

DISPOSITION OF SURPLUS MOVABLE PROPERTY FAQs

Overview:

The following is a summary of the general principles and guidelines concerning Surplus Movable Property. This document is presented in a frequently asked questions (FAQ) format. While fairly detailed, it is important to remember that every situation is unique and as a result each situation deserves careful individual review.

There are numerous links within the document directing your attention to areas within the document and to other related documents posted on the Louisiana Legislative Auditor's website and on external websites to facilitate your use of this document. For example, under the index section, you may go directly to any area of the FAQ by clicking the question you wish to view. Within the FAQ, there are several links to direct you to other areas of the FAQ and to relevant external documents. If you click on the individual question number, you will return to the index to allow you to select another question to view.

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Q.1. What is surplus property?

[R.S.33:4711.1\(B\)\(3\)](#)

- A.1.** [R.S. 39:321\(8\)](#) defines movable "property" as a tangible and non-consumable thing, and the Attorney General (AG) has referred to surplus property as property an entity "no longer needs or desires." ([AG Op. No. 98-120](#)). [R.S.33:4711.1\(B\)\(3\)](#) defines "surplus property" as tangible non-consumable movable property owned by a political subdivision, the governing authority of which has determined is no longer needed for public purposes. However, there are many restraints on disposition of public property because it is a "thing of value" belonging to the state. (LA Const. Art. [VII, §14](#)). An entity cannot loan or pledge or donate a thing of value belonging to the state or any of its political subdivisions. If an entity has property that it considers to be "surplus," the entity must follow the precise statutory guidelines to dispose of the property according to the law. Note that it is mandatory to establish the value of the thing belonging to the state that a public entity wishes to surplus as any disposition below that established fair market value would be an unlawful donation.

Q.2. What is "fair market value" and how is it determined?

- A.2.** Fair market value means the price at which property changes hands between a willing buyer and a willing seller when neither party is under any compulsion to buy or sell and both have a reasonable knowledge of relevant facts. ([AG Op. No. 07-0096](#)).

Referring to immovable property, the AG opined that fair value is best achieved by public bid, after the minimum bid is established by appraisal. The appraisal is a professional estimate that attempts to determine the fair market value of the property. Once an appraisal is obtained, the fair market value of the property is best determined by a public offering which subjects the property to actual market conditions.

The public entity should establish a value of the property it intends to surplus and document that valuation carefully.

Q.3. What is the preliminary step before the entity can determine which process to follow in disposing of surplus property?

A.3. The entity must first determine if it falls under the guidelines for disposition by a state agency, i.e. is the entity a board, commission, agency or department of the state, or if it falls under the provisions for local government, i.e. is the entity a municipality, parish or local political subdivision. Once this determination is made, the entity may choose the appropriate means to dispose of the surplus property. Some of the provisions discussed below may be used by either a state agency or a local government agency.

Q.4. What are the options for disposition of surplus movable property by the state, a board, commission, agency or department of the state?

A. 4. There are multiple provisions for the sale of surplus movable property that may be followed by a state entity. A state entity may sell surplus property under a **Division of Administration sale** (Title 39, Division of Administration Property Control law) or, with the permission of the Commissioner of Administration, by **public auction** after appropriate advertisement (Title 49, surplus property of the state). The division of administration may also sell the property via an **internet sale**.

[AG Op. No. 03-0403](#) states that surplus movable property of the state, or of any board, commission, agency or department of the state can be sold to private parties through the Division of Administration pursuant to [R.S. 39:330.1](#) or, with written consent of the Commissioner of Administration, a State Agency may act under the provisions of [R.S. 49:125](#) allowing the sale of surplus property at public auction after appropriate advertisement. See [Q.5.](#) and [Q.6.](#) below for a detailed discussion of the procedures.

