Disposition of Surplus Property

Overview

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

To facilitate use of this document, numerous links within the document will direct your attention to specific areas within the document and to related documents posted on the Louisiana Legislative Auditor's website and on external websites. For example, from the Index, you may go directly to any area of the FAQ by clicking the question you wish to view. Within the FAQ, several links will direct you to other areas of the FAQ and to relevant external documents. Clicking on an individual question number will return you to the index to allow selection of another question to view.

Index

General

1. What is surplus property?

2. What requirements does LA Constitutional Article VII, Section 14 impose upon the sale of public property?

3. What is "fair market value," and how is it determined?

4. What preliminary step is necessary before an entity can determine which process to follow, in disposing of surplus property?

Local

5. What provisions exist to allow a local government entity, a municipality, or a local political subdivision to sell surplus property?

6. Which transfers of property does the Local Services Law cover?

7. Under Local Services Law, Title 33:1321 *et seq.*, what is the definition of a "municipality"?

8. May a political subdivision donate or exchange movable surplus property with another political subdivision?

9. What may 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?

State

10. What options for disposition of surplus movable property are available to the state, a board, commission, agency or department of the state?

11. What procedure applies to a Division of Administration sale at a public auction?

12. What procedure applies to 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?

13. What penalties exist for improper disposal of property belonging to the state agency?

Miscellaneous

14. May an entity trade in surplus movable property?

15. May public servants bid on surplus property being disposed of by their public entity?

16. Do special provisions control the disposition of surplus movable property for certain agencies?

17. Which provisions control disposition of property by a school board?

18. What procedure should be used for disposal of library books and school books?

19. What provisions exist for disposition of historically significant property?

20. How may property that is damaged and insured and held by the Office of Risk Management (ORM) be disposed of?

21. May a law enforcement officer purchase his or her service firearm at retirement?

22. May a law enforcement K-9 handler purchase his or her K-9 upon the animal's retirement?

23. Are there special provisions for the disposal of surplus, seized, and forfeited firearms by law enforcement agencies?

24. May a parish or municipality pay a commission or fee to a real estate broker when selling immovable property?

Attorney General Opinions

Disposition of Surplus Property

General

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. R.S.33:4711.1(B)(3) defines "surplus property," for the purposes of the sale of surplus property over the internet, 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. Because it is a "thing of value" belonging to the state, it is public property. Surplus immovable property includes things such as land and buildings which are no longer needed by a public entity for a public purpose. Pursuant to LA Const. Art. VII, §14, many restraints are placed on disposition of public property. 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 declare to be surplus, as any disposition below that established fair market value would be an unlawful donation.

Q.2. **What requirements does LA Constitutional Article VII, Section 14 impose upon the sale of public property?**

A.2. Because disposition of surplus property involves the alienation of public property, the transaction must comply with Article VII, , §14 of the Louisiana Constitution of 1974, which provides:

> 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 must recover fair market value when selling surplus **movable** or **immovable** property.

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 may be either the property or the funds with which to purchase the property. **AG Op. No. 00-0150**

The **AG Op. No. 16-0057** opined that a public entity may consider the potential cost savings in exchanging surplus public property , such as debris and dirt removed from drainage ditches, when the disposal costs of public property outweighs its fair market value. This opinion does not authorize trade in of vehicles.

Q.3. **What is "fair market value," and how is it determined?**

A.3. 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 market value is best achieved by public bid, after the minimum bid is established by appraisal, and following adequate public notice. 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 that subjects the property to actual market conditions.

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

Q.4. **What preliminary step is necessary before an entity can determine which process to follow in disposing of surplus property?**

A.4. An 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.

Local

Q.5. **What provisions exist to allow a local government entity, a municipality, or a local political subdivision to sell surplus property?**

A.5. The Revised Statutes provide five methods for disposal of surplus movable by local government. The AG has opined that municipalities and local political subdivisions should dispose of surplus movable property by following the procedures outlined in R.S. 49:125 (the Division of Administration sale) [See also, **Q.6.**];

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 also may dispose of property through the provisions of the Local Services Law, R.S.33:1321 *et seq.* Political subdivisions under R.S. 49:125.1 may transfer surplus electronic devices to certain certified non-profits in return for services proportional to the value of the surplus devices transferred. The procedures for these five methods of disposition are discussed in detail below.

