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INFORMATION SHEET: ADVISORY OPINION NO. 2026-02
SURPLUS PROPERTY SALES

What is the question in the opinion?

Can a public official or employee purchase items from a surplus property sale?

What is the brief answer in this opinion?

Yes. A public official or employee is not prohibited from participating in a surplus property sale, provided that:

- (1) The public official or employee was not involved in any way in matters related to the sale of the items;
- (2) The public official or employee did not use his or her official authority or influence to secure the items; and
- (3) The public official or employee was not privy to any related confidential information.

To whom do the conclusions in this opinion apply?

The conclusions in this opinion apply to all individuals who are elected or appointed to, or employed by, any public agency, including but not limited to any state agency, county, city, township, school district, public library, and regional authority, regardless of whether the person is: (1) compensated or uncompensated; (2) serving full-time or part-time; or (3) serving in a temporary or permanent position.

When did the conclusions in this opinion become effective?

The opinion became effective upon acceptance by the Ethics Commission.

For More Information, Please Contact:

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AN ETHICS COMMISSION ADVISORY OPINION. ADVISORY OPINION NO.
2026-02 IS ATTACHED.**

Syllabus by the Commission:

- (1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official or employee from using the authority or influence of his or her position to secure surplus property from his or her public agency.
- (2) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official or employee from purchasing surplus property if he or she was involved in any way in matters related to the sale of the items;
- (3) Division (B) of Section 102.03 of the Revised Code prohibits a public official or employee who has confidential information regarding surplus property from purchasing the property from his or her own public agency. Additionally, R.C. 102.03(B) prohibits a public official or employee from disclosing confidential information regarding surplus property to any person, including other potential purchasers.
- (4) A public agency's sale of surplus property is not a "public contract" for purposes of R.C. 2921.42(A)(4). This Advisory Opinion affirms the conclusions in Advisory Opinion No. 83-006.

* * *

Introduction

The Ethics Commission previously considered public officials or employees securing surplus property through a sale or auction in prior advisory opinions and addressed the application of the public contract law (R.C. 2921.42). However, these earlier advisory opinions did not address the application of the conflict of interest law (R.C. 102.03(D) and (E)) or the confidential information protections (R.C. 102.03(B)). This Advisory Opinion considers how these provisions of the Ethics Law apply when a public official or employee purchases or otherwise secures surplus property from a public agency.

Public Contracts—R.C. 2921.42(A)(4)

R.C. 2921.42(A)(4) prohibits a public official¹ from knowingly having an interest in a public contract with his or her own public agency or a public agency with which he or she is connected. A "public contract" includes the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of any public agency.²

In Advisory Opinion No. 83-006, the Ethics Commission was asked whether the Ethics Law prohibited an employee of the division of police or any other city employee from purchasing unclaimed items at a public police auction. The Ethics Commission determined that the sale of

surplus property is not a “public contract” as defined in R.C. 2921.42 because it is not the purchase or acquisition of property or services by or for the use of a public agency. The Ethics Commission has similarly determined that if a college sells old furniture on an online auction website, the sale of the furniture is not a public contract because the college is not acquiring any property or service in exchange for the furniture.³ Therefore, R.C. 2921.42(A)(4) does not prohibit a public official from purchasing surplus property from his or her own public agency because the transaction is not a public contract.⁴

While the restrictions in the public contract law do not apply to the sale⁵ of surplus property, other restrictions in the Ethics Law apply.

Conflicts of Interest—R.C. 102.03(D) and (E)

The restrictions in the conflict of interest law prohibit a public official or employee from using his or her authority to secure surplus property. The conflict of interest law in R.C. 102.03(D) and (E) provides:

- (D) No public official⁶ or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties.
- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties.

R.C. 102.03(D) and (E) prohibit a public official or employee from recklessly⁷ soliciting, accepting, or using the authority or influence of his or her public position to secure any financial benefit for himself or herself.⁸ The Ethics Commission has explained that an official’s or employee’s objectivity and independence of judgment would be impaired if he or she were to participate in decisions that could affect his or her personal financial interests.⁹

The term “anything of value” includes goods, property, and every other thing of value.¹⁰ Examples of things of value that could be sold at a surplus property sale include vehicles, scrap metal, furniture, equipment, and electronics.

If a public official or employee uses his or her authority to secure a thing of value from a surplus property sale, then it would manifest a substantial and improper influence on the public official or employee with respect to that person’s public duties. For example, a public official or employee who is involved in the decision to sell surplus property has the opportunity to select items that he or she wants to purchase, rather than acting in the best interest of the agency. A public official or employee could be involved in the decision to sell surplus property by voting, discussing, deliberating, lobbying, negotiating, or otherwise participating in any part of the

decision-making process. A public official or employee could also use his or her authority or influence by selecting, pricing, or securing surplus property that is later included in the sale.

