Technical Bulletin: Surplus Property Disposal

Sid Hemsley
Municipal Technical Advisory Service

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One government’s trash may be another government’s treasure. A government can convert the trash to treasure by selling it, buying it, and trading it. Sometimes it can even give the trash away or receive it as a gift. But many municipalities have a general concern that at least some of those transactions might be illegal. They worry about the Municipal Purchasing Law and the various limitations in their charters related to public advertising and competitive bidding, buying and selling supplies and equipment, and giving away municipal property.

Generally, the municipality is on solid legal ground if the other fellow involved in the buying, selling, trading, giving, or getting is also a government of some kind, and if what is being bought, sold, traded, given or gotten, is surplus or used government property. Turn to Tennessee Code Annotated (TCA), Title 12, Chapter 3. There you will find two important provisions:

TCA 12-3-1003 says that municipalities can purchase from any federal, state, or local [county or municipal] government or agency "secondhand articles or equipment or other materials, supplies, commodities, and equipment without public advertisement and competitive bidding," regardless of the requirements of its charter.

That provision takes care of a municipality if it wants to buy something from another municipality or county (or the state or federal government), but is stopped only by a charter provision related to public advertisement and competitive bidding.

TCA 12-3-1005, created by Public Acts 1989, Chapter 305, goes even further by doing two things:

1. Authorizes counties, municipalities, and metropolitan governments to buy, trade, or receive as a gift surplus property from another county, municipality, metropolitan government, or state or federal government, subject to the approval of the governing bodies involved in the transaction, regardless of any other provisions of the law, including provisions related to public advertising and purchasing.
2. Authorizes counties, municipalities, and metropolitan governments by resolution or ordinance to establish a procedure for the sale, gift, or trade of its surplus property to other counties, municipalities, metropolitan governments, and to the states and federal governments, on whatever terms the governing body authorizes, regardless of any other law regarding the sale of used or surplus property.

In other words, under TCA 12-3-1005, municipalities can enter into buy, sell, trade, and gift transactions involving surplus or used personal property with governments at every level, either on an ad hoc basis, or through procedures established by resolution or ordinance. Chances are, the transaction will not violate the Municipal Purchasing Law or any charter provision.

A sample resolution establishing procedures for a municipality to dispose of its surplus property is attached. It can be adjusted to accommodate the needs of the particular municipality.

For Further Information

For further information on surplus property disposal, contact Sid Hemsley, senior legal consultant in Knoxville 615/974-0411, or your local MTAS municipal consultant in Nashville at 615/256-8151; Knoxville at 615/974-0411; or Jackson at 901/423-3710.
WHEREAS, Tennessee Code Annotated 12-3-1005 authorizes Tennessee municipalities to adopt rules and regulations for the disposal of their surplus property to other governments;

NOW THEREFORE, the (municipal governing body) of the City (Town) of (Name of city or town), Tennessee, hereby resolves as follows:

Section 1. The (person designated by the municipal governing body) is directed to make and maintain an inventory of surplus municipal equipment, supplies, and other personal property, and a history of its disposition. The inventory of surplus property and the history of its disposition shall be kept current and together in the same place at all times.

Section 2. The (municipal governing body) shall order municipal equipment, supplies and other personal property surplus placed on the inventory of surplus property, or shall order the same removed from the surplus property inventory, upon its own initiative or upon the written petition of the (person designated to keep and maintain an inventory of surplus property) and (other person/s designated by the governing body). The written petition shall include an explanation of why the property should be included in, added to, or removed from, the surplus property inventory.

Section 3. The (municipal governing body) shall make any changes in the surplus property inventory, including issuing orders for the same, only in open regular or special meetings. Orders of the (municipal governing body) declaring municipal property surplus shall:

a. Be in sufficient detail for the (person designated to keep and maintain the surplus property inventory) to accurately describe such property on the surplus property inventory;

b. Specify an estimated dollar value on the property. Such value shall be expressed on a per item basis, or where such a basis is not practical, on a per lot or other appropriate basis.

c. Designate the form and the price of sale of the surplus property; or, if the form is not a sale, a description of the form of disposition.

d. List any other information or conditions bearing on the disposition of the surplus property.

Section 4. In the event the sale is not to be in the form of a bid, the (municipal governing body) may authorize the (person designated to keep and maintain the inventory of surplus property) discretion to negotiate the price of the sale within definite dollar or percentage limits prescribed by the (municipal governing body).
Section 5. The (municipal governing body) may also direct the (person designated to keep and maintain an inventory of surplus property) to trade the surplus property for either the specific or the general surplus property of another government, or make an outright gift of such property to another government. Any trade of surplus property of the municipality for the property of another government, shall be subject to the approval of the (municipal governing body) prior to its consummation.

Section 6. The (municipal governing body) may at any time within the framework of this resolution amend its directions to the (person designated to keep and maintain an inventory of surplus property) for the disposal of any or all pieces of surplus property until the sale, trade, or gift of the property has been consummated.

Section 7. If before the sale, trade, or gift of surplus property has been consummated, the (person designated to keep and maintain an inventory of surplus property) determines that due to changed conditions it is in the best interest of the municipality to retain the property in question, he/she shall have the authority to suspend the disposition of the property until the next regular or special meeting of the (municipal governing body), to whom he shall explain the suspension of disposition in writing.

RESOLVED this __________ day of ________________, 199__.

______________________________
Chief Executive Officer

______________________________
Recorder/Clerk

______________________________
Date
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