

LEGISLATORS' NOTEBOOK COMPUTERS - IMPACT OF STATE SURPLUS PROPERTY LAW ON DISPOSITION

This memorandum addresses the issue of the disposition of notebook computers used by legislators for legislative purposes. Notebook-style computers were first provided to legislators during the 1995-96 interim (IBM ThinkPad 755CD notebook-style personal computers). During the latter part of the interim, 15 IBM ThinkPad 755ED notebook-style personal computers were acquired. During the 1997-98 interim, Gateway Solo 9100 computers were purchased for distribution to legislators who did not have the IBM ThinkPad computers. Later that interim, the IBM ThinkPad computers were replaced with Gateway Solo 2500 computers. During the 2001-02 interim, the Gateway computers were replaced with IBM ThinkPad A22m computers.

In every instance in which notebook-style computers were replaced by other computers, the replaced computers were transferred to the State Surplus Property Division for disposition under the state's surplus property law.

STATE SURPLUS PROPERTY LAW

North Dakota Century Code Section 54-44-04.6 provides:

**54-44-04.6. State surplus property -
 Department heads to inform director -
 Disposition of property - Proceeds -
 Exchange of property.**

1. The person in charge of any department, agency, or institution of the state **shall** inform the director of the office of management and budget or the director's designee whenever that department, agency, or institution possesses property surplus to its needs, whether originally obtained with state or other funds.
2. Political subdivisions may provide their surplus property to the office of management and budget for disposition according to subsections 3, 4, and 5.
3. **Surplus property must be transferred at fair market value to state agencies, political subdivisions, and nonprofit organizations eligible to receive federal surplus property under the Federal Property Administrative Services Act of 1949, as amended. Eligible organizations must be notified of the availability of property on a regular basis.**
4. If not disposed of under subsection 3, then by sale on sealed bids or at public auction to the highest and best bidder for property valued at more than three

thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars.

5. All proceeds received from the transfer or sale of surplus property must be deposited with the state treasurer for deposit in the surplus property operating fund. For each piece of property sold for less than three thousand dollars, all proceeds must be retained in the surplus property operating fund unless the office of management and budget determines the sale proceeds are subject to special requirements for distribution. For each piece of property sold for three thousand dollars or more, the office of management and budget shall transfer to the agency from which the property was received an amount equal to the proceeds of the sale less the administrative expenses of the sale. The agency shall deposit the proceeds into the fund from which the property was originally purchased. At the end of each biennium, the office of management and budget shall transfer all funds in the surplus property operating fund that exceed the amount needed for operating the surplus property function for one year to the general fund. (emphasis supplied)

Subsection 1 requires persons in charge of any state agency to inform the director of the Office of Management and Budget whenever that agency possesses property surplus to its needs. Subsection 3 provides that surplus property must be transferred at the fair market value to state agencies, political subdivisions, and nonprofit organizations eligible to receive federal surplus property. Subsection 4 provides that if not disposed of under subsection 3, surplus property may be sold on sealed bids or at public auction if valued at more than \$3,000, or by sealed bids, public auction, or negotiation at fair value for property valued at less than \$3,000. Information from various websites indicates the value of a refurbished IBM ThinkPad A22m notebook-style computer is approximately \$400.

At first reading, subsection 4 appears to allow state surplus property to be transferred to any entity on negotiation at fair market value if the property is valued at less than \$3,000. This would seem to imply that negotiation to nonpublic entities could occur rather than transferring the property for disposition in accordance with regular surplus property procedures.

However, subsection 1 requires persons in charge of state agencies to inform the director of the Office of Management and Budget or the director's designee of surplus property, and subsection 3 requires eligible organizations to be notified of the availability of property on a regular basis.

CONCLUSION

North Dakota Century Code Section 54-44-04.6 applies to the disposition of notebook-style computers provided to legislators. The State Surplus Property

Division must be informed of the availability of notebook-style computers when those computers have become "surplus" to the Legislative Assembly or the Legislative Council. Eligible organizations must be notified of the availability of state surplus property. If surplus property remains after eligible organizations have been notified of availability of surplus property and the eligible organizations have not acquired the property, surplus property may be disposed of to any entity on negotiation at fair value for property valued at less than \$3,000.