
Coates' Canons Blog: When can a local government employee or official buy surplus property from the local government? Part 2

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Following up on my post last week about the procedures available for selling surplus property, I will now address the second question raised by the original post: When can you sell surplus property to local government employees or officers?

G.S. 14-234 – Conflicts of Interest in Contracting

G.S. 14-234 prohibits local governments from entering into certain contracts with public officer or employees. To constitute a conflict of interest under G.S. 14-234, two conditions must be met: (1) the public officer or employee must be involved in making or administering the contract and (2) the public officer or employee, or his or her spouse, must receive a direct benefit from the contract. G.S. 14-234 defines involvement in making or administering the contract as participating in drafting specifications for the contract, awarding the contract, or serving on the governing board if the board takes action on the contract (*even if the board member does not vote*). The definition of “direct benefit” under G.S. 14-234 includes acquiring property under the contract.

A person who violates G.S. 14-234 will be guilty of a Class 1 misdemeanor, and any contract that violates G.S. 14-234 is invalid. What this means is that if you are involved in determining which laptops should be declared surplus or if you are an elected official (even if you don't vote on the contract), then you cannot purchase a laptop from your local government, unless an exception applies (see the next paragraph). On the other hand, if you're a public employee who has no involvement in the laptop sale, you would legally be able to buy the laptops from your local government under G.S. 14-234.

There are several exceptions to G.S. 14-234, including an exception for “small jurisdictions,” which are defined as cities with 15,000 people or less (according to the most recent federal census) and counties within which there are no cities with 15,000 people or less. This exception allows the local government to enter into a contract with a public officer who will receive a direct benefit from the contract as long as the conflict is disclosed and approved by a specific board resolution, the public officer doesn't vote, and the total amount of the contract does not exceed \$12,500 in one year (this amount increases to \$20,000 on October 1, 2009, per Session Law 2009-226).

You can find a flowchart that walks you through G.S. 14-234 here (click on “Flowchart for conflicts of interest”). Be sure to read the statute as you walk through the flowchart.

So, going back to our fact pattern, you can't sell the laptop to the City Council member (unless the small jurisdiction exception applies, and all the requirements of the exception are met), and you can't purchase the laptop yourself.

G.S. 14-234.1 – The “Insider Trading” Statute

Also, G.S. 14-234.1 prohibits any public officer or employee from getting a financial benefit based on non-public information that the employee has because of the employee's job if that information is not public knowledge. So if an officer or employee is getting an especially good deal on one of these laptops because the he or she knows that you're looking to get rid of it (and the general public doesn't know that), then the sale could violate GS 14-234.1. A person that violates G.S. 14-234.1 will also be guilty of a Class 1 misdemeanor.

This means you may not be able to sell the laptop to your friend in the planning department, although if you sell the laptops at public auction or through a sealed bidding process—that is, if you make the laptops publicly available—your



friend could legally bid on the laptops along with the general public, and it would be legal for you to tell your friend about this opportunity.

Additional Concerns

Even if a contract does not violate G.S. 14-234 or G.S. 14-234.1, it is important to consider public relations concerns. There is sometimes an expectation that the general public will have an opportunity to purchase surplus property, even when the procedures don't require public notice, and there could be a public perception of a conflict of interest when a public officer or employee contracts with the government he or she serves.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-234.html
- www.ncga.state.nc.us/Sessions/2009/Bills/House/HTML/H682v5.html
- www.sog.unc.edu/programs/purchase/tools.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-234.1.html