Q.5. What is the procedure for a Division of Administration sale at public auction? [R.S. 39:330.1\(A\)](#)

A.5. The procedure for the commissioner of administration to follow for a live public auction is set forth in [R.S. 39:330.1\(A\)](#). The commissioner of administration may hire qualified licensed auctioneers to handle said sale. The auctioneers shall be compensated from the sale proceeds. Selection of an auctioneer shall be by competitive bid under the provisions of the Louisiana Procurement Code, [R.S. 39:1551](#) *et seq.* The selection of the auctioneer shall be for the period of one year, and the commissioner shall be required to select the auctioneer by competitive bid annually.

The commissioner is also authorized to sell surplus property by internet computer auction or electronic technology with the cost of the sale paid for with sale

proceeds. There are special provisions for the sale of timber on lands under the jurisdiction of the Department of Agriculture and Forestry.

Q. 6. What is the procedure for disposal of surplus movable property by a state agency if the state agency obtains permission from the commissioner of administration to follow [R.S. 49:125](#)?

- A. 6.** If the unit of government obtains the permission of the commissioner of administration, the unit may sell its surplus movable property at public auction following [R.S. 49:125](#). The commissioner of administration may waive or modify the regular process pursuant to the Louisiana Administrative Code if good cause is shown. The provision states that the state or any board, commission, department or agency of the state or any political subdivision may sell surplus movable property at public auction and authorizes the entity to employ qualified licensed auctioneers to handle the sale. (Note that there are exceptions in [R.S. 39:330](#) for universities and other institutions of higher education for disposing of obsolete equipment).

An [R.S. 49:125](#) sale may be utilized by either a state entity or a local government entity.

Once the entity determines that the movable property is indeed surplus and no longer needed, it must establish a fair market value (FMV) commensurate with the value. The entity should document the manner in which it establishes the FMV for the minimal bid. No sale at a public auction shall be at a price which is less than is required by law, and all such sales shall be advertised in the manner provided by law. The agency shall reserve the right to reject any and all bids and remove the item of movable property from sale. Notice of the sale should be published at least once, at least 15 days prior to the sale, indicating the minimum bid of the appraised value of the item and the right to reject any and all bids. Further, the sale can be advertised and sealed bids submitted to the entity, with the property awarded to the highest bidder, provided the entity receives the property's fair value. [Article VII, Section 14 of the Louisiana Constitution of 1974](#) prohibits the donation of property or other things of value of any political subdivision. The agency should determine that the awarded bid price is commensurate with the value of the property sold.

Q.7. Are there any penalties for improper disposal of property belonging to the state agency?

- A.7.** Yes, [R.S. 39:330\(E\)](#) provides that each property manager and each person to whom property is entrusted and receipted shall be liable for the payment of damages whenever his wrongful or negligent act or omission causes any loss, theft, disappearance, damage to or destruction of property of his agency for which he is responsible. Such damages shall be recoverable in a civil suit prosecuted on behalf of the state by the Attorney General.

Q.8. What are the provisions for a local government entity, a municipality or local political subdivision to sell surplus movable property?

A.8. There are four methods provided in the Revised Statutes for disposal of surplus movable by local government. The AG states that to dispose of surplus movable property, municipalities and local political subdivisions should follow the procedures outlined in [R.S. 49:125](#) (the Division of Administration sale); [R.S. 33:4712\(F\)](#) for property with a value of less than \$5,000; or [R.S. 33:4711.1](#), a sale via the internet. Municipalities and other local government entities may also dispose of property through the provisions of Local Services Law, [R.S.33:1321 et seq.](#) The procedures for these four methods of disposition are discussed in detail below.

o **Disposition under [R.S. 49:125](#) of surplus movables at public auction open to private persons**

