
Coates' Canons Blog: When can a local government employee or official buy surplus property from the local government? Part 1

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Your local government, a mid-sized city in North Carolina, owns 50 laptops that are in working condition but are no longer being used. Each laptop is worth about \$600. As the Purchasing Manager, you've been asked to figure out how to get rid of these laptops. While you're trying to decide how to get rid of the laptops, a City Council member calls to ask you whether she can buy one of the laptops (she heard about them from the City Manager). Apparently, the City Manager has told several city employees about the laptops, too, because one of your friends in the planning department calls to ask you if he can buy a laptop. Coincidentally, your home computer has just crashed, and your husband has asked you to find a replacement computer as soon as you can.

My post today will address what options you have for getting rid of the laptops. My post next week will address the question of when you can sell surplus property to local government employees or officers.

What procedures can you use to dispose of the laptops?

There are several options available for disposing of these laptops:

1. Sell the laptops through private negotiation and sale, following the procedures in G.S. 160A-267.
2. Sell the laptops under regulations adopted by your governing board. (G.S. 160A-266(c) allows governing boards to "adopt regulations prescribing procedures for disposing of personal property valued at less than thirty thousand dollars (\$30,000) for any one item or group of items." If your governing board has adopted regulations under G.S. 160A-266(c), then you will need to make sure that those regulations permit the laptop sale, and make sure that you comply with the regulations in carrying out the sale.) Note that these regulations may or may not require advertisement and may authorize you to sell the laptops electronically.
3. Advertise for sealed bids, following the procedures in G.S. 160A-268.
4. Use the upset bidding procedure in G.S. 160A-269.
5. Sell them via public auction under G.S. 160A-270. (Electronic auctions may be used as long as your governing board has authorized the use of electronic auctions.)
6. Exchange the laptops for other property using the procedures in G.S. 160A-271.
7. Trade in the laptops as part of a purchase of new laptops, following the requirements in G.S. 143-129.7.
8. Give or sell the laptops to another governmental entity in North Carolina using the procedures in G.S. 160A-274.
9. Donate the laptops to a non-profit carrying out a public purpose using the procedures in G.S. 160A-279.
10. Donate the laptops to a federal agency, another state, a local government outside of North Carolina, a non-profit, or a "sister city" in a foreign country, using the procedures in G.S. 160A-280. (Note that there may be a constitutional issue with donating property to entities that are not in your local area. For a discussion of this issues, see page 260 of the Public Purchasing and Contracting Chapter in North Carolina Legislation 2007.

These options apply to the sale of any personal property (that is, tangible property that is not land or buildings attached to land) that is worth less than \$30,000. If you were selling laptops (or any other personal property) worth \$30,000 or more, you could use options 3 through 10 above, but not options 1 or 2. And if you were selling real property (that is, land or buildings attached to land) instead of personal property, you could use options 3 (advertising for 30 days before the bid opening instead of the 7 days required for personal property), 4, 5 (publishing a notice of the sale at least 30 days before the auction instead of the 10 days required for auctions of personal property), 6, 8, or 9.

Note that although Chapter 160A of the General Statutes regulates city governments, Article 12 of Chapter 160A—the

article in which these property disposal methods are found—also applies to counties (G.S. 153A-176, schools (G.S. 115C-518), ABC Boards (G.S. 18B-701(12)), community colleges (G.S. 115D-15(a), although community colleges also have the option of disposing of property under procedures adopted by the N.C. Department of Administration), airport authorities (G.S. 116-274(b)(4)), sanitary districts (G.S. 130A-55(20)), and joint municipal assistance agencies (G.S. 159B-44(12)).

However, options 9 and 10 do *not* apply to schools. In *Boney v. Board of Trustees*, 229 N.C. 136, 48 S.E.2d 56 (1948), the North Carolina Supreme Court held that the North Carolina Constitution (specifically, Article IX, Section 7) prohibits schools from conveying school property without monetary consideration, even to a governmental agency that will put the property to a public (but non-school) use. David Lawrence discusses this on page 93 of *Local Government Property Transactions in North Carolina*, which you can purchase here (free property disposal forms from the book are also available through that link).

Next week we'll find out whether you can sell a laptop to the city council member or your friend in the planning department and whether you can buy one for yourself.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-267.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-266.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-268.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-269.html
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- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-271.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-129.7.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-274.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-279.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-280.html
- www.sog.unc.edu/pubs/nclegis/nclegis2007/23%20Public%20Purchasing.pdf
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-176.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-518.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_18B/GS_18B-701.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_115D/GS_115D-15.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_116/GS_116-274.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_130a/gs_130a-55.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_159B/GS_159B-44.html
- www.sog.unc.edu/publications/books/local-government-property-transactions-north-carolina