As a preliminary step for municipalities, R.S. 33:4712(B) requires an ordinance be introduced giving the reasons for the disposition of the property and fixing the minimum price of the sale, lease, exchange, or other contract to be made with reference to the property, except in cases for movable property only that is valued at less than $5,000 (see "Disposition under R.S. 33:4712(F)" below).

Exchanges of immovable property valued at $100,000 or more requires additional notice. In such cases, R. S. 33:4712(B) requires, prior to the introduction of the ordinance, active solicitations of proposals for the exchange of the property by advertising a minimum of 3 times in 30 days. Thereafter, the ordinance must be published 3 times in 15 days, one week apart, in a newspaper published in the municipality, or, if no such newspaper, one having a general circulation in the municipality.

⇨ **Disposition under R.S. 49:125 of surplus movables at public auction open to private persons**

La. R.S. 49:125 authorizes a 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 may be advertised and sold by the entity at a regular auction sale-- provided the requirements of La. R.S. 49:125 are met. (AG Op. No. 07-0096). Those requirements are:

- Sale must be advertised;
- 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.
- 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 entity's right to reject any and all bids.
- Further, the sale may 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 market value.

Regarding the notice provision, **AG Op. No. 92-0606**, discussing the sale of land, states that the publication and notice allow 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)

⇨ **Disposition under R.S. 33:4712(F): Surplus movable property of a municipality or political subdivision when the property's value is less than $5,000.**

La. R.S. 33:4712 (F) authorizes a municipality to sell movable property that has an appraised value of $5,000 or less at private sale once a resolution is passed giving the reasons for the action and setting 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 Op. No. 07-0096 states that a political subdivision may also use R.S. 33:4712(F).

⇨ **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. Furthermore, costs of the sale may be paid from the proceeds of the sale. AG Op. No. 07-0096. See also, AG Op. No. 09-0233. R.S. 33:4711.1 provides:

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 the sale.

(3) Sell surplus property through any form of electronic technology, including Internet websites created expressly for that purpose whether privately or publicly owned.

⇨ **Disposition under R.S. 33:1321 *et seq.*: Local Services Law**

R.S. 33:1324

The Attorney General has long opined that a political subdivision may sell its surplus movable property to another public entity through an intergovernmental agreement (IGA) 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 requirement of a public auction. The transfer must be at a price commensurate with the value of the surplus property. The price paid may be in money or in services. See AG Op. No. 14-0005. The Attorney General has also opined that agreements under the authority of the Local Services Law are required to be reduced to writing. See AG Op. No. 21-0109.

Additionally, R.S. 38:2212.1(D) specifically provides that the public bid law requirements for the procurement of materials and supplies "shall not apply to a public entity purchasing surplus materials and supplies from another public entity . . ."

⇨ **Disposition under R.S. 49:125.1: Transfer of Surplus Electronic Devices to certified nonprofit entities in return for the performance of services**

R.S. 49:125.1

A political subdivision may transfer surplus electronic devices to nonprofit entities certified by R2 Solutions or by the e-Stewards Initiative in return for the performance of services by the nonprofit on behalf of the political subdivision. The services performed must be proportional to the value of the electronic devices transferred. Service may, at a minimum, include pickup and transfer of devices from the political subdivision and erasure of hard drives and of memory of electronic devices. Political subdivisions transferring devices under R.S. 49:125.1 should execute a written cooperative endeavor agreement (CEA) clearly delineating the surplus electronic devices to be transferred, the services to be received in return for the transfer, and documentation that the nonprofit meets the proper certification required by the statute.

Additional information on cooperative endeavor agreements and a sample template may be found on the LLA website CEA Memo and Sample.

