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Disposition of Surplus Property

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Disposition of Surplus Property

Reference Number: CTAS-940

County governments frequently need to sell or convey equipment or property which is no longer needed for county purposes. The disposition of surplus property is the final step in the county's purchasing cycle. County officials and department heads should become familiar with the various laws and/or private acts that govern the sale and/or transfer of surplus property for their respective county. A review of the laws pertaining to the disposition of surplus property follows.

General Law. When there are no specific requirements imposed by general law or private act, the disposal of county property is within the discretion of the county legislative body. See T.C.A. § 5-7-101 (authorizing the county to dispose of its property) and T.C.A. § 5-1-103 (authorizing the county legislative body to act for the county). The county legislative body would have to act at a meeting that complies with the open meetings law. See *Op. Tenn. Att'y Gen.* U86-112 (August 1, 1986), *Op. Tenn. Att'y Gen.* 03-131 (October 3, 2003). Counties are authorized to lease real property owned by them under T.C.A. § 5-7-116.

County Financial Management System of 1981. In counties that have adopted the County Financial Management System of 1981 (1981 Act), it is the duty of the finance director under T.C.A. § 5-21-118(b) to conduct public sales of county property when the county legislative body declares the property surplus. In a county operating under the 1981 Act, all sales of county surplus property must be by public sale. *Op. Tenn. Att'y Gen.* 13-84 (October 31, 2013). For property of the board of education, this statute must be interpreted in conjunction with the provisions of T.C.A. §§ 49-6-2006 and 49-6-2007, which give the board of education certain authority over the disposition of its property. See Disposition of Surplus Property in the Education Department.

County Purchasing Law of 1957. In counties that have elected to be governed by the provisions of the County Purchasing Law of 1957, the county purchasing agent must sell surplus real or personal property pursuant to T.C.A. § 5-14-108(o) by public auction or by sealed bid after the county legislative body has declared the property surplus (for property of the board of education, the board would make the determination that the property is surplus, and may conduct the sale if the department of education is not under the 1957 law; see Disposition of Surplus Property in the Education Department). The county purchasing agent, with the assistance of the county purchasing commission, may adopt rules for requiring reports from county departments of surplus equipment and supplies, and the transfer of surplus equipment and supplies that may be used by other county departments, and rules for the sale, after receipt of competitive bids, of surplus equipment (T.C.A. §§ 5-14-107(5) and 5-14-107(6)). In these counties, the county legislative body is authorized under T.C.A. § 5-14-108(o) to establish by 2/3 vote a procedure whereby the purchasing agent, upon request of the county mayor, may dispose of surplus personal property with an estimated value of \$1,000 or less by selling on the open market or by gift, trade, or barter to a nonprofit or charitable organization.

Transfers of Surplus Property Among Governmental Entities. There are two statutes that authorize counties to transfer surplus property to other governmental entities. Under T.C.A. § 12-2-420 (formerly T.C.A. § 12-3-1005), counties may transfer surplus personal property to other governmental entities by sale, gift, trade, or barter upon such terms as the county legislative body may authorize, without public advertisement or competitive bidding, regardless of any other law to the contrary. The approval of the governing bodies of both entities is required. A similar statute, T.C.A. § 12-9-110, authorizes public agencies, including county legislative bodies and boards of education, to convey or transfer both real property and personal property to other public entities without sale or competitive bidding. The conveyance may be made by an agreement between the governing bodies of the public agencies authorizing the conveyance and determining that the terms and conditions are appropriate. The public agency or agencies receiving the conveyance or transfer must use the property for a public purpose. This provision may be used without declaring property surplus, and it supersedes any contrary requirements in any other general law or private act. T.C.A. § 12-9-110.

County Officials and Employees Prohibited from Privately Purchasing Surplus County Property—Under T.C.A. § 5-1-125, county officials and employees are prohibited from purchasing surplus county property unless the property is being sold by public auction or by competitive sealed bid.

Sale of Surplus Property by Internet Auction—Under T.C.A. § 5-1-128, counties are authorized to sell surplus property by internet auction.

Sale of Historic or Scenic Property. Under T.C.A. § 12-2-501, counties may sell real or personal property by private negotiation and sale if (1) the property is significant for architectural, archaeological, artistic, cultural, or historical purposes or for its open, natural, or scenic condition, and (2) the property is sold to a nonprofit corporation or trust in furtherance of its preservation or conservation purposes, and (3) a

preservation or conservation agreement is placed in the deed and the nonprofit may only dispose of the property subject to covenants promoting preservation or conservation. or if applicable, securing the right of public access.

Disposition of Confiscated Property or Property Acquired at Tax Sales. These types of property are not considered surplus county property that can be disposed of using the methods outlined above, but rather are governed by their own procedures which are covered elsewhere.

Sale of Real Property to Certain § 501(c)(3) Entities. Notwithstanding any rule, regulation or other law to the contrary, any county, upon two-thirds (2/3) vote of the county legislative body, may dispose of real property at a nominal cost by private negotiation and sale to a nonprofit corporation incorporated under the laws of this state that has received a determination of exemption from the Internal Revenue Service pursuant to 26 U.S.C. § 501(c)(3), and whose purpose includes providing educational and vocational training services to children and adults with disabilities, or whose purpose includes providing educational services to youth in areas including health, science, agriculture, and civic engagement through in-school and after-school programs and school and community clubs and camps. T.C.A. § 5-7-119.

Property Taken by Eminent Domain. If a condemning entity determines that property taken by eminent domain is not used for the purpose for which it was condemned, or for some other authorized public use, or if the condemning entity decides to sell the property within 10 years of taking the property, then the condemning entity must first offer the property for sale to the persons from which the property was taken. Such persons may purchase the property for not less than fair market value plus costs and have 30 days to sign a purchase agreement for the property. If the former owner does not purchase the property within the 30 days, then the property may be sold in any commercially reasonable manner for not less than fair market value plus costs. T.C.A. § 29-17-1005.