La. [R.S. 49:125](#) authorizes the public entity to employ a qualified licensed auctioneer to handle the sale. [AG Op. No. 07-0096](#) states that La. [R.S. 49:125](#) fails to reveal a mandate that only a licensed auctioneer conduct the sale by public auction. Thus, the AG opines that the surplus movable property can be advertised and sold by the entity at a regular auction sale provided the requirements of La. [R.S. 49:125](#) are met. The sale must be advertised, and no sale shall be at a price less than is required by law, with the public entity reserving the right to reject any and all bids and remove the item from the sale. ([AG Op. No. 07-0096](#)). Notice of the sale should be published at least once, at least 15 days prior to the sale, indicating the minimum bid of the appraised value of the item and the right to reject any and all bids. Further, the sale can be advertised and sealed bids submitted to the entity, with the property awarded to the highest bidder, provided the entity receives the property's fair value.

Regarding the notice provision, [AG Op. No. 92-0606](#), discussing the sale of land, states that the publication and notice allows opportunity for opposition to the proposed auction to be made known, and "in our estimate, generates the most interest to get the best price for the property sought to be sold." Thus, the "critical inquiry is not what method is used to sell the surplus property, but whether the proposed sale is advertised in such a manner as to adequately give the public notice of the proposed sale, as well as create sufficient interest in the sale so that the best price is obtained." ([AG Op. No. 07-0096](#))

o **Disposition under [R.S. 33:4712\(F\)](#): Surplus movable property of a municipality or political subdivision with a value less than \$5,000.**

[La. R.S. 33:4712 \(F\)](#) authorizes a municipality to sell movable property, which has an appraised value of \$5,000 or less, at private sale provided there is a resolution passed which gives the reasons for the action and setting therein the minimum price and terms of the sale. In addition, notice of the resolution and proposed sale must be published at least 15 days prior to the date of the sale and the sale must be made to the highest bidder. The AG states in [Op. No. 07-0096](#) that a political subdivision may also use [R.S. 33:4712\(F\)](#).

o [R.S. 33:4711.1](#), effective June 23, 2006, internet sale:

[R.S. 33:4711.1](#) authorizes a parish or municipality to sell surplus movable property that has been determined to no longer be needed for a public purpose through the use of electronic technology including Internet websites that facilitate such sales and to pay costs of the sale from the proceeds of the sale. (AG Op. [No.07- 0096](#)). [AG Op. No. 09-0233](#) discusses a local political subdivision use of the [R.S. 33:4711.1](#) electronic sale procedure.

[R.S. 33:4711.1](#) Internet sale of movables by parishes, municipalities, and local political subdivisions

A local political subdivision may, through Internet computer auction:

- (1) Sell surplus property through the use of electronic technology including Internet websites that facilitate such sales.
- (2) Pay any costs associated with the sale from the proceeds of such sale.
- (3) Sell surplus property through any form of electronic technology, including Internet websites created expressly for that purpose whether privately or publicly owned.

o **Disposition under [R.S. 33:1321](#) et seq.: Local Services Law**

[R.S. 33:1321](#)

A political subdivision may sell its surplus movable property to another public entity through an intergovernmental agreement as provided by [R.S. 33:1321](#) et seq., the "Local Services Law". The "Local Services Law" provides for the purchase of surplus materials and supplies by one public entity from another without the other public entity going through a public auction. The transfer must be for a price that is commensurate with the value of the surplus property.

[Q.9.](#) What can a parish, municipality, or political subdivision do if the surplus movable property does not sell at a sale pursuant to [R.S. 33:4712\(F\)](#) or at public auction conducted pursuant to [R.S. 49:125](#)?

A.9. [AG Op. No. 05-0450](#) states that if the property does not sell despite minimal pricing, it is deemed to have no value and it may be discarded. This opinion is discussing obsolete computers and other office equipment referred to as "junk." The AG does not define "discarded," but Webster's states that to "discard" is to "get rid of, especially as useless or unwanted." Applying the prohibitions of Art. [VII Sec. 14 of the LA Const.](#) that something of value belonging to the state cannot be given away to the concept of discarding public property, the entity should take special care in establishing that the property "has no value" prior to discarding. See also [AG Op No. 10-0276](#).