Q.6. **Which transfers of property does the Local Services Law cover?**

A.6. **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

necessity of a public auction or public bid process. See R.S. 38:2212.1(D). The transfer must, however, be for a price commensurate with the value of the surplus property. Also see AG Op. No. 07-0096 The Attorney General has opined that agreements under the authority of the Local Services Law are required to be reduced to writing. See AG Op. No. 21-0109.

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.7. Under Local Services Law, R.S. 33:1321 *et seq.*, what is the definition of a "municipality"?

A.7. 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. "Bonds" shall mean any bonds issued pursuant to any law by any parish or municipality, whether the 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.8. May a political subdivision donate or exchange movable surplus property with another political subdivision?

A.8. Generally, Article VII, Sec. 14 of the Louisiana Constitution prohibits the donation of public property. However, Section (E) of this Article specifically allows the donation or exchange of surplus movable property between or among political subdivisions **whose functions include public safety.** For example, pursuant to Art. VII. Sec. 14(E), a sheriff may donate a surplus police vehicle to a municipal police department. Any such donations or exchanges should be in writing, either by resolution of the governing authority or with a CEA, setting forth the surplus equipment to be donated/exchanged and the public safety function of each entity.

Q.9. **What may 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 discusses obsolete computers and other office equipment referred to as "junk." Article VII Sec. 14 of the LA Const. (something of value belonging to the state may not be given away) requires entities to take special care in establishing that the property "has no value" prior to discarding it. Public entities should consider the potential scrap value of surplus movable property prior to deeming the items "junk."

See also **AG Op. No. 16-0057** and **AG Op No. 10-0276**

State

Q.10. **What options for disposition of surplus movable property are available to the state, a board, commission, agency or department of the state?**

A.10. Several provisions for the sale of surplus movable property may be followed by a state entity. A state entity may sell surplus property under a **Division of Administration sale** (R.S. 39:330.1) or, with the permission of the Commissioner of Administration, by **public auction** after appropriate advertisement (R.S. 49:125). Also, the Division of Administration may 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 may 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.11.** and **Q.12.** below for a detailed discussion of the procedures.

Q.11. **What procedure applies to a Division of Administration sale at a public auction?** **R.S. 39:330.1(A)**

A.11. 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 the 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. Special provisions apply to the sale of timber on lands under the jurisdiction of the Department of Agriculture and Forestry.

Q.12. What procedure applies to 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.12. If the unit of government obtains permission from the Commissioner of Administration, the unit may sell its surplus movable property at public auction following R.S. 49:125. If good cause is shown, the Commissioner of Administration may waive or modify the regular process pursuant to the Louisiana Administrative Code. The code provides 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 used 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 (FMW) commensurate with the value.

- The entity should document the manner by which it establishes the FMV for the minimal bid.
- No sale at a public auction shall be at a price that is less than is required by law, and all such sales shall be advertised in the manner provided by law.
- The agency has 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.
- The sale may 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. That is, because Article VII, Section 14 of the Louisiana Constitution of 1974 prohibits the donation of property or other things of value

by any political subdivision, the agency must determine that the awarded bid price is commensurate with the value of the property sold.

Q.13. What penalties exist for improper disposal of property belonging to the state agency?

A.13. 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 or her wrongful or negligent act or omission causes any loss, theft, disappearance, damage to or destruction of property of his or her agency for which she or he is responsible. The damages shall be recoverable in a civil suit prosecuted on behalf of the state by the Attorney General**.**

Miscellaneous

Q.14. May an entity trade in surplus movable property?

A.14. 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. Surplus property should be disposed of in accord with its applicable rules, and new movable property should be purchased using public bid or state contract (procurement code).

For State agencies, **AG Op. No. 80-0841** states, that if a purchase is made through the Division of Administration, then the request for bids or request for proposals may describe the surplus property items for which a trade-in allowance is sought and make those descriptions available to prospective bidders or proposers. The trade-in allowance, which is made under the authority of the Commissioner of Administration, would then be, in effect, a condition or specification for the bids or proposals. This opinion, and the authority to provide for a trade-in, does not apply to purchases or disposal of surplus by local government entities.

