

Development of a Surplus Property Policy

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

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 municipal 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 MTAS website material.

Sincerely,

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A sound policy for the selling of surplus property would include the following considerations:

- **Appraisal of the item.** The city should not sell surplus property unless and until the governing board has a firm understanding of the value of the item proposed for sale. The appraisal need not be a long and highly documented report such as real estate appraisals used in eminent domain proceedings, but it should provide some assurance to the community that the full value of the property was known and understood by the board prior to the sale. The appraisal should be the basis of accepting or rejecting bids received by the city for the sale.
- **Estimates.** It will not always be practical to obtain an appraisal of lower value items owned by the city – old automobiles, obsolete electronic equipment, etc. In such instances, the city should still get an estimate from some person or firm that specializes in the product proposed for sale. These estimates will not be as official as a written appraisal, but should suffice to give the governing board a realistic idea of the property's value.
- **Assign Responsibility for Conducting the Sale.** The policy should assign responsibility for the sale to a specific employee, agent, or department. The surplus property resolution can simply direct the appropriate employee to arrange the sale of the item or property.
- **Minimum Bid to be Specified.** Except for very low value items, the policy should require the governing board to set a minimum threshold for accepting bids on surplus property offered for sale. When possible, the city's sale advertisement should refer to this threshold to minimize the submission of unacceptably low bids.
- **Auction vs. Sealed Bids.** The city might consider holding a public auction to sell its surplus property – a gathering of interested parties in a common place and time for the purpose of bidding on items offered for sale. There are two advantages to this method. First, a well attended auction is entirely transparent and understood by the public. Accusations that the city ignored certain bids can be avoided – protecting the city against claims of corruption. Sealed bids also may be used to sell surplus property and in some cases may be entirely appropriate for selling surplus property. A good city surplus property policy would provide some general guideline for when either of these sales methods are to be used.
- **Advertisement Policy.** The city should stipulate when and where surplus property sales will be advertised. For low value items, the local newspaper and the city's website would be sufficient for notifying the public of the impending sale. For higher value items, the city would do well to advertise on a regional or even statewide basis and send invitations to bid to persons and entities thought likely to be interested in the sale. Cities should also be open to advertising surplus property on websites such as govdeals.com which will open bidding to a huge potential market,
- **Dangerous Items.** It is wise for a city to avoid selling certain items of surplus property, which by virtue of their purpose, design, or obsolescence are inherently dangerous. Included in this category would be certain chemicals that might be toxic if mishandled by an uninformed buyer, defective equipment that might cause injury to persons unfamiliar with the item, etc. A police department, for example, might be wise to limit the sale of surplus firearms and other dangerous weapons to other law enforcement agencies. Similarly, some pieces of equipment known to be dangerously defective might best be sold for scrap rather than to a citizen who could be harmed by it.
- **Prohibited sales.** It bears repeating here that T.C.A. 6-54-125 does not allow members of a municipal governing board or municipal employees to purchase surplus property from the cities they serve unless the sale was made by means of a bid at a public auction. A sealed bid process, therefore, must not result in the sale of surplus property to the board members or employees.

It will look much better to the public, however, if the city's surplus property policy discourages all board members and employees from bidding in any public auctions conducted by the city, or from receiving surplus property offered for sale by the city. Regardless of the city's effort to assure a fair and legal

bidding process, the public will likely view surplus property sales to city officers and employees as suspicious.

The big loophole in such a policy, however, is for city officers or employees to have a spouse or friend do the bidding on their behalf – obtaining the surplus property through a straw man. This is not, however, a particularly clever ruse. Once the straw man hands the property over to the city official or employee, the story is likely to leak out and become public knowledge. The resulting publicity will not reflect well on the parties involved.

- **Removal of City Logos.** Especially in the case of motor vehicles, care should be taken to remove all logos and other symbols on the surplus property prior to the sale. This will reduce the opportunity for citizens to think the vehicle has been stolen, or is being used improperly, etc.

A Final Word

Once the city has developed and enacted a surplus property policy, copies of the policy should be distributed to every department head, the city's property manager, and any others who might be involved in selling things the city no longer needs. A short training session also may be in order to assure that everyone understands the new policy and the implications for non-compliance.

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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