One of the purposes of the Ethics Law is to ensure that public decisions are objective and made with the public's best interest in mind, not the personal financial interests of public officials or employees. Therefore, R.C. 102.03(D) and (E) prohibit a public official or employee from using the authority or influence of his or her position to secure surplus property from his or her public agency. R.C. 102.03(D) and (E) also prohibit a public official or employee from purchasing surplus property if he or she was involved in any way in matters related to the sale of the items.

Confidentiality—R.C. 102.03(B)

A “public official or employee”¹¹ is also subject to R.C. 102.03(B), which reads:

No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official's or employee's official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

R.C. 102.03(B) prohibits a present or former public official or employee from recklessly¹² disclosing or using, without proper authorization, information acquired by him or her during his or her official duties when that information is confidential.¹³ Confidential information in the context of a surplus property sale could include the amount of the reserve or the contents of sealed bids. A public official or employee who has confidential information regarding surplus property is prohibited from purchasing the property from his or her own public agency. Additionally, a public official or employee is prohibited from disclosing confidential information regarding surplus property to any person, including other potential purchasers. Access to this confidential information would provide an unfair advantage to the public official or employee and create an unfair process for the public.

Guidelines for Public Officials and Employees

In summary, public officials or employees are not prohibited from purchasing surplus property from their own agency if certain conditions are met. A public official or employee is not prohibited from participating in a surplus property sale, provided that:

- (1) The public official or employee was not involved in any way in matters related to the sale of the items;
- (2) The public official or employee did not use his or her official authority or influence to secure the items; and
- (3) The public official or employee was not privy to any related confidential information.

Examples of the R.C. 102.03(B), (D), and (E) Restrictions

- A. A city councilmember who votes to sell vacant city land could be improperly influenced if the councilmember could purchase the land from the city. The councilmember's vote would be the use of his or her authority or influence to secure a thing of value, i.e., the land. R.C. 102.03(D) and (E) would prohibit the councilmember from purchasing the vacant land after using his or her authority or influence to put it up for sale.
- B. A village administrator who is involved in planning and managing the sale of village equipment could be improperly influenced if the village administrator could later purchase the same equipment at a village auction. The village administrator is likely privy to confidential information about the sale that is not available to the public. Confidential information could include bid amounts, reserves, and information about the equipment. Additionally, the village administrator would be involved in the process of selling the items that would involve the use of his or her authority or influence. Therefore, R.C. 102.03(B), (D), and (E) would prohibit the village administrator from purchasing surplus property from the sale.
- C. A township employee who is responsible for posting a surplus township ambulance on an online auction website is prohibited from telling his or her friend about the reserve price for the ambulance. This would reveal confidential information to the friend that would provide the friend an unfair advantage over the public. The township employee's disclosure of this confidential information would be a violation of R.C. 102.03(B).
- D. A county commissioner votes to approve the sale of a surplus golf cart using a third-party online auction website. The online auction website manages the auction process and facilitates the transaction between the buyer and the county. The county commissioner's vote would be the use of his or her authority or influence to secure a thing of value, i.e., the golf cart. R.C. 102.03(D) and (E) would prohibit the county commissioner from purchasing the golf cart through the online auction website, even though the county did not directly conduct the auction.
- E. An Ohio Department of Rehabilitation and Corrections ("ODRC") employee wants to buy a boat that the Ohio Department of Natural Resources ("ODNR") has put up for sale using a third-party only auction website. The ODRC employee has no interaction with ODNR in his or her public role. In this case, R.C. 102.03(D) and (E) would not prohibit the ODRC employee from purchasing the boat using the third-party online auction website because the ODRC employee did not use his or her authority or influence to secure the boat.

Other Laws, Policies, and Rules

The Ethics Law represents the minimum standards that public officials or employees must follow to avoid violating criminal laws. Although a public agency cannot create policies or rules that are less restrictive than the Ethics Law, an agency can implement policies, decisions, or rules that are more restrictive than the Ethics Law.¹⁴ For instance, public agencies may prohibit their officials or employees from purchasing surplus property from their own agency by adopting

policies that are more restrictive than the Ethics Law. For example, R.C. 125.13(F) and State of Ohio Administrative Policy AM-02 prohibit state employees “from purchasing, leasing, or receiving Property being disposed of by the State Agency employing them.”¹⁵

Additionally, other statutes describe the methods that townships,¹⁶ school districts,¹⁷ municipalities,¹⁸ and counties¹⁹ must use when disposing of surplus property. There is also a law that provides a limited exception to the Ethics Law for the sale of a retired police dog or horse to its handler.²⁰ The Ethics Commission recommends that, prior to participating in surplus property sales, public officials or employees consult with legal counsel to determine whether there are laws, policies, or rules regarding purchasing surplus property.