Q.15. May public servants bid on surplus property being disposed of by their public entity?

A.15. Public servants and members of their immediate family may not bid on surplus property being disposed of by their agency*, as doing so would violate Ethics rules. 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 and R.S. 42:1123 for exceptions to this provision and Ethics Board Opinions such as 2006-035, 2009-183, and 2003-346.

* Agency for the purposes of the Code of Governmental Ethics is defined in R.S. 42:1102(2). Determinations of a public servant's "agency" are fact-specific and subject to the exclusive jurisdiction of the Board of Ethics. This is a matter which should be reviewed with the Board of Ethics prior to the purchase by the public employee or their immediate family.

Q.16. Do special provisions control the disposition of surplus movable property for certain agencies?

A.16. 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.

> R.S. 33:4712(G), which provides that certain retiring municipal police officers may purchase their firearm at fair market value, 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.**
>
> R.S. 11:2185 and R.S. 11:2235 contain similar provisions for sheriffs, deputy sheriffs, and other law enforcement to purchase their firearm upon retirement. (See **Q.21**.)

R.S. 33:4712(H) authorizes the governing authority of a municipality to establish, by ordinance, procedures for the private sale of a police dog that is no longer needed for police work to the officer who trained or worked with the dog. Such sale shall be in exchange for consideration proportionate to the value of the dog.

"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 following the procedures required in the Public Bid Law or the Louisiana Procurement Code. The AG states in AG Op. No.

00-0055 regarding computers that if the computers are no longer useful to the entity, the entity may sell them to the other public entity for a reasonable price related to their fair market value, but may not donate them.

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.

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.17. Which provisions control disposition of property by a school board?

A.17. R.S. 17:87.6(A) provides for alienation at public or private sale of any property no longer needed by a school board.

> 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. Any sale shall be in accordance with the provisions of R.S. 41:891 and 892.

R.S. 17:87.6(C)* provides for the sale, trade, or use of buyback programs for disposing of surplus computers used for classwork, to those students who actually used them. School boards shall securely erase all student, employee, and school and district data or otherwise render it inaccessible in accordance with data security policies established by the Louisiana Department of Education and any applicable State or Federal Regulations. See R.S. 17:87.6(C)(7).

AG Op. No. 03-0101 opines as follows regarding the necessity 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.

The sale of surplus immovable property, i.e. land or buildings, by a school board shall comply with the provisions of R.S. 41:891 and R.S. 41:892. R.S. 41:891 provides that the sale of section sixteenth lands, school indemnity lands, and other school lands shall follow the procedures already set forth in law (Chapter 6 of Title 41 of the Revised Statutes, R.S. 41:631-981), as applicable.

Q.18. What procedure should be used for disposal of public library books and school books?

A.18. R.S. 25:151 addresses the topic of disposal of library books. Other statutes provide exceptions for specific libraries and museums, such as the Law Library mentioned above.

R.S. 25:151 Disposition of Public Library Books

Each public library in the state of Louisiana may dispose of any superseded, obsolete, unused, or otherwise unnecessary book by permitting it to be claimed as follows:

If a library book has been out of use for over a year, a public library may, with the approval of the appropriate governing board, dispose of the book by making it available free of charge to any hospital, correctional facility, public or private institution, nonprofit organization, adult education program, youth organization, school, or any individual for private use.

A public library seeking to dispose of books shall do so by making all such books available to be selected for ownership in a convenient location in the library.

"Public library" shall include the State Library of Louisiana, any parish or municipal library, and any college or university or school library.

The Webster Parish Library, subject to the approval of the Webster Parish Library Board of Control, may sell any superseded, obsolete, or otherwise unnecessary book in the possession of the library to any hospital, correctional facility, public or private institution, nonprofit organization, adult education program, youth organization, school, or individual. The proceeds collected from the sale of library books shall be remitted to the Webster Parish Library Board of Control and shall be used exclusively for the maintenance, operation, and support of the Webster Parish Library.

The Webster Parish Library may dispose of books by making such books available for purchase at a convenient location to be determined by the Webster Parish Library Board of Control.

