

December 21, 2012  
Opinion 12-0150

Ms. Deborah Cunningham Foshee  
Parish Attorney  
Jefferson Parish Government  
1221 Elmwood Park Blvd  
Suite 701  
Jefferson, LA 70123

90-A-1 PUBLIC FUNDS & CONTRACTS

La. Rev. Stat. 49:125, La. Rev. Stat. 33:4711.1, La. Rev. Stat. 33:4712 (F)

Jefferson Parish may not donate surplus computer equipment to a private company for recycling and refurbishing. The surplus computer equipment may be sold at a public auction conducted pursuant to La. Rev. Stat. 49:125, through an Internet computer auction pursuant to La. Rev. Stat. 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.

Dear Ms. Cunningham Foshee:

Your request for an Attorney General's Opinion has been assigned to me for research and reply. On behalf of Jefferson Parish, you have asked for our opinion as to whether the Parish may donate surplus computers to a private company for proper recycling and refurbishment without offering the material at public auction or private sale.

According to your request, the Parish has accumulated a large amount of outdated, surplus computers and other equipment. Although the Parish is familiar with the various statutory authorities that govern the disposal of surplus movable property, your opinion request notes that the Parish has concerns about the cost of properly disposing of hazardous electronic waste. You state that due to the purchase of computers by junk dealers, electronic waste may find its way into landfills after public auction. You further indicate that components of the electronics are hazardous and have the potential to leach and harm the environment and residents. Considering the fact that the surplus computers are outdated and have little value, in addition to the ultimate cost to the Parish for offering the items at auction and the possible environmental cost associated with the waste, you ask whether donating the surplus computers to a company for proper recycling and refurbishment without offering the computers at public auction or private sale is allowed by law.

As previously recognized by our office, political subdivisions of the state may sell their surplus movable property at a public auction conducted pursuant to La. Rev. Stat. 49:125, through an Internet computer auction pursuant to La. Rev. Stat. 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. See Attorney General Opinion Nos. 09-

0233, 11-0026. Also, with respect to surplus computer equipment, we note that La. Rev. Stat. 38:2320 authorizes political subdivisions to establish procedures to give public schools and technical colleges first priority to purchase such equipment.

La. Rev. Stat. 49:125 provides for the sale of surplus property by political subdivisions, and states that “the state or any board, commission, department or agency of the state or any political subdivision of the state is hereby authorized to sell surplus movable property at public auction, in addition to the other methods provided by law for such sales.”

La. Rev. Stat. 33:4711.1 authorizes a political subdivision to sell surplus property through the use of electronic technology, including Internet websites that facilitate such sales, whether privately or publicly owned. The statute allows the political subdivision to pay the costs associated with the sale from the proceeds of such sale.

La. Rev. Stat. 33:4712 (F) authorizes a political subdivision to sell movable property which has an appraised value of \$5,000 or less at a private sale, provided there is a resolution passed that gives the reasons for the action and setting therein the minimum price and terms of the sale. In addition, notice of the resolution and proposed sale must be published at least fifteen days prior to the date of the sale and the sale must be made to the highest bidder.

Each of the statutory references cited above is subject to the general provisions of Louisiana Constitution Article VII, Section 14 which generally prohibits the gratuitous alienation of public property. As recognized in Attorney General Opinion No. 98-352, Article VII, Section 14 generally prohibits the outright donation of surplus public property. Furthermore, Article VII, Section 14 mandates that the Parish receive equivalent value in exchange for the sale or transfer of its publicly owned property.

Thus, it is the opinion of this office that the Parish may not donate its surplus computers to a private company for recycling and refurbishing. However, the Parish does have the authority to sell its surplus movable property pursuant to the procedures outlined in La. Rev. Stat. 49:125, La. Rev. Stat. 33:4711.1 or La. Rev. Stat. 33:4712(F). The Parish may also sell or transfer its surplus movable property to another political subdivision without the necessity of public bid and advertisement pursuant to La. Rev. Stat. 33:1321, *et seq.* In each instance, the Parish is required to receive commensurate value in return for the sale or transfer of the surplus movable property. Although we are not in a position to question or doubt the concerns of possible environmental contamination raised in your opinion request, we are of the opinion that such concerns do not obviate the

Parish's obligation under 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.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

BY:

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MICHAEL J. VALLAN  
Assistant Attorney General

JDC/MJV/chb

SYLLABUS  
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Michael J. Vallan  
Assistant Attorney General