

1982 Ky. Op. Atty. Gen. 2-8, Ky. OAG 82-8, 1982 WL 177148 (Ky.A.G.)

*1 Office of the Attorney General

Commonwealth of Kentucky

OAG

82

-

8

January 5, 1982

Mr. Dan D. Ball
Lawrence County Attorney
122 Main Cross Street
Louisa, Kentucky 41230

Dear Mr. Ball:

You raise a question as to the legality of a sale of a bulldozer by the Lawrence Fiscal Court without bids. The equipment is no longer needed by the county. The W & W Paving Company apparently negotiated a purchase of the equipment for \$40,000.00. One of the partners in the purchasing firm is a son of Ray Williams, who is now a member of fiscal court and will on January 4, 1982, begin serving as county judge/executive.

Assuming that Lawrence Fiscal Court has adopted [KRS 45A.345](#) through [45A.460](#), of the Kentucky Model Procurement Code, pursuant to [KRS 45A.343](#), the statute, [KRS 45A.425](#), relating to the sale of surplus or excess property would apply.

[KRS 45A.425](#) reads:

“(1) A local public agency may sell or otherwise dispose of any personal property which is not needed or has become unsuitable for public use, or which would be suitable, consistent with the public interest, for some other use.

“(2) A written determination as to need or suitability of any personal property of the local public agency shall be made; and such determination shall fully describe the personal property; its intended use at the time of acquisition; the reasons why it is in the public interest to dispose of the item; and the method of disposition to be used.

“(3) Surplus or excess personal property as described in this section may be transferred, with or without compensation, to another governmental agency; or it may be sold at public auction or by sealed bids in accordance with [KRS 45A.365](#).”

Thus [KRS 45A.425](#) must be followed where the fiscal court adopts those sections of the procurement code, as mentioned above. Under that statute the surplus property may be sold at public auction or by sealed bids in accordance with [KRS 45A.365](#) (competitive sealed bids).

In the event that Lawrence Fiscal Court has not adopted the above mentioned sections of the Kentucky Model

Procurement Code, then [KRS 424.260](#) applies as to bidding. However, the latter statute covers only procurement, not sale of surplus property. In such case the fiscal court should observe the common law principle of having the property appraised by two competent appraisers and selling the property found to be surplus at not less than the appraised value.

This arises from the duty of a public officer to perform the duties “of his office honestly, faithfully, and to the best of his ability, in such a manner as to be above suspicion of irregularities, and to act primarily for the benefit of the public.” 63 Am.Jur.2d, Public Officers and Employees, § 276, p.p. 791-792. A public officer is required to exercise “prudence, caution, and attention which careful men usually exercise in the management of their own affairs.” Ibid., § 282, p. 795. Thus prudence and caution and sound management would dictate that such excess county property, if it is properly found to be excess, be disposed of at no less than the appraised value.

*2 It has been held that the power to sell includes the power to lease. See [Abernathy v. City of Irvine, Ky., 355 S.W.2d 159 \(1962\)](#). However, your questions relate to sale.

Where [KRS 45A.425](#) applies and is not followed, the courts might hold that the sale was invalid. See [Handy v. Warren County Fiscal Court, Ky. App., 570 S.W.2d 663 \(1978\)](#); and [Board of Education of Floyd County v. Hall, Ky., 353 S.W.2d 194 \(1962\)](#).

Sincerely,
Steven L. Beshear
Attorney General

By: Charles W. Runyan
Assistant Deputy Attorney General

1982 Ky. Op. Atty. Gen. 2-8, Ky. OAG 82-8, 1982 WL 177148 (Ky.A.G.)
END OF DOCUMENT