Q.10. May a public servant bid on surplus property being disposed of by his public entity?

A.10. [R.S. 42:1113](#) contains details regarding prohibited contractual arrangements and states that no public servant, excluding any legislator and any appointed member of any board or commission and any member of a governing authority of a parish with a population of ten thousand or less, or member of such a public servant's immediate family, or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.

See [R.S. 42:1113](#) for exceptions to this provision and Ethics Board Opinions such as [2006-035](#), [2009-183](#), and [2003-346](#).

Q.11. What is the provision for disposition if property is damaged and held by the Office of Risk Management (ORM)?

A.11. Any property which has been damaged, is insured by the ORM in the Division of Administration (DOA), and is being held by the ORM under the terms of the insurance coverage shall be disposed of under the provisions of DOA (see Title 39 sale discussed in [Q.5.](#) above) only after approval by the ORM. Funds received by the sale of any such property shall be remitted to the ORM to the extent of payment by the ORM for the insured loss. Any funds received in excess of the insured loss shall be credited to the state general fund.

Q.12. What are the provisions to dispose of historically significant property?

A.12. [R.S. 39:330\(G\)\(1\)](#) states:

Notwithstanding any other provision of law to the contrary, no property defined to be historically significant by the commissioner of administration shall be disposed of by sale, donation, transfer, or other form of alienation in any manner, or destroyed except as provided. Further, historically significant property shall be clearly marked as such and shall be identified separately in each agency's inventory control system. In the event that an agency determines that historically significant property under its control is surplus, the commissioner of

administration shall be responsible for determining the appropriate disposition of such property with respect to storage, relocation, transfer, or other disposition as may be provided by rules and regulations issued by the commissioner based on recommendations by the state historic preservation officer.

Q.13. Are there any LA Constitutional Article VII, Section 14 requirements for the sale of public property?

A.13. Yes, since the disposition of surplus movable property involves the alienation of public property, the transaction must be examined in light of Article VII, §14 of the Louisiana Constitution of 1974, which provides, in pertinent part, the following:

Except as otherwise provided by this constitution the funds, credit, property, or things of value of the state or of any political subdivisions shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

This section mandates that, at a minimum, a public entity sell its surplus immovable property for fair value.

Note that [Article VII Section 14 of the Const. of LA](#) does not prohibit the state or any of its political subdivisions from receiving a donation. Article 6, Section 23 of the Louisiana Constitution of 1974 specifically provides that political subdivisions may acquire property for any public purpose by purchase, donation, expropriation, exchange, or otherwise. "Public purpose" is generally defined as pertaining to public welfare, health and safety. The donation can be either the property or the funds to purchase the property. [AG Op. No. 00-0150](#)

Q.14. Under Local Services Law, [Title 33:1321 et seq.](#), what is the definition of a municipality?

A.14. [R.S. 33:1321](#) defines a "municipality" to include cities, towns, villages, or other special districts or other political subdivisions created to perform one or more public functions or services. "Governing body" shall mean the body with authority to enact ordinances and resolutions and in which is vested responsibility for the public policy; and "bonds" shall mean any bonds issued pursuant to any law by any parish or municipality, whether such bonds are payable from revenues of a revenue producing project, or from ad valorem taxes on real estate, acreage taxes, or from any other source whatever. [\[Refer to 33:4717.1 also\]](#)

Q.15. What transfers of property are covered under the Local Services Law?

- A.15.** [AG Op. No. 06-0073](#) states that Local Services Law covers surplus movable property. A sheriff's office may also sell surplus movable property to another public entity through an intergovernmental agreement as provided by [R.S.33:1321 et seq.](#), the "Local Services Law". These statutes provide for the purchase of surplus materials, supplies and equipment by one public entity from another without the other public entity going through the public auction or public bid process. See [R.S. 38:2212.1\(D\)](#). However, the transfer must be for a price commensurate to the value of the surplus property.