The Calcasieu Parish Library, subject to the approval of the Calcasieu Parish Library Board of Control, may sell any superseded, obsolete, or otherwise unnecessary book in the possession of the library to any hospital, correctional facility, public or private institution, nonprofit organization, adult education program, youth organization, school, or individual.

The proceeds collected from the sale of library books shall be remitted to the Calcasieu Parish Library Board of Control and shall be used exclusively for the maintenance, operation, and support of the Calcasieu Parish Library.

The Calcasieu Parish Library may dispose of by making such books available for purchase at a convenient location to be determined by the Calcasieu Parish Library Board of Control.

The Livingston Parish Library, subject to the approval of the Livingston Parish Library Board of Control, may sell any superseded, obsolete, or otherwise unnecessary book in the possession of the library to any hospital, correctional facility, public or private institution, nonprofit organization, adult education program, youth organization, school, or individual.

The proceeds collected from the sale of library books shall be remitted to the Livingston Parish Library Board of Control and shall be used exclusively for the maintenance, operation, and support of the Livingston Parish Library.

The Livingston Parish Library may dispose of by making such books available for purchase at a convenient location to be determined by the Livingston Parish Library Board of Control.

Q.19. What provisions exist for disposition of historically significant property?

A.19. R.S. 39:330(G)(1) states:

Notwithstanding any provision of law to the contrary, no property that the Commissioner of Administration defines as historically significant shall be disposed of by sale, donation, transfer, or other form of alienation in any manner, nor may it be 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 the property with respect to storage, relocation, transfer, or other disposition allowed by rules and regulations issued by the Commissioner based on recommendations by the state historic preservation officer.

Q.20. How may property that is damaged and insured and held by the Office of Risk Management (ORM) be disposed of?

A.20. Any property that 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 R.S.39:330.3) only after approval by the ORM. Funds received from the sale of damaged 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.21. May a law enforcement officer purchase his or her service firearm at retirement?

A.21. Seven special exceptions to the Surplus Property Law exist for a retiring law enforcement officer purchasing his or her sidearm. The requirements are specific and must be met exactly. According to the AG:

"A municipal police officer retiring with 16 years of active service may not purchase his firearm using the provisions of La. R.S. 11:2235 or R.S. 33:4712(G). These statutes would allow a municipal police officer who retires with at least 20 years of active service to purchase his firearm at fair market value. Otherwise, in order to dispose of the firearm, the police department must declare it surplus property and follow all of the steps required by law in order to effect the sale." **AG Op. No. 12-0242**

The seven specific exceptions are:

1. Any **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 or her firearm at fair market value upon retirement, subject to approval by the chief of police.
R.S. 33:4712(G) and R.S. 11:2235

2. Any **sheriff or deputy sheriff** who retires and who is in good standing with the Louisiana Sheriffs' Pension and Relief Fund shall be entitled to purchase his or her firearm at fair market value upon retirement, subject to approval by the sheriff. **R.S. 11:2185***

*Amended by Act 183 of 2021 Regular Session to remove requirement of minimum of sixteen years of service.

3. Any **peace officer**, as defined by **R.S. 40:2402(1)(a)***, who is employed by the Department of Public Safety and Corrections, office of state police, other than state troopers, has at least twenty years of active service, and retires under the provisions of R.S. 11:441 shall be entitled to purchase his or her firearm at fair market value, upon retirement, subject to the approval of the deputy secretary of public safety services of the Department of Public Safety and Corrections. **R.S. 11:609**

4. Any member of the **State Employees' Retirement System** who is a commissioned officer of the Louisiana **Department of Public Safety and Corrections, division of probation and parole**, who has at least twenty years of active service and who retires under the provisions of R.S.11:441 or 602, as may be applicable, shall be entitled to purchase his or her firearm at fair market value upon retirement, subject to the approval of the director of the division of probation and parole. **R.S. 11:608**

