



COUNTY ADVISORY BULLETIN

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HOUSE BILL 226 OF 124th GENERAL ASSEMBLY AUTHORIZES COUNTY COMMISSIONERS TO DISPOSE OF OBSOLETE PERSONAL PROPERTY VIA INTERNET AUCTION AND TO DISCARD OR SALVAGE VALUELESS PROPERTY

Effective Date: January 25th, 2002.

Revised Code Sections Affected: 307.12, 505.10, 721.15.

Lead Sponsor: Collier (R- Mt. Vernon).

House Co-Sponsors: Peterson (R-Delaware), Fessler (R-New Carlisle), Hartnett (D-Mansfield), Calvert (R-Medina), Setzer (R-Vandalia), Seaver (D-Minster), Dale Miller (D-Cleveland), Reidelbach (R-Columbus), Seitz (R-Cincinnati).

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(R-Wooster), Austria (R-Beavercreek), White (R-Manchester), Armbruster (R-North Ridgeville).

The enactment of House Bill 226 by the 124th General Assembly revised Ohio Revised Code (ORC) 307.12, which contains the procedures and requirements related to the disposal of county personal property by a board of county commissioners. House Bill 226 made two major changes in ORC 307.12, creating new authority for boards to 1) dispose of or salvage unneeded, obsolete or unfit property that has been determined to have no value; and 2) to sell unneeded, obsolete or unfit county personal property, regardless of its value, via Internet auction.

The purpose of this county advisory bulletin is to review the current state of ORC 307.12 with regard to the disposal of county personal property and to explain the new authorities granted to boards of county commissioners under House Bill 226.

CURRENT LAW ON DISPOSAL OF UNNEEDED, OBSOLETE OR UNFIT PROPERTY BY COUNTY COMMISSIONERS

Donation or Sale by County Commissioners to Other Government Entities - ORC 307.12 (B)

Under current law, a board of county commissioners may **sell or donate** personal property, regardless of its value, to the federal government, the state government or any political subdivision in Ohio, without advertisement or public notification. ORC 307.12 (B). This authority extends to “good” personal property held by the county; that is, property with market value that is not classified as unneeded, obsolete or unfit for the use for which it was acquired.

Personal property that may be sold or donated in this manner includes motor vehicles acquired for the use of county officers or departments, road machinery, equipment, tools or supplies. These sales or donations to other governmental entities also are exempt from competitive bidding requirements.

The relatively-new authority to **donate** personal property to other governmental entities was enacted in House Bill 19 of the 123rd General Assembly. Before the enactment of House Bill 19 in 1999, counties lacked the legal authority to donate property to other governmental units. If a county, for example, donated a piece of personal property such as fire truck, police cruiser or ambulance to a township, the county was required to retain title to the donated vehicle itself. By retaining title, a county exposed itself to liability if the vehicle now in use by the township were to be involved in an accident. House Bill 19 was passed to eliminate this potential problem.

In the particular case of a motor vehicle that the board determines to have a fair market value of \$4,500 or less, it may donate the vehicle to a 501 (c) (3) tax-exempt, non-profit organization to meet the transportation needs of participants in the Ohio Works First

Program created under ORC Chapter 5107 and the Prevention, Retention and Contingency (PRC) Program created under ORC Chapter 5108. ORC 307.12 (A) (2).

Sale of Property by County Commissioners at Public Auction or Private Sale

Public Auction or Sealed Bid - ORC 307.12 (A)

Instead of selling or donating unneeded, obsolete, or unfit personal property in one of the instances described above, a board of county commissioners may dispose of the property in other ways, depending on its value.

If the board determines that the fair market value of the unneeded, obsolete or unfit property is more than \$2,500, the board may sell it either at a public auction or by sealed bid to the highest bidder. ORC 307.12 (A) (1). These procedures must be authorized by a board resolution and are subject to public notice, advertisement, and bidding requirements. In the case of a sealed bid procedure, a board of county commissioners is authorized to reject all bids and hold another sale, either by public sale or through another sealed procedure.

Private Sale - ORC 307.12 (B)

If the board determines that the fair market value of the property to be \$2,500 or less, the board may sell the property by private sale, without advertisement or public notification. ORC 307.12 (B). Private sales of surplus county-owned property can be beneficial to a county by reducing storage problems and saving money as it relates to newspaper advertisements.

However, counties should take care as it relates to real or perceived ethical concerns when a private sale without advertisement or public notification takes place. Ohio's ethics laws bar a public official from using his or her public position to secure anything of value, including surplus public property, for himself or herself or for someone with whom he or she has a close family or business tie. A county official who is responsible for classifying property as unneeded, unfit or obsolete, or who conducts a sale of such property, should not purchase this property from the county and should not use his or her position to make the property available to family members or business associates.