Conclusion

Limited to questions arising under Chapter 102 and Sections 2921.42 and 2921.43 of the Revised Code, it is the opinion of the Ethics Commission, and the Commission advises that:

- (1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official or employee from using the authority or influence of his or her position to secure surplus property from his or her public agency.
- (2) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official or employee from purchasing surplus property if he or she was involved in any way in matters related to the sale of the items;
- (3) Division (B) of Section 102.03 of the Revised Code prohibits a public official or employee who has confidential information regarding surplus property from purchasing the property from his or her own public agency. Additionally, R.C. 102.03(B) prohibits a public official or employee from disclosing confidential information regarding surplus property to any person, including other potential purchasers.
- (4) A public agency’s sale of surplus property is not a “public contract” for purposes of R.C. 2921.42(A)(4). This Advisory Opinion affirms the conclusions in Advisory Opinion No. 83-006.



Merom Brachman, Chairman
Ohio Ethics Commission

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission’s website: www.ethics.ohio.gov.

¹ R.C. 2921.01 (“‘Public official’ means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers.”)

² R.C. 2921.42(I)(1)(a).

³ Ohio Ethics Commission Advisory Opinion No. 91-011. Notably, a public agency's sale of property in return for which the public agency receives a service from the purchaser is a public contract. For example, a city housing program that requires the revitalization of the property as part of the purchase is a public contract. *Id.*

⁴ Adv. Op. No. 83-006. Additionally, R.C. 2921.42(A)(3), which prohibits a public official from occupying a position of profit in a public contract authorized by the public official or a legislative body of which the public official was a member at the time of authorization, does not prohibit a public official from purchasing surplus property from his or her own public agency because the public agency's sale of surplus property is not a public contract.

⁵ Throughout this advisory opinion, the term "sale" means any manner that a public agency uses to dispose of surplus property, including advertising its availability for purchase from the agency directly or through a third-party auctioneer or online site.

⁶ R.C. 102.01(B) ("Public official or employee" means any person who is elected or appointed to an office or is an employee of any public agency.")

⁷ See Adv. Ops. No. 2020-02 and 2025-02; see also *State v. Towns*, 2020-Ohio-5120 (6th Dist.) (applying R.C. 2901.21(B) to R.C. 102.03(B) because "the statute does not indicate a purpose to impose strict liability."); see generally *Ohio Jury Instructions*, CR § 521.17 (Rev. Jan. 30, 2021).

⁸ Adv. Ops. No. 89-008, 2001-03, and 2001-04.

⁹ *Id.*

¹⁰ R.C. 1.03 and R.C. 102.01(G).

¹¹ R.C. 102.01(B) ("Public official or employee" means any person who is elected or appointed to an office or is an employee of any public agency.")

¹² See Adv. Ops. No. 2020-02 and 2025-02; see also *State v. Towns*, 2020-Ohio-5120 (6th Dist.) (applying R.C. 2901.21(B) to R.C. 102.03(B) because "the statute does not indicate a purpose to impose strict liability."); see generally *Ohio Jury Instructions*, CR § 521.17 (Rev. Jan. 30, 2021).

¹³ Adv. Op. No. 2020-02.

¹⁴ See Adv. Op. No. 2004-03; see also R.C. 102.06 and 102.08.

¹⁵ R.C. 125.13(F) and State of Ohio Administrative Policy AM-02: Disposal of Excess and Surplus Property ("However, employees are permitted to purchase Property disposed of by other agencies. Employees are responsible for knowing the source of any Property they are bidding on or purchasing.")

¹⁶ R.C. 505.10. Notably, in R.C. 505.10(C) township trustees are required to "consult with the Ohio ethics commission and comply with the provisions of Chapters 102 and 2921 of the Revised Code, with respect to any sale or donation under division (A)(2) of this section to a nonprofit organization of which a township trustee, any member of the township trustee's family, or any business associate of the township trustee is a trustee, officer, board member, or employee."

¹⁷ R.C. 3313.41. Notably, in R.C. 3313.41(G) school district board members are required to "consult with the Ohio ethics commission, and comply with Chapters 102 and 2921 of the Revised Code, with respect to any donation under this division to a nonprofit organization of which a board member, any member of a board member's family, or any business associate of a board member is a trustee, officer, board member, or employee."

¹⁸ R.C. 721.15.

¹⁹ R.C. 307.12.

²⁰ R.C. 9.62 provides a law enforcement officer with the opportunity to purchase a police dog or horse for \$1 when the animal grows too old to be fit for duty.