island	3	\$600	\$200
SOUTH CAROLINA	2	\$300	\$150
Tennessee	2	\$150	\$75
Texas	1	\$50	\$50
Virginia	2	\$25	\$12.50
West Virginia	1	\$50	\$50

Reciprocity

S.C. Code §40-6-270 allows an individual to be licensed as an auctioneer in S.C. by having an auctioneer’s license in another state if the state has requirements that are substantially equivalent to South Carolina’s. We reviewed the 15 states that South Carolina currently has reciprocal agreements with to determine if their requirements to become a licensed auctioneer are similar to S.C.’s requirements.

According to an LLR official, reciprocal agreements are initiated by a state licensing board. The initiating board reviews and compares the licensing requirements to ensure they are equivalent and prepares an agreement for review by the other board. All of the states with reciprocity agreements with S.C. have auctioneer requirements similar to those in S.C. For example, most of the states examined require completion of auctioneer training through approved auctioneer schools, the completion of apprenticeships, and examinations.

INVESTIGATIONS

We reviewed LLR’s and SCAC’s investigative process to determine whether complaints are handled efficiently and in compliance with the law. We found that LLR should improve documentation of its actions and decisions. Also, one case was not resolved based on the final decision of the Auctioneers’ Commission. In reviewing the Auctioneer Recovery Fund, a fund maintained by the commission to pay claims to persons harmed by a licensee, we found that the fee paid by licensees to the fund could be reduced or the amount that can be claimed from the fund could be increased.

Investigative Process

Investigations of complaints for the Auctioneers’ Commission are handled by LLR’s office of investigations and enforcement (OIE). When a complaint is received, a chief investigator

screens it for a possible violation. If the investigator determines that a possible violation has occurred, he assigns it to a staff investigator. If the investigator determines that a possible violation has not occurred, the complaint is classified as “Do Not Open.”

Once an investigation begins, the staff investigator contacts the respondent by letter and/or subpoenas records under S.C. Code §40-1-80(B). However, according to an LLR official, if notification to the respondent would adversely affect the complainant and/or impede the investigation, their policy allows the investigator to determine on a case-by-case basis whether notification is necessary. An exception to the policy may also arise when complaints are staff-generated or anonymous. The investigator conducts the investigation, completes an investigative summary for approval by the chief investigator, then distributes the investigation summary to an internal investigative review committee (IRC) for review.

The IRC for the Auctioneers’ Commission is composed of the investigator’s supervisor, the administrator of the commission, a staff attorney, and an independent expert. The IRC reviews the investigation and makes a recommendation to the SCAC. The commission then makes its decision, which can be to dismiss the case, continue the investigation, accept a consent agreement or permanent relinquishment, or authorize a formal complaint. A respondent may appeal the SCAC’s final order within 30 days to the Administrative Law Court.

Review of Complaints

We examined all 41 complaints concerning auctioneers for 2004-2006 for compliance with legal and procedural requirements. We found that the complaints were resolved in compliance with the commission’s authority. We did identify issues concerning documentation of the investigations.

- Seven of the 41 complaints were classified as “Do Not Open” cases and have no actual case file. OIE policy requires the chief investigator to send a letter to the initial complainant. These letters are meant to explain why a complaint was classified as “Do Not Open.” According to an LLR official, these letters are kept in a file for 1 year.
- During the time period of our review, the OIE was unable to locate 2 of the 34 files for which investigations were conducted.
- In 15 of the 32 complaint files we reviewed, there was no copy of the letter that is required by OIE policy to be sent to the person being investigated or documentation of why a letter was not sent. This letter informs the respondent that the SCAC has received a complaint against him, describes the complaint, and asks for his response.
- In 12 of the 18 cases decided by the Auctioneers’ Commission, there was no documentation of the commission’s decision.
- One of the cases was not resolved as decided by the commission. The case had already been dismissed before the commission met. This complaint was handled based on the IRC recommendation.

In order to ensure that cases are handled in compliance with the law and LLR policy, LLR should maintain documentation of all actions concerning a complaint in the complaint file. If a file is classified as “Do Not Open,” any documentation concerning this complaint should be kept for three fiscal years. If no letter was sent to a respondent as allowed under an exception in LLR’s policy, then the case file should contain documentation stating why a written notice was not sent to the respondent. A checklist of required actions could be kept in each file and the LLR employee responsible for that action could initial to document that the step had been completed.