5. Any member of the system who is a commissioned member of the **Louisiana Department of Wildlife and Fisheries** law enforcement division who has at least twenty years of active service and who retires under the provisions of R.S. 11:582 shall be entitled to purchase his or her firearm at fair market value, upon retirement, subject to the approval of the chief of the law enforcement division. **R.S. 11:592**

6. Any member of the system who is a commissioned member of the office of **state police** who has at least twenty years of active service and who retires under the provisions of this Section shall be entitled to purchase his or her firearm at fair market value, upon retirement, subject to the approval of the deputy secretary of public safety services of the department.
R.S. 11:1307 (B)

7. An immediate family member may purchase the firearm of a deceased qualifying commissioned member of the Office of State Police, sheriff, deputy sheriff, municipal police officer, or other member of law enforcement, if the individual was unable to purchase their firearm prior to death, unless they are prohibited from possessing a firearm under R.S. 14:95.1 or any other State or Federal law.

The immediate family member shall have a right of first refusal to purchase the firearm in the following order of precedence:

- The individual designated as beneficiary of the deceased officer to purchase the firearm;
- The surviving spouse of the deceased officer;

- A child of the deceased officer. If more than one child seeks to purchase the firearm, the oldest child who seeks to purchase the firearm precedes all other children who seek to purchase the firearm in the right of first refusal;

- A parent of the deceased officer; and

- A sibling of the deceased officer. If more than one sibling seeks to purchase the firearm, the oldest sibling who seeks to purchase the firearm precedes all other sibling who seeks to purchase the firearm in the right of first refusal.

R.S. 11:1307(B), 11:2185, 11:2235, and 40:1665.4

R.S. 40:2402(3)(a) "Peace officer" means any full-time employee of the state, a municipality, a sheriff, or other public agency, whose permanent duties actually include the making of arrests, the performing of searches and seizures, or the execution of criminal warrants, and is responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, or highway laws of this state, but not including any elected or appointed head of a law enforcement department.

(b) **"Peace officer"** shall also include those sheriff's deputies whose duties include the care, custody, and control of inmates.

(c) **"Peace officer"** shall also include full-time military police officers within the Military Department, State of Louisiana.

(d) **"Peace officer"** shall also include full-time security personnel employed by the Supreme Court of the state of Louisiana.

Note: The AG considered a related issue from a different angle in 2009:

"The Village of Florien may purchase its police officers' service weapons and have the officers reimburse the Village through payroll deductions. However, the officers must provide written authorization allowing the payroll deductions." **AG Op. No. 09-0246**

Note: A law enforcement agency may dispose of its own surplus firearms, and those seized and forfeited, in accordance with R.S. 40:1798. These agencies include the La. Department of Public Safety and Corrections, office of the state police, the La. Department of Wildlife and Fisheries, and each law enforcement agency of a political subdivision of the state.

Q.22. May a law enforcement K-9 handler purchase his or her K-9 upon the animal's retirement?

A.22. R.S. 33:4712(H) authorizes the governing authority of a municipality to establish, by ordinance, procedures for the private sale of police dogs that are no longer

needed for police work to the officer that trained or worked with the dog. The sale shall be in exchange for consideration proportionate to the value of the dog. For a discussion of the consideration in light of Article VII, §14 of the Louisiana Constitution, see AG Op. No. 20-0123.

The AG has opined that K-9 animals are assets of the department and must be treated the same as any other assets of the department. AG Op. No. 84-0074, AG Op. No. 94-0126, AG Op. No. 03-0217. In AG. Op. No. 03-0217, the AG opined that transferring the ownership of a K-9 animal to avoid civil suit is a reasonable settlement by the parties to avoid litigation as a compromise agreement for a claim of back pay by the handler.

However, in other cases outside of the provisions of R.S. 33:4712(H), the K-9 should be sold as any other surplus asset of the entity.

Q.23. Are their special provisions for the disposal of surplus, seized, and forfeited firearms by law enforcement agencies?

A.23. Yes. R.S. 40:1798 provides for the procedures that must be followed for the disposure of seized firearms by law enforcement agencies, including the La. Department of Public Safety and Corrections, Office of the State Police, the La. Department of Wildlife and Fisheries, and each law enforcement agency of a political subdivision of the state, i.e. sheriffs and municipal police departments.

