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District property disposal

This fact sheet is designed to address the most frequently asked questions about the disposal of property that is no longer needed for school purposes. This information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.

What is the difference between “real property” and “personal property?”

Real property refers to land and things that are permanently attached to the land (i.e. school buildings, stadiums, etc.). Personal property generally refers to the items that are movable and not a part of the land (i.e. textbooks, desks, computers, etc.).

Is the board required to offer the district’s real property to other entities prior to disposing of it?

Yes. Pursuant to section 3313.411 of the Revised Code (RC), the board of education must first offer to lease or sell any “unused school facilities” to the governing authority of any community school and the board of trustees of any college-preparatory school located within the district prior to disposing of the property. The board of education may also, but is not required to, offer the property to the governing authorities of community schools with plans, as stipulated in their contracts, either to relocate to the district or to add facilities to be located within the district.

What constitutes an “unused school facility?”

The statute defines an “unused school facility” to include any real property used by a school district for school operations including, but not limited to academic instruction or administration, since July 1, 1998, but that has not been used in that capacity for two years.

What happens if an eligible party is interested in purchasing or leasing the property?

If an eligible party notifies the district treasurer of its intention to purchase the property within 60 days, the district board must sell the property to the party at a price that is not greater than the appraised fair market value of the property. If more than one eligible party offers to purchase the property, the board shall conduct a public auction for those interested parties. Only those parties that initially notified the treasurer of their interest in the property are eligible to bid in the auction. The district board is not required to accept any bid for the property that is lower than the appraised fair market value of the property, as determined in an appraisal of the property that is not more than one year old.

If an eligible party notifies the district treasurer of its intention to lease the property within 60 days, the district board must lease the property to the party at a price that is not greater than the fair market value for such a leasehold. If more than one party notifies the treasurer of its intention to lease the property, the district board must conduct a lottery to select the party to which the district board will lease the property. Again, the district board must lease the property to the party at a price that is not greater than the fair market value for such a leasehold, as determined in an appraisal of the property that is not more than one year old.

If no eligible party accepts the offer within 60 days, the board may dispose of the property by auction or private sale, as may be required.

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For more information
on this subject, please
contact OSBA’s Division
of Legal Services

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Public auction

When is the board required to hold a public auction?

In most cases, if the value of the real or personal property exceeds \$10,000, a board of education is required to sell property at a public auction. At least 30 days before the auction, the board must notice the auction either by publishing a notice in a newspaper of general circulation or by posting notices in five of the most public places in the school district.

Once the board has published or posted the initial notice, it has satisfied the statutory requirement. The Ohio Attorney General has held that continuous publication up until the auction date is not required (1974 Ohio Atty. Gen. Ops. No. 002).

How do we determine if the value of the property exceeds \$10,000?

Prior to the sale, a board may hire an appraiser to appraise the property or may make its own determination as to whether the aggregate value of the property exceeds \$10,000. In the absence of fraud or a gross abuse of discretion, the judgment of the board will not be disturbed by a court of law. The board also may have adopted board policy setting forth the procedures for determining the value of the district property.

Must a licensed auctioneer conduct the public auction?

No. An auctioneer's license is not required to conduct a district's public auction, so long as the individuals involved in the auction are not compensated for their services.

Are we required to sell the property to the highest bidder at the public auction?

The board is not required to sell the property to the highest bidder if they find the highest bid to be insufficient or unacceptable. A board has the discretion to reject any and all bids made on the property. However, the Ohio Attorney General has held that if the board does not reject the bids and the property is sold at the public auction, it must be sold to the highest bidder (1961 Ohio Atty Gen. Ops. No. 2395).

Can the board meet the public auction requirement by soliciting written sealed bids from interested buyers?

No. The language of the statute expressly requires the board of education to conduct a public auction. The rationale is that public auctions are less secretive and more competitive than when sealed bids are used, which arguably provides a greater benefit to the board that is trying to sell its property.

What happens if the district fails to comply with the statute requiring a public auction?