RECOMMENDATIONS

3. The Department of Labor, Licensing and Regulation should document its decision concerning complaints that will not be investigated for three fiscal years.
4. The Department of Labor, Licensing and Regulation should ensure that all complaints are handled in compliance with state law.
5. The Department of Labor, Licensing and Regulation should document all actions and decisions regarding complaint investigations.

RECOVERY FUND

The Auctioneer Recovery Fund, established by S.C. Code §40-6-330 through -360, pays claims to persons injured by licensees. Claims for reimbursement from the fund are heard by the commission and only actual damages can be paid. The fund is not liable for more than \$10,000 per transaction or for more than \$20,000 for one licensee in one calendar year. We reviewed the one claim made against the fund during the period of our review and found no problems with the claim.

State law specifies that the fund maintain a balance of at least \$100,000. New applicants for licensure pay a \$100 fee. If the fund exceeds \$100,000, the commission can use the excess for educational purposes. Any funds over \$125,000 must be transferred to the general fund. We found that the fund was maintained in compliance with its governing laws. Transfers to the general fund were carried out as required by law.

Auctioneer Claims in Other States

We examined other states’ claim requirements to determine if South Carolina’s auctioneer claims process is consistent with other states. The states we examined were the states that have reciprocal agreements with S.C. The following table shows the recovery fund fees and maximum claim amount in the seven reciprocal states that have a recovery fund.

Only one state with a recovery fund has a higher fee than South Carolina. Two states have a fee equal to South Carolina. Three states have a maximum claim amount that is higher than South Carolina’s. In the one claim that had been filed against the fund, the property owner’s losses were estimated to be at least \$60,000. Due to the balance in the fund, the recovery fund fee could be lowered to \$50 or the maximum claim amount could be doubled to increase consumer protection.

LLR has indicated that the recovery fund fee will be reduced by \$20 beginning with the next licensing period.

In the LAC’s 1990 sunset review of the Auctioneers’ Commission, we recommended that South Carolina create a recovery fund instead of requiring a bond for auctioneers. A recovery fund was recommended due to the amount of paperwork that the commission’s staff had to complete to make sure each licensee was properly bonded. While South Carolina’s recovery fund fee is high compared to other states, it appears that the recovery fund does address its intended purpose. We do not believe this purpose could be addressed more appropriately by a different means, such as requiring a bond for an auctioneers’ license.

RECOVERY FUNDS IN RECIPROCAL STATES		
RECIPROCAL STATES	RECOVERY FUND FEE	MAXIMUM CLAIM AMOUNT
Florida	\$100	\$50,000
Georgia	\$150	\$10,000
Indiana	No Charge	\$20,000
Kentucky	\$30	\$50,000
North Carolina	\$50	\$10,000
SOUTH CAROLINA	\$100	\$10,000
Tennessee	\$50	\$10,000
Texas	\$100	\$10,000

RECOMMENDATIONS

6. If the Department of Labor, Licensing and Regulation does not lower the Auctioneer Recovery Fund fee, the General Assembly should amend S.C. Code §40-6-360 to increase the fund’s liability to not more than \$20,000 for each transaction, and an aggregate of \$40,000 for one licensee in one calendar year.
7. If the General Assembly does not increase the maximum claim amount from the Auctioneer Recovery Fund, the Department of Labor, Licensing and Regulation should lower the Auctioneer Recovery Fund fee charged to new licensees to \$50.

REVENUES AND EXPENDITURES

We reviewed the Auctioneers’ Commission’s (SCAC) revenues and expenditures to determine if funds have been used efficiently and appropriately. We did not find significant problems with their financial transactions. We found that the commission was paying for a leased car prior to FY 06-07 that was not exclusively for the commission’s use. We also found that the commission was paying for phones for LLR employees who did not work directly for the SCAC.

The Department of Labor, Licensing and Regulation (LLR) is responsible for all fiscal activities of the commission. LLR must maintain a separate account for the commission and allocate expenses appropriately. The commission has three funds — operating, recovery fund, and fines.