R.S. 40:1798(G) provides that surplus firearms of the law enforcement agency may also be disposed of using the same procedures for seized and forfeited firearms, which are described below.

If the seized or forfeited firearm is "contraband", a firearm that cannot be lawfully owned or possessed by any State or local law enforcement agency or by a private citizen, then the law enforcement agency shall destroy the seized or forfeited firearm. See R.S. 40:1798 (C)

In accordance with R.S. 40:1798(D), if the seized or forfeited firearm is not "contraband", the law enforcement agency shall return the firearm to the owner if:

- The law enforcement agency knows the owner of the seized or forfeited firearm;
- The owner of the seized or forfeited firearm did not commit any violation of any Federal or State law or local ordinance in which the seized or forfeited firearm was involved; and
- The owner may lawfully possess the seized or forfeited firearm.

Under R.S. 40:1798(E), if the seized or forfeited firearm is neither contraband (R.S. 40:1798(C)), nor returnable to the owner under R.S. 40:1798(D), the law enforcement agency may dispose of the seized or forfeited firearm as follows:

1. If the firearm is of a type that may be lawfully possessed and used by a law enforcement agency, the law enforcement agency may dispose of the seized or forfeited firearm in the following ways:
    a. The law enforcement agency may retain and use the firearm.
    b. The law enforcement agency may sell or donate* the firearm to another law enforcement agency or may use the firearm as consideration or partial consideration in an exchange with another law enforcement agency.
    c. The law enforcement agency may sell the firearm to a dealer or a firearms manufacturer, or may use the firearm as consideration or partial consideration in an exchange with a firearms dealer or firearms manufacturer, provided the firearms dealer or the firearms manufacturer is licensed to buy, sell, or trade that type of firearm.
    d. The law enforcement agency may destroy the firearm.

*Reminder, Article VII, §14(E) of the Louisiana Constitution authorizes the donation or exchange of surplus movable property, including firearms, between or among political subdivisions whose functions include public safety, i.e. law enforcement agencies.

2. If the firearm is of a type that may be possessed and used by a private citizen, the law enforcement agency may, in addition to the methods of disposal noted above, sell the firearm to a private citizen at a public auction in the same manner as a sale of other surplus property. The sale of a firearm to a private citizen shall comply with all Federal and State laws and local ordinances that apply to the sale of the firearm. The law enforcement agency shall perform the background checks on the purchaser as required by State and Federal laws for sales of firearms by licensed firearms dealers.

Under R.S. 40:1798(E), a law enforcement agency may utilize the surplus or seized firearm as partial consideration for the purchase of new firearms from a licensed dealer. However, local government entities must also still comply with the Public Bid Law, as applicable, in the purchase of firearms.

If the total purchase price of new firearms is less than $30,000, the public entity should consider obtaining, but is not required to obtain, three quotes from licensed dealers to ensure it is getting the best price in the expenditure of public funds and surplus of public property.

If the total purchase price is $30,000 but no more than $60,000, the public entity shall first obtain and document in its files at least three quotes from licensed firearm

dealers. If the total purchase exceeds $60,000, the purchase must be let for bid, unless an exception to the Public Bid Law applies.

For additional information on the surplus of firearms, please see the LLA's Legal Minute video on this topic listed as "Special Surplus Rules for Firearms" under the Legal Assistance Page of the LLA Website.

Q.24. May a parish or municipality pay a commission or fee to a real estate broker when selling immovable property?

A.24. Yes, R.S. 33:4712.12 authorizes a parish or municipality to pay a real estate broker's fee or commission upon the offer and acceptance to purchase and sell property owned by the parish or municipality which the broker assisted the parish or municipality in selling.

The fee or commission shall be paid from the proceeds of the sale of the property, and the fee or commission shall not exceed ten percent of the final sales price.

