
Coates' Canons Blog: Disposing of Small Surplus Items: One Man's Junk is Another Man's Treasure

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Warm weather is finally here and it's time for some spring cleaning. There's your worn out

office chair, that dented file cabinet whose drawers are stuck shut, those obsolete computers, and goodness-knows-what that is gathering dust in the public works warehouse. You hate to throw the stuff away. If someone will buy it (some people will buy anything!), you might generate a little much needed cash for your unit. Or, perhaps a local non-profit would be grateful to have some of these items (after all, your office chair isn't *that* old). Maybe some of your co-workers would be interested in buying some of the items (again, some people will buy anything!). Can you post the items on GovDeals and hope for the best? Can you call a local charity and ask them to haul the stuff away? Can you conduct an "in-house" sale open only to employees of your unit? What are your options?

Disposing of surplus property is governed by **Article 12 of Chapter 160A (G.S. 153A-176** for counties[1]). The property disposal statutes generally require some method of competitive sale to ensure that a unit of government gets the highest value when it disposes of property purchased with taxpayers' dollars. There are several exceptions to this general rule, such as conveyances to other units of government (**G.S. 160A-274**), selling land to volunteer fire departments or rescue squads (**G.S. 160A-277**), certain conveyances for economic development purposes (**G.S. 158-7.1**), sales to private entities that will put the property to continued public use (**G.S. 160A-279**), and donations to nonprofits (**160A-280**).

Small Surplus Item Disposal

Competitive sale is also not required when disposing of what I refer to as "small surplus items." **G.S. 160A-266** authorizes private negotiation and sale (meaning negotiating price and selling directly to a single buyer without using a competitive sale method) for personal property valued at less than thirty-thousand dollars (\$30,000). The \$30,000 threshold may apply to either one item, such as a surplus vehicle or heavy equipment, or to a group of similar items, like a collection of old computers. Note that this authorization applies only to personal property – vehicles, office equipment, computers, etc. Real property cannot be sold by this method.

G.S. 160A-266 provides two methods for private negotiation and sale of small surplus items. One method requires governing board approval. The other method allows the board to delegate this authority to an individual officer or employee to conduct these sales without board approval. Both methods are discussed below.

Procedural Requirements with Board Approval

Under G.S. 160A-266(b), the procedural requirements for private negotiation and sale of small surplus items are set out in **G.S. 160A-267**. Once the items have been identified, the governing board must authorize the private sale of these items by resolution adopted at a *regular* meeting (not a special or emergency meeting). The resolution authorizes an individual official or employee to sell the items by private sale at a negotiated price. The resolution must identify the property to be sold and may, but is not required to, set a minimum sale price. After the resolution is adopted, a public notice

summarizing the contents of the resolution must be published once in a newspaper of general circulation within the jurisdiction (electronic notice is not statutorily authorized). While negotiations with the potential buyer can occur prior to governing board approval and during the published notice period, the sale cannot take place until 10 days after publication of the notice. In short, private negotiation and sale is a three-step process:

Step 1: Governing board adopts resolution at a regular meeting authorizing the negotiated sale.

Step 2: Notice of the resolution is published.

Step 3: 10 days after publication, sale can take place.

Does this mean that every time you want to get rid of an old office chair or a dented filing cabinet you must get governing board approval (by resolution at a regular meeting), publish notice, and wait 10 days after publication? Basically, yes.

If this process seems cumbersome or impedes your ability to efficiently dispose of small surplus items, or if you think your board may get tired of adopting resolutions every time you have a small surplus item to dispose of, there is another option.

Procedural Requirements without Board Approval

To avoid the procedural requirements outlined above, governing boards may adopt regulations authorizing an individual officer or employee to conduct small surplus item sales without governing board approval (**G.S. 160A-266(c)**). The statute specifies the following regarding the content of the regulations:

1. The procedures must be designed to secure fair market value for the surplus items.
2. The procedures must enable disposals to be done efficiently and economically.
3. Published notice does not have to be required (although it may be).
4. Sales may be accomplished either by private negotiation or public sale.
5. Private and public exchanges of property may be authorized.
6. The individual authorized to conduct the sales may set the fair market price of the item(s).
7. The individual authorized to conduct the sales may transfer title once the sale is completed.
8. Governing board approval need not be required (although it may be).

Once a local regulation is adopted,[2] the officer or employee authorized to conduct small surplus item sales may then do so at any time without published notice or governing board approval unless required by the local policy. The officer or employee must keep a record of the items sold, including a general description of the disposed property, to whom it was sold or with whom it was exchanged, and the sale price or other consideration received by the unit.

Unless restricted by local regulation, the authorized officer or employee may choose the particular method by which to sell small surplus items. Private negotiation and sale is an efficient method of disposal if a willing buyer is already identified. If not, interest among potential buyers can be generated by posting notice on the unit's website of the opportunity to purchase the item. Another option is to put the item up for auction on an electronic auction site like **GovDeals** or **Public Surplus**. Some units provide information about electronic auction items on their own websites (for examples, see **Catawba County** and the **City of Asheville**).

Donations to Nonprofits

What about donating those old computers to a local nonprofit? Article 12 authorizes two different methods for donating property to private organizations.