- The operating fund includes the revenues from licensing fees and the expenditures for the daily operations of the commission.
- The recovery fund is maintained to pay people who are harmed by a licensee (see p. 4).
- The fines fund receives civil fines imposed upon licensees by the commission.

The table below shows the commission’s cash balances in the operating account from FY 04-05 through March 31, 2007.

The revenue received by the commission comes from license fees and fees related to licensing such as examinations and verification fees. Expenditures by the commission are paid directly to the vendor and as administrative transfers to LLR for the SCAC’s share of LLR’s administrative expenditures.

CASH BALANCES			
	FY 04-05	FY 05-06	FY 06-07*
Cash Forward	\$349,487	\$401,636	\$458,070
Revenues	184,121	200,966	51,009
Expenditures	98,801	110,427	45,567
Administrative Transfers	23,291	23,062	11,642
Transfers to General Fund	9,880	11,043	0
Revenue over Expenditures	\$52,149	\$56,434	(\$6,200)
Cash Balance	\$401,636	\$458,070	\$451,870

* As of March 31, 2007

Source: Department of Labor, Licensing and Regulation

Revenues

Almost all of the revenues received by the commission come from license renewal fees. In order to determine if the revenues due to the commission were handled properly, we reviewed a nonstatistical sample of 34 deposits for FY 05-06 and FY 06-07. We verified that the funds were for the commission and that the funds were credited to the appropriate fund. We identified no problems with LLR’s handling of the commission’s revenues.

Expenditures

We reviewed the commission’s expenditures from FY 05-06 and FY 06-07 to determine if the expenditures were appropriate and related to the commission. The following table shows how the commission’s operating funds were spent for FY 05-06 and FY 06-07.

EXPENDITURES		
	FY 05-06	FY 06-07*
Personal Services	\$65,741	\$25,400
Contractual Services	22,868	1,512
Supplies	1,702	454
Fixed Charges	8,213	7,030
Travel	5,709	584
Equipment	6,194	0
TOTAL	\$110,427	\$34,980

* As of February 6, 2007

Source: Department of Labor, Licensing and Regulation

We reviewed a nonstatistical sample of 69 vouchers paid by the commission for FY 05-06 and FY 06-07. We noted two types of expenditures where the commission paid the total cost for items that were not used exclusively by the SCAC.

- In FY 05-06, the commission paid \$4,490 to the Budget and Control Board to lease a car. The billings indicated that the car was assigned to the Cosmetology Board. An LLR official explained that the car was used by an LLR investigator who investigated complaints for the commission and other programs. The car was then transferred to the LLR office of investigations and enforcement. However, prior to that reassignment, the commission was paying the full lease for a car which was not being used solely for commission business. In FY 06-07, the commission had no expenditures for a car lease.
- The commission pays for the phones for two LLR employees who do not work for the SCAC. According to an LLR official, these phones are used by LLR employees in the business and related services division and are charged to one or more programs in that division.

The commission should only pay the total cost of those items which are directly related to its operations.

RECOMMENDATION

8. The Department of Labor, Licensing and Regulation should use the Auctioneers’ Commission’s funds to pay for the total cost of those items directly related to the commission’s operations.

Administrative Transfers

To fund administrative functions that are shared by all of the licensing boards, LLR transfers funds monthly from the commission. According to an LLR official, each board’s share of LLR’s administrative expenses is based on the amount of the board’s expenditures. It is assumed that if the board spends more, it is using more of the LLR’s administrative resources. The commission’s share of the administrative expenses is about 1% each month. The following table shows the transfers from the commission to LLR.

We reviewed a nonstatistical sample of five monthly transfers in FY 05-06 and FY 06-07 and did not identify any problems with the calculation of the amount that the commission owed.

ADMINISTRATIVE TRANSFERS			
FY 03-04	FY 04-05	FY 05-06	FY 06-07*
\$21,479	\$23,291	\$23,062	\$11,642

* As of March 31, 2007

Source: Department of Labor, Licensing and Regulation

AGENCY COMMENTS



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September 20, 2007

George L. Schroeder, Director
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1331 Elmwood Avenue, Suite 315
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Dear Mr. Schroeder:

*Re: Report: A Review of the Operations of the
South Carolina Auctioneers' Commission*

The Department of Labor, Licensing and Regulation, on behalf of ourselves and the Auctioneer's Commission, whose program we administer, thank you for the opportunity to respond to the Review of this program. The Department especially appreciates the primary conclusion that the operations of the Commission were handled appropriately and in compliance with the law. As always, we welcome suggestions concerning ways to improve the services provided by the Department and the Commission to the public.

