

**BEFORE THE BOARD OF LIVESTOCK
MONTANA DEPARTMENT OF LIVESTOCK
STATE OF MONTANA**

**IN THE MATTER OF THE 2020
SALE AND TRANSFER OF THE
MARKET CERTIFICATE FOR
LEWISTOWN LIVESTOCK
AUCTION**

**PROPOSED DECISION AND
RECOMMENDED ORDER**

The Department of Livestock (“Department”) appointed the undersigned to serve as hearing officer in the matter of the application for transfer of a livestock market certificate of public convenience and necessity (“market certificate”) pursuant to Mont. Code Ann. § 81-8-253. The application proposes to transfer the livestock market certificate of public convenience and necessity currently held by Central Montana Livestock Auction, Inc. (“Seller”) to Lewistown Livestock, Inc. (“Buyer”).

A public hearing was held on September 18, 2020 at 1:00 p.m. at the Lewistown Livestock Auction at 83 Stockyard Lane, Lewistown, Montana 59457. President of Buyer, Kyle Shobe, was present. President of Seller, Lyle Allen, was present.

EVIDENCE

Kyle Shobe testified on behalf of the Buyer. Lyle Allen testified on behalf of the Seller. Abby Williams, Livestock Market Auditor for the Department, also testified. A number of people were present as member of the public, but no public comments were offered.

The Hearing Officer admitted the following exhibits into the hearing record:

No.	Description
1	September 8, 2020 Letter from Abby Williams
2	Application for Transfer of Livestock Market Certificate

Page numbers were added to the bottom right-hand corner of the exhibits by the Hearing Officer after the hearing.

An audio recording of the hearing was made and is part of the hearing record.

FINDINGS OF FACT

1. Seller is a corporation organized under the laws of the State of Montana. (Ex. 2, at 40–41).
2. Seller does business under the assumed business name “Lewistown Livestock Auction.” *Id.* at 42.
3. Lyle Allen (“Mr. Allen”) is the President of Seller.
4. Buyer is a corporation organized under the laws of the State of Montana. *Id.* at 46–47.
5. Kyle Shobe (“Mr. Shobe”) and his wife Jodie Shobe (“Mrs. Shobe”) are the sole owners of Buyer.
6. Mr. Shobe has worked for Lewistown Livestock Auction as an auctioneer and yard regularly employee since 2007. Mr. Shobe also has experience working as a seasonal livestock auctioneer for the Glasgow Stockyards since 2011 and the Sidney Livestock Market Center since 2015. He also has experience in the purebred livestock business, conducting approximately 30 purebred sales in a given year.

7. Mr. Shobe is the co-owner of Shobe Auction & Realty, Inc., a full-service auction and real estate firm in Lewistown, Montana. The firm has been in business since 1985, and Mr. Shobe has been a partner since 2007.

8. Seller and Buyer have entered into a “Commercial Asset Purchase Agreement” in which Buyer agreed to purchase personal property, good will, and the market certificate of Seller. *Id.* at 11–18.

9. Seller owns the real property where the Lewistown Livestock Auction operates. Seller and Shobe Properties, LLC, have entered into an “Agreement to Sell and Purchase Commercial Real Property.” *Id.* at 3–9. A description of the real property, subject only to confirmation in a final title commitment, is contained therein.

10. Shobe Properties, LLC is a limited liability company organized under the laws of the State of Montana. *Id.* at 44. Mr. and Mrs. Shobe are the members/managers of Shobe Properties, LLC. *Id.* at 45.

11. Buyer intends to operate Lewistown Livestock Auction on the same real property where Seller operates it currently.

12. At the hearing, Mr. Shobe and Mr. Allen provided testimony under oath that the materials submitted to the Department comprised the application for transfer of the market certificate. These application materials are accepted into the record as **Exhibit 2** as the Department’s business records for the market certificate transfer request.

13. Financial statements of Seller and Mr. and Mrs. Shobe were submitted to the Department with the application for transfer of the market certificate. *Id.* at 19–35.

14. Mr. Shobe testified, without contradiction, that the financial information contained in his and Mrs. Shobe's financial statements was representative of Buyer's financial situation.

15. Abby Williams ("Ms. Williams") testified that the Department was satisfied that the Buyer and Seller had submitted all materials required for a complete application for transfer of a market certificate. Ms. Williams' written statement regarding her review of the application materials is accepted into the record as **Exhibit 1** as the Department's business records for the market certificate transfer request.