[LA R.S. 33:1329](#):

Any parish or municipality or commission appointed under this part may acquire by gift, grant, purchase, or condemnation proceedings or otherwise, **all property**, including rights-of-way, necessary to effectuate arrangements concluded under the terms of this Part. Where condemnation is necessary, the parish or municipality shall follow the procedures which, under existing law, govern its acquisition of property by condemnation.

[Q.16.](#) What are the provisions for disposition of property by a school board?

- A.16.** [R.S. 17:87.6](#) discusses alienation at public or private sale of any property no longer needed by a school board.

A. Any city, parish, or other local public school board may sell, lease, or otherwise dispose of, at public or private sale, for cash or on terms of credit, any school site, building, facility, or personal property which is not used and, in the judgment of the school board, is not needed in the operation of any school or schools within its jurisdiction. Any such sale, lease, or disposal of such school property shall be on such terms and conditions and for such consideration as the school board shall prescribe.

[AG Op. No. 03-0101](#) states the following when asked whether it is necessary for a school board to advertise a sale and accept sealed bids at a minimum level when selling surplus movable property:

As stated in the statute, a school board does not have to dispose of its unused surplus movable property by advertising and taking sealed bids. Furthermore, La. [R.S. 49:125](#) permits the sale of surplus by public auction. Therefore, it is the opinion of this office that the ... School Board may, pursuant to [La. R.S. 17:87.6](#), sell its surplus movable property on such terms and conditions and for such consideration as the board may prescribe. The school board may dispose of the movable property at a public or private sale.

Q.17. Are there special provisions regarding the disposition of surplus movable property for certain agencies?

A.17. Yes. Some of these special provisions are listed below.

Law Enforcement Agencies: [La Const. Article VII, §14\(E\)](#) provides that nothing prohibits the donation or exchange of surplus movable property among political subdivisions whose function is public safety. Furthermore, [R.S. 38:2319.21](#) permits the donation or exchange of surplus movable property if both parties to the transaction are political subdivisions whose functions include public safety. A sheriff's department is a law enforcement agency that is also a political subdivision.

Act 239 of the 2010 Regular Session enacting R.S. 33:4712(G), sale, exchange, or lease of property by a municipality, states:

G. Notwithstanding any provisions of this Section to the contrary, a municipal police officer who retires with at least twenty years of active service and who is in good standing with the Municipal Police Employees' Retirement System shall be entitled to purchase his firearm at fair market value upon retirement, subject to approval by the chief of police and the local governing authority.

There are similar provisions at R.S. 11:2185* and 2235 for deputy sheriffs and other law enforcement.

"Public Procurement" Entity: Under the Louisiana Procurement Code, [R.S. 39:1703](#) allows any public procurement unit, i.e. an entity that follows the Procurement Code, to sell or acquire from any other public procurement unit, materials, supplies and equipment without the procedures required in the Public Bid Law or the Louisiana Procurement Code. The AG states in [AG Op. No. 00-55](#) regarding computers that if the computers have no value the entity may sell them to the other public entity for a reasonable price related to their fair market value.

Law Library of Louisiana: [R.S. 25:93](#) states that the director of the Law Library of Louisiana may sell or exchange surplus movable property, provided that all proceeds realized from any sale or exchange shall be applied to the purchase of books, periodicals, manuscripts, papers, or any other research material for the Law Library of Louisiana. "Surplus movable property" for this statute means any duplicate, superseded, obsolete or otherwise unnecessary book, periodical, manuscript, paper, or other research material in the possession of the Law Library of Louisiana.

* [Act 24 of 2011 Regular Session](#) amended [R.S. 11:2185](#) to allow a sheriff or deputy sheriff who retires with at least sixteen years of active service and who is in good standing with the Louisiana Sheriff's Pension and Relief Fund to purchase their firearm at fair market value upon retirement.