As part of our ongoing efforts to improve departmental performance, we had already recognized and addressed many of the concerns raised by this study. We are particularly proud that through careful fiscal management and without any fee increase since 1989, the Department has accrued a significant cash balance in the name of the Commission. This cash balance has allowed the Department, using the analysis required by S. C. Code 40-1-50(D) to reduce fees for operation of the auctioneer's licensing program, effective with the next renewal cycle.

A major reason for the creation of the Department of Labor, Licensing and Regulation was to increase government efficiency and effectiveness by consolidating resources and administration of more than forty small agencies. The program administered for the Auctioneers' Commission has benefited from this consolidation. It now has access to a variety of resources, including trained financial investigators, professional management, a sophisticated information management system, and supporting attorneys that would not be possible for a program operating alone on \$200,000 in annual revenues. However, consolidation and resource sharing do present complicated accounting issues. It is important

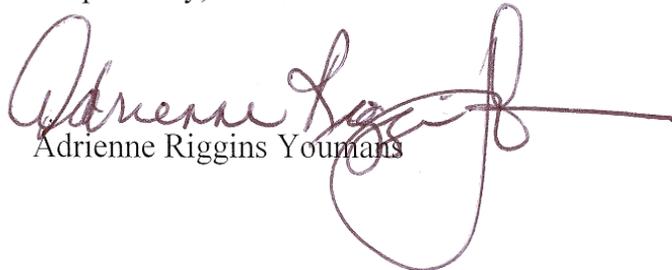
George L. Schroeder, Director
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that the accounting system does not become so complicated and cumbersome that the savings evaporate. The Department will continue to apply generally accepted standards for government accounting and to make every effort to allocate the costs of shared resources among programs in a fair and equitable manner.

The Department and the Commission also continue to make every effort to see that all complaints are handled in compliance with state law. We use a sophisticated computerized case management system to assure that no funds are expended on complaints concerning matters outside the Commission's jurisdiction and that all investigations are timely and complete and that the results are presented to the Commission. As I pointed out in my letter of July 31, my staff located much of the documentation that your report cites as missing. We continue to explore the use of imaging systems as a cost effective way of making records more readily accessible.

Thank you for the opportunity to relay our concerns about the report. Like you, I am committed to provide the best administration possible to the programs for which I am responsible.

Respectfully,



Adrienne Riggins Youmans

THIS AUDIT WAS CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED GOVERNMENT AUDITING STANDARDS AS SET FORTH BY THE COMPTROLLER GENERAL OF THE UNITED STATES.

FOR MORE INFORMATION

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George L. Schroeder
Director

SCOPE AND METHODOLOGY

We reviewed the SCAC's revenues and expenditures and the operations of the commission. The period covered by our review was, generally, from FY 04-05 through FY 06-07. We interviewed LLR and SCAC staff, licensed auctioneers, and officials with other state agencies and private organizations associated with auctioneer licensing. We reviewed SCAC records related to licensing and board meetings. We also reviewed LLR records of complaint investigations and financial transactions. Other sources of evidence included reports and information on the licensing of auctioneers in other states, state law and regulations, and LLR policies and procedures.

We assessed the internal controls over the licensing process, investigations, and revenues and expenditures. We also conducted nonstatistical sampling of the licensing process and the financial transactions. To accomplish some of our objectives, we relied on computer-generated data. We tested the reliability of the computerized information and did not identify concerns about its accuracy.

Authorized by §2-15-10 *et seq.* of the South Carolina Code of Laws, the Legislative Audit Council, created in 1975, reviews the operations of state agencies, investigates fiscal matters as required, and provides information to assist the General Assembly. Some audits are conducted at the request of groups of legislators who have questions about potential problems in state agencies or programs; other audits are performed as a result of statutory mandate.

The Legislative Audit Council is composed of five public members, one of whom must be a practicing certified or licensed public accountant and one of whom must be an attorney. In addition, four members of the General Assembly serve *ex officio*.

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