Property Brought in after Delinquent Tax Sale. Property brought in by the county after a delinquent tax sale is not considered county surplus property but instead is sold in accordance with T.C.A. § 67-5-2507. See Disposition of Property Purchased by County at Tax Sale.

Surplus First Responder Two-Way Radios. Following notice to the commissioner, the department of safety may transfer surplus first responder two-way radios to a county designated as distressed by the Appalachian Regional Commission. After the transfer of the surplus two-way radio to a distressed county, other radios may be transferred to other county governments in need that submit proof to the department that the county cannot purchase the equipment. However, two-way radios obtained by the federal government must be transferred in accordance with federal law. T.C.A. §12-2-403.

Disposition of Surplus Property in the Education Department

Reference Number: CTAS-941

The decision to sell surplus property in the education department generally is a decision of the board of education. The board of education has the power to dispose of real property titled in its name, as provided in T.C.A. § 49-6-2006. With respect to personal property of the education department declared surplus by the board of education, T.C.A. § 49-6-2007 requires newspaper advertisement and competitive bidding for items valued at \$500 or more.

The board of education has the power to lease or sell buildings and property or the portions of buildings or property it determines are not being used or are not needed by the public school system in the manner deemed by the board to be in the best interest of the school system and the community that the system serves, under T.C.A. § 49-2-203(b)(10). That statute also provides that a local board of education may dispose of surplus property under T.C.A. §§ 49-6-2006 and 49-6-2007, it being the stated legislative intent that a local board at its discretion may dispose of surplus property to private owners as well as civic or community groups.

Under T.C.A. § 49-6-2006(c), the board of education may dispose of property upon which it has constructed a building under its vocational education program by public sale or negotiated contract, notwithstanding the provisions of any other law to the contrary.

Under T.C.A. § 49-6-2006(d), the board of education may elect to transfer surplus real or personal property to the county or to any municipality within the county for public use, without the requirement of competitive bidding or sale.

Under T.C.A. § 49-6-2007(f), the board may donate computers that have been removed from inventory in its schools to low-income families in the school district, or they may dispose of computers by selling or trading them to computer vendors or manufacturers as part of the proposal to purchase new computers for the LEA.

School systems dispose of their surplus textbooks under T.C.A. § 49-6-2208, which provides for sale by

public auction, sealed bids, internet auction, or negotiated contract for sale (by reference to T.C.A. § 12-2-403(a)(1)-(4)), or by other methods that are approved by the local board of education.

In counties that have adopted the County Financial Management System of 1981, it is the duty of the county purchasing agent under T.C.A. § 5-21-118(b) to conduct public sales of school real and personal property when the board of education declares the property surplus and determines that the property should be sold. See *Op. Tenn. Att'y Gen.* 13-84 (October 31, 2013). The purchasing agent should conduct such sales of personal property in accordance with T.C.A. § 49-6-2007, and public sales of real property according to the direction of the board of education.

In counties that have elected to be governed by the County Purchasing Law of 1957 and where schools are included, the provisions of T.C.A. §§ 49-6-2006 and 49-6-2007 must be read in conjunction with the provisions of T.C.A. § 5-14-108 (o). The statutes should be read together and harmonized to the extent possible. To the extent that these statutes are in direct conflict, however, the provisions of T.C.A. § 5-14-108 should be followed.

Following is an example of how the disposition of surplus property in a school system under the provisions of the County Purchasing Law of 1957 or the County Financial Management System of 1981 might flow (note that this is an example only):

Sample Steps:

1. The school board declares the property surplus and decides whether to sell the property at public auction or sealed bid, or whether to transfer the property to another governmental entity as authorized in T.C.A. § 49-6-2006.
2. If the school board decides to hold a public auction or public sale, the purchasing agent advertises a public sale in the newspaper at least seven days prior to the sale. T.C.A. § 49-6-2007(b).
3. The purchasing agent holds the sale as advertised and sells the items on behalf of the school board.

Disposition of Surplus Property in the Highway Department

Reference Number: CTAS-942

Under the County Uniform Highway Law (CUHL), the road superintendent has "supervision and control over and is responsible for all the machinery, equipment tools, supplies, and materials owned or used by the county in the construction, reconstruction, repair, and maintenance of county roads and bridges." T.C.A. § 54-7-112. This is a basic grant of custodial power over equipment to the road superintendent. The county legislative body has general control over county property and its disposition. T.C.A. § 5-7-101. Road superintendents often transfer/trade surplus equipment with other counties, with the approval of both governing bodies, pursuant to T.C.A. § 12-2-420 (formerly T.C.A. § 12-3-1005). If the authority of T.C.A. § 12-2-420 is not used, in counties that have elected to be governed by the provisions of the County Purchasing Law of 1957, it is the duty of the county purchasing agent under T.C.A. § 5-14-108 to sell by public auction or sealed bid any surplus county property (both personal and real property) when the county legislative body declares the property surplus. The county purchasing agent, with the assistance of the county purchasing commission, may adopt rules for requiring reports from county departments (including highway department), of surplus equipment and supplies, and the transfer of surplus equipment and supplies that may be used by other county departments, and rules for the sale, after receipt of competitive bids, of surplus equipment. T.C.A. §§ 5-14-107(5) and 5-14-107(6).

In counties that have adopted the County Financial Management System of 1981 (CFMS of 1981), it is the duty of the county purchasing agent under T.C.A. § 5-21-118 (b) to conduct public sales of county property (including highway department) when the county legislative body declares the personal property surplus, and public sales of real property owned by the county. T.C.A. § 5-21-118(b).

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