A court could stop a proposed sale or set aside a sale that has already been completed if the sale is or was improperly executed.

How long is the district required to maintain records relating to the public auction?

RC 4707.21 requires districts to keep records relative to their sponsored auctions for up to two years after the auction date. These records may include settlement sheets, written contracts, and copies of any advertising/notices that list the items for auction.

Private sale

When can the board sell district property at a private sale?

A board of education may bypass the public auction requirement and sell its property at a private sale when one or more of the following exceptions are met:

- The value of the property does not exceed \$10,000;
- The property has been offered for sale at public auction at least once and has not been sold;
- The buyer of the property is a municipal corporation, county, township, school district, or other public entity enumerated in RC 3313.41; or
- The property is being disposed of as part of a trade or exchange.

What rules govern the private sale of district property?

Surprisingly, there are few rules that govern how a school board may dispose of its property through a private sale. The sale may be made "upon such terms as are agreed upon" by the parties. The board can sell the property by any method it chooses, but should take action to authorize the final sale during a board meeting. No form of public notice is required by statute, but OSBA recommends soliciting bids from more than one source to make sure the board is getting the best price for the property and to avoid claims of favoritism.

May we use eBay or Craigslist to host our private sale?

Yes, so long as the property qualifies as property that can be sold at a private sale.

Trading property

May a board of education trade its personal property for personal property owned by another person or entity?

Yes. A board of education may trade its personal property for other items of similar personal property. The items traded may constitute all or part of the purchase price of the new items. The board may

trade the item upon such terms as are agreed upon by the parties to the trade. However, there is no requirement for the letting of bids or public notice.

May a board of education trade its real property for real property owned by another person or entity?

Yes. If the board has identified a parcel of real property that it determines is needed for school purposes, the board may acquire that property by exchanging the board's property for the desired real property. Alternatively, the board may trade in a parcel of real property which it owns as part of the price of another specific parcel. A trade of real property requires a majority vote of the full board and must be made by a conveyance executed by the president or treasurer of the board.

Donations

May a board donate its unneeded property?

In general, boards of education have no authority to donate or give school property to any private person, public corporation or agency. However, there is an exception with respect to the disposal of surplus goods. Boards of education are permitted to donate unneeded property to certain civic and charitable organizations whenever the board determines that the fair market value of such property does not exceed \$2,500.

How does a board donate its unneeded property?

The board must first adopt a resolution that outlines its intent to make unneeded, obsolete, or unfit-for-use property available to nonprofit organizations. The resolution should set forth any guidelines or procedures that the board determines are necessary to implement their donation program and must indicate whether the board will be responsible for conducting the program or whether they will hire a private contractor to run the program. This criteria also is typically set forth in board policy.

Which civic or charitable organizations are eligible to receive donations?

In order to be eligible to receive donations, the organization must submit to the board of education written notice of its interest in being considered for such donations. The notice must include all of the following:

- Evidence that the organization is a nonprofit organization that is located in the state of Ohio;
- Evidence that the organization is exempt from federal income tax pursuant to sections 501(a) and 501(c)(3) of the Internal Revenue Code;
- A description of the organization's primary purpose;

- A description of the type(s) of property the organization needs; and

- The name, address and telephone number of the person designated by the organization to receive the donated property.

The board must maintain a list of all nonprofit organizations that notify the board of their desire to obtain donated property.

How are donations to eligible civic or charitable organizations made?

The board must publish, in a newspaper of general circulation within the district, a notice of its intent to donate unneeded, obsolete, or unfit-for-use school property to eligible nonprofit organizations. The notice must be published at least twice. The second notice must be published not less than ten nor more than twenty days after the notice which immediately preceded it. A similar notice also must be posted continuously in the board of education offices and on the district's website.

Donations are made to eligible organizations on a "first come, first served" basis unless the board has determined, by resolution, that certain organizations are to be given priority with respect to the item in question.

Conclusion

Members may contact their board counsel for specific questions or the OSBA Legal Division for additional general information.

The information in this fact sheet is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.