16. Mr. Allen testified that he had no concerns regarding the Buyer's qualifications to operate the livestock market currently owned and operated by Seller.

17. No additional testimony was offered by other witnesses at the hearing and, thus, there was no testimony opposing the transfer of the market certificate.

CONCLUSIONS OF LAW

1. Mont. Code Ann. § 81-8-251 establishes the materials that must be provided when a market certificate is sought, as follows:

(2) The application for a certificate of public convenience must be in writing, verified by the applicant, and filed with the department. The application must specify the following:

(a) the names of the persons applying for a certificate together with their permanent addresses. If the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the place where the applicant proposes to operate a livestock market;

(c) a complete description of the property and facilities proposed to be used for the livestock market;

(d) the commissions or charges the applicant proposes to impose on the consignors' livestock for services rendered by the applicant in the operation of the livestock market;

(e) the location of other livestock markets within a radius of 200 miles of the proposed livestock market and the names and addresses of the operators of those markets;

(f) a detailed statement of the facts upon which the applicant relies to show public convenience and necessity for the livestock market, including the trade area to be served, the economic benefits to the livestock industry, the services to be offered, and the anticipated revenue from inspection that may be derived by the state;

(g) if the applicant is a foreign corporation, its principal place of business outside the state, the state in which it is incorporated, and a showing that it is in compliance with the laws relating to foreign corporations doing business in this state;

(h) a detailed financial statement showing that current assets exceed current liabilities and that long-term assets exceed long-term liabilities;

(i) any additional information the department may require.

2. Mont. Code Ann. § 81-8-253 provides the requirements for transfer of a livestock market certificate, as follows:

The department may approve the transfer of ownership of a certificate of public convenience and necessity issued pursuant to this part without a determination and showing of public convenience and necessity. Such approval may be granted only after a public hearing at which the transferee's qualifications to operate a livestock market have been thoroughly examined and found sufficient to properly operate a livestock market. A minimum of 10 days' notice by mail must be given to all persons to whom notice is sent pursuant to the provisions of 81-8-252 of a hearing to consider an initial application for a certificate.

3. Based on the materials contained in the application and the testimony of Mr. Shobe, Mr. Allen, and Ms. Williams, the Hearing Officer concludes that the required materials were contained in the application for transfer of the market certificate. No contrary testimony or evidence was presented.

4. The Hearing Officer concludes that the Buyer's qualifications to operate a livestock market were thoroughly examined and found sufficient to properly operate a livestock market. No contrary testimony or evidence was presented.

5. Administrative R. Mont. 32.15.104(2) provides the requirement for a hearing on certain transfers of a livestock market certificate, as follows:

Changes which result in ownership or control of the market passing to persons not already approved by the department of livestock to operate the market may be given approval only after public hearing before the department of livestock.

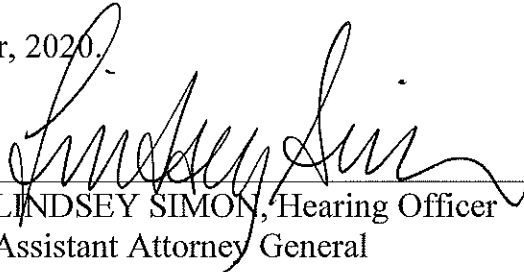
6. The Hearing Officer concludes that the hearing required for the proposed change in ownership and control the livestock market was met.

RECOMMENDED ORDER

Upon review of the application materials and the testimony at the public hearing, the Hearing Officer recommends that the Board of Livestock APPROVE the application for the transfer of the market certificate from Central Montana Livestock Auction, Inc. to Lewistown Livestock, Inc. and that the Hearing Officer's proposed decision and recommended order be ACCEPTED in their entirety by the Board.

Exceptions to these proposed findings of fact, conclusions of law, and order may be filed with the Board of Livestock pursuant to Mont. Code Ann. § 2-4-621(1) and Admin. R. Mont. 1.3.223.

DATED this 21st day of September, 2020.



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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2020, I caused a true and accurate copy of the foregoing to be served upon the following by U.S. Mail and electronic mail as follows:

Lewistown Livestock, Inc.
305 Snowy Mountain Drive
Lewistown, MT 59457
Proposed Buyer

Central Montana Livestock Auction, Inc.
P.O. Box 1190
Lewistown, MT 59457-1190
Proposed Seller

Montana Board of Livestock
c/o Mike Honeycutt, Executive Officer
c/o Ethan Wilfore, Brands c/o Enforcement
Administrator
Abby Williams, Livestock Market Auditor
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