Colleges and Universities: [R.S. 39:330 \(B\)\(1\)](#) provides an exception for colleges and universities to sell or trade in certain surplus property or equipment.

Q.18. May an entity trade in surplus movable property?

A.18. In general, "trading-in" is not allowed. For local government entities, the AG treats the disposal of surplus property and purchase of new property as two separate processes. Disposal of surplus property should be done in accord with its applicable rules, and the purchase of new movable property under public bid or state contract (procurement code). However, [AG Op. No. 80-841](#) states that if a purchase is through the Division of Administration, then it would be permissible for the request for bids or request for proposals to describe the surplus property items for which a trade-in allowance is sought and make those available to prospective bidders or proposers. This would then be in effect a condition or specification for the bids or proposals.

Attorney General Opinions:

AG Op. No. 10-0297: Pursuant to La. R.S. 38:2325(16) and 38:2337, the Sabine River Authority has the independent authority to enter into contracts or agreements to sell, utilize, distribute, or consume the waters over which it has jurisdiction. However, if any contracts and other agreements which provide for the sale, utilization, distribution, or consumption, are with entities located outside of the boundaries of the State of Louisiana, the written concurrence of the Governor is required under these same laws.

Generally, any surplus movable property of the State, or of any board, commission, agency, or department of the State, can only be sold through the Division of Administration on its behalf, and then only at public auction after appropriate advertisement or by compliance with the Public Bid Law provided in La. R.S. 39:330.1 and La. R.S. 49:125. See AG Op. No. 79-1222. While these statutes provide the general rule for the sale of surplus movable property by State agencies, this Office has maintained that a public entity [specifically the SRA] may be exempt from the operation of general regulatory laws when the entity is granted broad and sweeping discretion and authority within its special statutes. See AG Op. No. 07-0093 and 97-287. In considering the SRA's explicit authority to enter contracts or agreements for the sale, utilization, distribution, or consumption of water within the SRA's jurisdictional boundaries, this Office is of the opinion that the SRA is exempt from the operation of the general laws governing the sale of surplus movable property.

AG Op. No. 10-0276: The police jury may dispose of the ditch dirt using the procedures set forth in La. R.S. 33:4712(F) or La. R.S. 39:125 as long as it receives equivalent value for the dirt. If the police jury is able to adequately document that the dirt has no or negative value, then it may be disposed of without violating La. Const. art. VII, Sec. 14.

AG Op. No. 10-0006: The Town of Mansura has the discretion to allow short-term limited uses of a publicly owned building provided it obtains in return a value or benefit

that is commensurate with the use. In the event the Town of Mansura wishes to enter into a long-term agreement whereby a third-party would have undisturbed control over and use of a publicly owned building, then the provisions of La. Rev. Stat. 33:4712 would be applicable. The provisions of La. Rev. Stat. 33:4712 would also apply to any management agreement and/or cooperative endeavor agreement whereby by a third-party would have the authority to manage, schedule, and/or coordinate such long-term uses.

AG Op. No. 09-0233: The Rapides Parish Sheriff's Office may not donate a surplus police vehicle to the Renaissance Home for Youth pursuant to La. Const. Art. VII, Sec. 14(E) because Renaissance Home is not a political subdivision of the State under La. Const. Art. VI, Sec. 44(2) whose functions include public safety. The Rapides Parish Sheriffs Office may, however, sell the surplus police vehicle pursuant to the procedures outlined in La. R.S. 49:125, La. R.S. 33:4711.1, or La. R.S. 33:4712(F).

AG Op. No. 07-0096: As a political subdivision, Cypress Black Bayou Recreation and Water Conservation District should follow the procedures outlined in LSA-R.S. 33:4712(F) or LSA-R.S. 49:125 to dispose of surplus movable property. Alternatively, it may sell its surplus movable property to another public entity through an intergovernmental governmental agreement as provided by R.S. 33:1321 *et seq.*, the "Local Services Law."