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# COUNTY ADVISORY BULLETIN

**CAB**

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## **THE DISPOSAL OF COUNTY PERSONAL PROPERTY**

### **INTRODUCTION**

During the last year the Ohio General Assembly made two changes in the Ohio Revised Code affecting the disposal of county owned personal property. ORC Section 307.12 is the basic section of Ohio law that establishes procedures for the disposal of county owned personal property, including motor vehicles, road machinery, equipment, tools, and supplies, that is no longer needed for public use or that is obsolete or unfit for the use for which it was acquired.

Under Am. Sub. H.B. 408, the Welfare Reform Law, counties may now donate county owned motor vehicles to certain nonprofit agencies to assist in the implementation of welfare reform. This new provision of law became effective on October 1, 1997. In addition, Am. Sub. S.B. 62, effective November 5, 1997, increased the threshold on the value of county owned personal property that may be disposed of by private sale. The purpose of this CAB is to explain the changes included in both bills and to provide a detailed summary of ORC Section 307.12 as it now exists.

### **DONATION OF VEHICLES TO NONPROFIT ORGANIZATIONS**

Under the recently enacted Welfare Reform Law, new emphasis is placed on transportation for participants. All counties must prepare transportation plans so that the employment goals of welfare reform can be met. H.B. 408 enacted Division (A) (2) of Section 307.12 to allow counties to donate motor vehicles to certain nonprofit organizations for the purpose of meeting the transportation needs of participants in the Ohio Works First Program and in the Prevention, Retention, and Contingency (PRC) Program. Counties may only donate vehicles to 501(c)(3) nonprofit organizations and may only donate the vehicle if the value does not exceed \$4,500. Counties are urged to work with their County Human Service Director to see if this new authority could be used and determine if there are state guidelines relating to this authority.

## **PRIVATE SALE OF COUNTY OWNED PERSONAL PROPERTY**

ORC Section 307.12, as amended by S.B. 62, clarifies that certain personal property may be disposed of at private sale, without advertisement or public notification. Under former law, it was generally agreed personal property valued at \$2,000 or less was not subject to the normal procedures applicable to the disposal of personal property; however, the law was poorly worded and confusing. Under the revised law, it is clear that county owned personal property valued at \$2,500 or less may be sold at private sale without advertisement or public notification. Yet, before the property may be sold at a private sale, the Board of County Commissioners, must find by resolution the following:

1. The personal property, including motor vehicles, road machinery, equipment, tools, or supplies, is not needed for public use or is obsolete or unfit for the use for which it was acquired; and
2. The fair market value of the property to be sold by private sale is, in the opinion of the Board, \$2,500 or less.

CCAO encourages counties to consult with the Prosecutor before making a private sale pursuant to this new section. It is vital the resolution be adopted prior to a private sale occurring. In addition, care should be taken as it relates to real or perceived ethical concerns when a private sale without advertisement or public notification takes place.

Ohio's Ethics Law prohibits a public official from using his public position to secure anything of value, including surplus county property, for himself or someone with whom he has a close family or business tie. A county official who is responsible for declaring property salvage, or for managing the sale of the property should not purchase the same property from the county, and should not use his position to make the property available for family members or business associates.

Other safeguards against real or perceived unethical conduct should be considered before a county decides to use the private sale provision. For example, it might be appropriate that as surplus county owned personal property becomes available, a procedure be established to notify the Commissioners. The Commissioners would maintain a list of surplus property with an estimated value of less than \$2,500. This list could then be posted in the County Commissioners office and in the County Auditors office so that the public would know what is available for private sale and could make an offer. Under this procedure, CCAO suggests that the Commissioners delegate authority to the Clerk, Purchasing Director or another staff member to make a decision to sell the property for a tendered price with considerable discretion to the designated staff person. The procedure may also include a lead time of a week or more, thereby providing the public with more open access to surplus property. This type of process should ensure no preferential treatment is given to any person. The goal is to avoid even the appearance of impropriety.

Private sales of surplus county owned personal property could be beneficial to the county in a variety of ways. It may reduce storage problems which often occur when counties

must wait until enough property is accumulated to have an auction or a sealed bid sale. It may also save money as it relates to newspaper advertisements. Care and the consideration of ethical issues, however, should be discussed prior to conducting private sales of surplus property.

## **PUBLIC SALES OF SURPLUS PERSONAL PROPERTY**

While there were few changes to the law relating to public sales of personal property in S.B. 62, this section of the CAB will review the law as it relates to the sale of personal property valued in excess of \$2,500. If the County Commissioners determine that the fair market value of surplus personal property is in excess of \$2,500, then it must be sold by either public auction or by sealed bid. In this case the Commissioners must, by resolution, find that the county has personal property, including motor vehicles, road machinery, equipment, tools, or supplies, that is not needed for public use or is obsolete or unfit for the use for which it was acquired. The resolution must also find that the fair market value of the property to be sold is, in the opinion of the Board, in excess of \$2,500, and that it intends to sell the property either at public auction or by sealed bid to the highest bidder.

Commissioners must then give notice of the pending public sale as follows:

1. Notice of the public sale must be published in a newspaper of general circulation in the county.
2. The notice must be published at least 10 days prior to the sale.
3. The notice must include the time and place of the sale, and must specify whether the sale will be by public auction or by sealed bid. If the sale is to be conducted by sealed bid, the Commissioners must also prescribe the form of the bid and must state the time when the bids will be opened and tabulated.
4. In addition, a typewritten or printed notice of the sale must also be posted in both the offices of the County Commissioners and the County Auditor.

If the sale is conducted by sealed bid, the Commissioners may reject all bids, and at a later date hold another public sale by either public auction or sealed bid.

## **LEASE OF PERSONAL PROPERTY NOT OF IMMEDIATE NEED**

Division C of ORC Section 307.12 includes a little used provision providing authority to the 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 such a situation exists and he/she notifies the County Commissioners of this fact, the Commissioners may lease such personal property to any municipality, township, or other political subdivision under such terms and conditions, and fees established by the Commissioners under contracts executed by the Commissioners. Ohio law requires no notice or specific process as it

relates to such contracts, other than their approval at a regular or special session of the Board.

## **SALE OF PERSONAL PROPERTY TO OTHER POLITICAL SUBDIVISIONS**

In addition to the other authorities specified, Commissioners have very broad authority to sell personal property to the federal government, the state, or any political subdivision of the state. Such sale is exempt from any advertisement and public notification. In addition, such sales may be made regardless of the value of the property. Furthermore, the purchaser in this situation is not subject to competitive bidding.

## **TRADE IN OF VEHICLES, EQUIPMENT OR MACHINERY**

ORC Sections 307.12 (D) and (E) contain provisions where the county may "trade in" existing vehicles, equipment, and machinery when it is purchasing new ones. The Board may find, by resolution, the county has vehicles, equipment, or machinery which are not needed or are unfit for public use. The resolution must also express the desire of the Board to sell the vehicles, equipment, or machinery to the firm from which it proposes to purchase new ones and to have the selling price credited against the purchase price of the new vehicles, equipment, or machinery. Commissioners may also include such a statement in the bid advertisement and use this credit as a means of determining the lowest responsible bidder.

## **CONCLUSION**

The purpose of this CAB is to inform Commissioners of recent changes in ORC Section 307.12 relating to the sale of personal property no longer needed by the county. This CAB has summarized the recent changes in the law and has also comprehensively summarized all provisions of ORC Section 307.12.

## **ACKNOWLEDGMENT**

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