The first option, G.S. 160A-279 authorizes *only* cities and counties (no other units of local government) to convey both personal *and real* property to a private entity if the city or county has the legal authority to appropriate funds to that entity for carrying out a public purpose. Actually having appropriated funds to that entity is not required; it is sufficient that the city or county has the legal authority to appropriate funds to that entity for a public purpose. For example, a city or county has the legal authority to appropriate funds to the local SPCA to operate an animal shelter which serves a public purpose. In lieu of appropriating funds to the SPCA, the city or county may convey property to the SPCA to carry out the public purpose of operating the animal shelter. The property can be conveyed by sale at fair market value, less than fair market

value, or for no consideration at all.[3]

The authority to convey property to a private entity under this statute is not unlimited. First, the entity cannot be a for-profit corporation, and second, the property to be conveyed cannot have been acquired by eminent domain. When a city or county conveys property under this statute, it must attach covenants or conditions to the conveyance to ensure that the recipient will continue to put the property to public use.

When conveying property under this statute, the city or county must follow the three-step process for private negotiation and sale discussed above (**G.S. 160A-267**; resolution adopted by board at regular meeting; published notice of resolution; sale takes place 10 days after publication). This process is required *even if* the governing board has adopted local regulations authorizing an official or employee to conduct private sales of small surplus items.

The second option for donating to nonprofits, **G.S. 160A-280**, authorizes units of local government[4] to donate personal property (but not real property) to other units of government anywhere in the United States, nonprofit organizations incorporated by the United States or any state, or a “sister-city.”[5] To make a donation under this statute, the governing board must adopt a resolution declaring that the property to be donated is surplus, obsolete, or unused, and giving its approval for the donation. While not required, the resolution should include a description of the donated property and identify the recipient. Public notice of the resolution must be posted at least five days prior to the resolution’s adoption (formal published notice does not appear to be required). After the governing board adopts the resolution, the property may be donated. As with private negotiation and sale, donating personal property under this statute involves a three-step process:

Step 1: Post public notice of intent to approve donation at least five days before the board meeting at which the resolution approving donation will be considered.

Step 2: Governing board adopts resolution approving donation.

Step 3: Make donation.

Selling Small Surplus Items to Employees

What about conducting an “in-house” sale open only to employees of your unit? While G.S. 160A-266 does not limit with whom the unit may negotiate the private sale of small surplus items, other factors should be taken into consideration, such as potential public criticism for allowing government employees an exclusive opportunity to purchase public property.

In addition, the prohibition against self-benefiting under a public contract, **G.S. 14-234**, prohibits a public officer or employee, or his or her spouse, from receiving a direct benefit from a public contract that the officer or employee is involved in making or administering. A direct benefit prohibited under this statute includes acquiring property. So, if the employee is involved in the decision to surplus a particular item (which would constitute making or administering the contract), both that employee and his or her spouse are prohibited from purchasing that item – in other words, you can’t sell surplus property to yourself. For more discussion of this topic, our former colleague Eileen Youens authored two excellent blog posts (click [here](#) and [here](#)) on selling surplus items to employees.

Sample Resolutions, Notices, Local Policy, and Other Resources

If you want to propose to your board that it adopt a local policy authorizing an individual officer or employee to dispose of small surplus items, or if not, if you need examples of resolutions and notices for private sales and donations as well as for other property disposal methods, see our Local Government Purchasing website (www.ncpurchasing.unc.edu). On this site, under the “**Forms**” link in the left-hand menu of the main page, you’ll find sample resolutions, notices for publication, and a sample local policy (click [here](#) to go directly to the property disposal sample forms page). Also on our purchasing website under the “**Tools**” link are charts outlining property disposal options (click [here](#)) and the step-by-step procedures for each property disposal method (click [here](#)). Another great resource is David Lawrence’s **Local Government Property Transactions in North Carolina** (2nd ed., 2000).

[1] Article 12 of Chapter 160A also applies to local schools (**G.S. 115C-518(a)**), ABC Boards (**G.S. 18B-701(12)**), community colleges (**G.S. 115D-15(a)**); community colleges also can dispose personal property under procedures adopted by the N.C. Department of Administration), airport authorities (**G.S. 63-53(4)**), sanitary districts (**G.S. 130A-55(20)**), regional solid waste authorities (**G.S. 153A-427(b)**), and joint municipal assistance agencies (**G.S. 159B.44(12)**).

[2] The term “regulation” is used in G.S. 160A-266(c). The small surplus item disposal policy may take the form of an ordinance, resolution, or policy, so long as it is formally adopted by the governing board.

[3] The North Carolina Supreme Court has held that continued public use is a constitutionally adequate form of consideration. *Brumley v. Baxter*, 225 N.C. 691, 36 S.E.2d 281 (1945).

[4] The authority to donate personal property under G.S. 160A-280 is not restricted to cities and counties; however, local school boards are constitutionally restricted from donating property. See, *Boney v. Board of Trustees*, 229 N.C. 136, 48 S.E.2d 56 (1948).

[5] A “sister-city” is a city in another county that has entered into a formal, written agreement or MOU with a local government in North Carolina for establishing a long-term partnership to promote communication, understand, and goodwill, and to develop mutually beneficial activities, programs, and ideas (G.S. 160A-280(a)).

Links

- canons.sog.unc.edu/wp-content/uploads/2014/04/old-compters.jpg
- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_160A/Article_12.html
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-176
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-274.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-277.html
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=158-7.1
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-279.html
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- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=115C-518
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- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=115D-15
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=63-53
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-55
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