Lease of Property by Commissioners to Other Government Entities - ORC 307.12 (D)

ORC 307.12 (D) – which was designated as division (C) before the enactment of House Bill 226 – is a little-used provision that provides authority for a board of county commissioners to lease personal property if it is not of immediate need to the county. If a county officer or department head determines that he or she has motor vehicles, road machinery, equipment, tools or supplies that are not of immediate need, that officer or department head may notify the board of commissioners, and the board may then lease the property to any municipal corporation, township or other political subdivision of the state.

This lease must state the terms and conditions under which the board will be “reimbursed” for the leased property, but the law requires no other notice or specific process for these transactions, other than approval at a regular or special session of a board of county commissioners.

Trade-In of Property by County Commissioners When Purchasing New Property - ORC 307.12 (E) and 307.12 (F).

In addition to donation or sale to government entities, public auction, sale by sealed bid, private sale, or lease to a township, municipal corporation or other political subdivision, a board may sell any unneeded, obsolete, or unfit motor vehicles, equipment or machinery as a trade-in for the purchase of other vehicles, equipment or machinery. ORC 307.12 (E).

And if the board is accepting bids for the sale of vehicles, equipment or machinery to the county, it may accept bids on its unneeded, obsolete or unfit for use vehicles, equipment or machinery and subtract those bid amounts from the selling price of the items offered for sale when determining the lowest responsible bidder. ORC 307.12 (F).

CHANGES MADE BY HOUSE BILL 226 IN THE PROCEDURES FOR DISPOSAL OF PROPERTY BY A BOARD OF COUNTY COMMISSIONERS

Discarding or Salvaging Valueless Property - ORC 307.12 (G)

If a board of county commissioners determines that any unneeded, obsolete or unfit property in fact has no value, it is now authorized, with the enactment of House Bill 226, to discard or salvage that property. ORC 307.12 (G). No specific authority for boards of county commissioners to discard or salvage property characterized as valueless was previously contained in the ORC.

As in the case of private sales of county property, commissioners should be aware of real or perceived ethical concerns with regard to the classification of any unneeded, obsolete or unfit property as valueless. In addition, care should be taken to incorporate written procedures and definitions into the county’s purchasing manual or another document to ensure a high degree of regularity and oversight to these transactions. In some cases of disposal of valueless property, particularly computer monitors, assistance from environmental services or other county departments may be appropriate or necessary.

Selling Property Via Internet Auction - ORC 307.12 (C)

House Bill 226 authorizes a new way by which a board of county commissioners, as well as a board of township trustees or the council of a municipal corporation, may sell unneeded, obsolete or unfit for use personal property. Regardless of its determined monetary value, a board of county commissioners is now authorized to sell this property via Internet auction under the procedures established in House Bill 226. ORC 307.12 (C).

In order to be authorized to sell this property, a board of county commissioners must adopt, during each calendar year, a resolution declaring its intent to sell the property via Internet auction.

This resolution **must** include: 1) a description of how the auctions will be conducted; 2) a specification of the number of days during which bidding will be conducted, which must be at least 15 days, including Saturdays, Sundays, and legal holidays; 3) an indication of whether the county itself will conduct the Internet auction or whether it will contract with a representative to conduct the auction on its behalf; 4) if the representative is known at the time the resolution is adopted, contact information such as the representative's name, address, and telephone number; and 5) the general terms and conditions of the sale.

After adopting a resolution of intent to sell unneeded, obsolete or unfit for use property via Internet auction, a board of county commissioners must publish, in a newspaper of general circulation in the county, notice of its intent to do so. This published notice must include a summary of the information contained in the board's resolution and must be published in the newspaper at least twice. The second notice must be published at least 10 days after but no more than 20 days after the first notice. A third notice or any subsequent notice must be published at least 10 days after but no more than 20 days after the previous notice.

A notice identical or similar to the one that is published in the newspaper must be posted on a permanent basis throughout the applicable calendar year in a conspicuous place in the offices of the county auditor and the offices of the board of county commissioners. Also, if a county maintains a website on the Internet, a similar or identical notice must be posted continually on the website throughout the applicable calendar year.

Whenever unneeded, obsolete or unfit for use property is to be sold by Internet auction, a board of county commissioners or its representative is authorized to establish minimum prices that will be accepted for specific items and may establish other terms and conditions of a particular sale, including but not limited to requirements for pick-up or delivery, method of payment, and payment or non-payment of sales tax in accordance with applicable laws. This information must be provided on the Internet at the time of the auction and may be provided before that time upon request, if available.