Attorney General Opinions:

NEW 2026

AG Op. No. 24-0156 – The Sabine Parish Police Jury may sell excess production of oil sand provided it is deemed surplus property. If the sale is to another governmental entity, the sale may be executed using various mechanisms, including an intergovernmental agreement or cooperative endeavor agreement in accordance with R.S. 33:1321, *et seq.*

AG Op. No. 20-0123 – The AG discusses the application of the three prongs of the Cabela's Test to the sale or donation of a retired K-9 to its handler for the purposes of compliance with Article VII, §14 of the Louisiana Constitution.

AG Op. No. 16-0057 - The Rapides Parish Police Jury may institute a debris and material removal policy which weighs the costs in disposing of surplus debris and waste dirt from dredging drainage ditches compared to the potential value the entity might obtain in any sale of the waste dirt and debris, and thereby dispose of the waste dirt and debris to private parties in order to realize substantial cost savings. This opinion does not authorize trade in of vehicles.

AG Op. No. 16-0045 – The North Louisiana Criminalistic Laboratory Commission (NLCLC), being neither a state agency nor a governing authority of parish or municipality, may sell its surplus immovable property at public auction or private sale and retain the proceeds of the sale as long as the property is sold at fair market value.

AG Op. No. 14-0162 - St. James Parish is authorized to declare and sell **immovable** surplus property and should do so by passing an ordinance following the procedure set forth in La. R.S. 33:4712. In selling surplus immovable property, the Parish must ensure public notice of any such sale and the Parish must receive fair value. The Parish may use

the services of a real estate agent to market surplus immovable property but must pay a reasonable hourly rate for his/her professional services rather than a commission out of the proceeds of the sale of public property.

AG Op. No. 14-0056 - Concordia Parish Recreation District No. 3 ("District") may transfer ownership of certain improvements made by the District on property owned by the Concordia Parish School Board if the value of the improvements is equivalent to the value the District has received from the School Board from its past use of School Board property. Receiving less than fair value for its surplus property would constitute a donation prohibited by La. Const. art. VII, Sec. 14.

AG Op. No. 14-0005 –An exchange of public property between two public entities is authorized under the provisions of the Local Services Law, R.S. 33:1324. When property is exchanged between two public entities, those entities are not bound by the advertising and bidding requirements set forth in R.S. 33:4712. However, the terms of the transfer or exchange must comply with the mandates of La. Const. art. VII, Sec. 14.

AG Op. No. 13-0114 – Water District's broad authority to acquire movable property under R.S. 33:3815 includes right to dispose of surplus movable property under R.S. 49:125.

AG Op. No. 12-0150 – Jefferson Parish may not donate its surplus computers to a private company for recycling or refurbishing. The Parish's concerns of possible environmental contamination do not obviate the Parish's obligation under the law to determine the value of its surplus property, follow the applicable procedures for alienating such surplus property, and ensure that it receives equivalent value in return for the alienation of such surplus property.

AG Op. No. 11-0162 – R.S. 33:4711.1 authorizes the Terrebonne Parish Sheriff's Office to sell surplus movable property by internet auction. The sale must be for a price that is commensurate to the value of the surplus property.

AG Op. No. 11-0026 - The District No. 4 Public Works Commission of St. Landry Parish may sell its surplus movable property at a public auction conducted pursuant to R.S. 49:125, through an Internet computer auction pursuant to R.S. 33:4711.1, or at a public sale under La. Rev. Stat. 33.4712(F) if the property to be sold is appraised at less than $5,000.

AG Op. No. 10-0297: Pursuant to La. R.S. 38:2325(16) and 38:2337, the Sabine River Authority is authorized to enter independently into contracts or agreements to sell, utilize, distribute, or consume the waters over which it has jurisdiction. If, however, any contracts and other agreements that provide for the sale, use, distribution, or consumption, involve entities located outside of the boundaries of the State of Louisiana, these same laws require written concurrence of the Governor.

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 **AG Op. No. 97-0287**. 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 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 value 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 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 whose functions include public safety under La. Const. Art. VI, Sec. 44(2). The Rapides Parish Sheriff's 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 R.S. 33:4712(F) or 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."