House Bill 226 may provide a new and welcome alternative to the existing methods of selling county personal property, which usually occurs at public auction. Public auctions typically involve costs associated with transportation, storage for periods as long as one year, advertising, staff assistance the day of the auction, and the services of auctioneers, who generally charge double-digit commissions on all items sold.

Often, these public auctions include specialized equipment and machinery that could have a much greater value if advertised by the county in a cost-effective manner to a wider Internet audience that includes specialized buyers. Internet auctions will allow this cost-effective advertising to specialized buyers and generally have the potential to lead to

quicker and more lucrative sales for the county.

A major concern at this time with Internet auctions is negotiating an acceptable fee with the auction provider. For nearly all counties, the option of conducting an Internet auction on its own appears unviable because of the high cost of purchasing and installing the necessary software. Some vendors who provide Internet auction services charge commissions in the range of 1 1/2 to 2% of the sale proceeds; others charge flat, non-refundable fees of up to \$5,000 for each auction conducted, regardless of whether any bids actually are received on the property up for sale.

Counties are advised to proceed cautiously in this area and to ensure that some incentive exists for a auction provider to create an environment in which as many credible bids as possible will be received. A county's ability to profit from an Internet auction may very well depend on how this fee is negotiated with a provider.

Attached on pages 7 and 8 of this bulletin for your use is a model resolution declaring the intent of the board of county commissioners to conduct Internet auctions for unneeded, obsolete or unfit for use personal property. Please feel free to alter the language or form of this resolution to meet the requirements of your individual county.

If you have questions on House Bill 226, please contact Doug Putnam of CCAO at 614-221-5627 or dputnam@ccao.org or Brad Cole of CCAO at 614-221-5627 or bcole@ccao.org

**RESOLUTION OF INTENT TO CONDUCT AN INTERNET AUCTION
FOR THE SALE OF UNNEEDED, OBSOLETE OR UNFIT COUNTY
PERSONAL PROPERTY IN CALENDAR YEAR 2002**

M. _____ **moved the adoption of the following resolution:**

WHEREAS, House Bill 226 of the 124th General Assembly, which became effective on January 26th, 2002, authorizes a board of county commissioners to dispose of unneeded, obsolete or unfit personal property through the use of an Internet auction ; and

WHEREAS, section 307.12 (C) of the Ohio Revised Code (ORC), as amended by House Bill 226, requires a board of county commissioners to adopt, during each calendar year, a resolution expressing its intent to sell personal property by Internet auction; therefore be it

RESOLVED, that the _____ County Board of Commissioners, hereby expresses its intent to dispose of unneeded, obsolete or unfit personal property by Internet auction during calendar year 2002; and be it further

RESOLVED, that the personal property disposed of through Internet auction may include, as specified in ORC 307.12 (C), motor vehicles acquired for the use of county officers and departments, road machinery, equipment, tools or supplies, any of which is either unneeded, obsolete, or unfit for the use for which it was acquired; and be it further

RESOLVED, that the Internet auction will be conducted in the following manner under the following general terms and conditions:

_____;

and be it further;

RESOLVED, that the number of days of bidding on the property involved, as specified in ORC 307.12, will be at least 15 days, including Saturdays, Sundays, and legal holidays; and be it further

RESOLVED, that the _____ County Board of Commissioners will:

- 1) _____ conduct the auction itself; **OR**
- 2) _____ has contracted with the representative listed here to conduct the Internet auction on the county's behalf: name of representative _____ address _____ telephone number _____; **OR**
- 3) _____ will contract with a representative at a later date to conduct the auction on the county's behalf; and be it further

RESOLVED; that the _____ County Board of Commissioners will publish in the _____ a newspaper of general circulation, a summary of the information contained in this resolution and that this summary will be published in that newspaper on the following dates: _____ and _____, the second date being at least 10 days after but not more than 20 days after the first publication of the notice; and be it further

RESOLVED, that a notice similar to the one published in the newspaper will be posted continually throughout calendar year 2002 in a conspicuous place in the offices of the county auditor and the offices of the board of county commissioners and on the _____ County Internet website; and be it further

RESOLVED, that the _____ County Board of Commissioners reserves the right, at a later date, to establish the minimum prices that may be accepted for any property that is the subject of the Internet auction, the terms and conditions of any particular sale that may occur, including but not limited to requirements for pick up and/or delivery of the property, method of payment, and payment of sales tax in accordance with applicable laws;

and be it further

RESOLVED, that the information described in the paragraph above will be provided on the Internet at the time of the auction itself, or will be provided before that time, upon request, if the terms and conditions have been determined by the board of county commissioners or its representative; and be it

FINALLY RESOLVED, that copies of this resolution be sent to the offices of the _____ County Auditor and the County Commissioners Association of Ohio (CCAO).

Upon roll call on the adoption of the resolution, the vote was as follows:

Adopted

Date