



COUNTY ADVISORY BULLETIN

CAB

Published by: County Commissioners Association of Ohio

37 West Broad Street, Suite 650 • Columbus, Ohio 43215-4195

Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

Bulletin 2005-03

May 2005

HOUSE BILL 323 OF THE 125TH GENERAL ASSEMBLY ALLOWS BOARD OF COUNTY COMMISSIONERS, BOARDS OF TOWNSHIP TRUSTEES AND SCHOOL BOARDS TO DONATE UNNEEDED PROPERTY ITEMS WITH A MARKET VALUE OF \$2,500 OR LESS TO OHIO-BASED NON-PROFIT CORPORATIONS

Lead Sponsor: Representative Jim Hoops (R-Napoleon).

House Co-Sponsors: Wolpert (R-Hilliard), Daniels (R-Greenfield), Chandler (D-Kent), Cirelli (D-Canton), Collier (R-Mount Vernon), Domenick (D-Smithfield), Clyde Evans (R-Rio Grande), Fessler (R-New Carlisle), Flowers (R-Canal Winchester), Martin (R-Avon Lake), McGregor (R-Gahanna), Olman (R-Maumee), Price (D-Columbus), Schlichter (R-Washington Court House), Sferra (D-Warren), Skindell (D-Lakewood), Ujvagi (D-Toledo), Wagner (R-Sycamore), Walcher (R-Norwalk).

Allen (D-Dayton), Aslanides (R-Coshocton), Barrett (D-Cincinnati), Brown (D-Toledo), Buehrer (R-Delta), Calvert (R-Medina), Carano (D-Youngstown), Carmichael (R-Wooster), Combs (R-Hamilton), DeBose (D-Cleveland), DeGeeter (D-Parma), David Evans (R-Newark), Gibbs (R-Lakeville), Gilb (R-Findlay), Hagan (R-Alliance), Hartnett (D-Mansfield), Harwood (D-Niles), Hughes (R-Columbus), Jerse (D-Euclid), Key (D-Cleveland).

Latta (R-Bowling Green), Miller (D-Cleveland), Niehaus (R-New Richmond), Otterman (D-Akron), Sylvester Patton (D-Youngstown), Tom Patton (R-Strongsville), Perry (D-Toledo), Peterson (R-Delaware), Reidelbach (R-Columbus), Schmidt (R-Loveland), Seaver (D-Minster), Seitz (R-Cincinnati), Setzer (R-Vandalia), Dan Stewart (D-Columbus), Strahorn (D-Dayton), Taylor (R-Uniontown), Webster (R-Hamilton), Widener (R-Springfield), Wilson (D-Bridgeport), Woodard (D-Cleveland Heights).

Senate Co-Sponsors: Robert Gardner (R-Madison), Mumper (R-Marion), Zurz (D-Uniontown), Roberts (D-Dayton), Harris (R-Ashland), Schuler (R-Cincinnati).

Revised Code Sections Affected: 307.12, 505.10, 3313.41 (amended).

Effective Date: September 23, 2004.

Background on Disposal of Obsolete and Unfit Personal Property Items by Boards of County Commissioners

Under Ohio law, before and after the passage of HB 323, a board of county commissioners has been authorized to *sell or donate* any personal property items that “are not needed for public use, or are obsolete, or are unfit for the use for which they were acquired.” All of this property will be referred to in this CAB as “unneeded personal property.”

These items of unneeded personal property may be *sold or donated* to the federal or state government, or to any political subdivision in the state, regardless of fair market value. These sales or donations can occur without public notification or advertisement. ORC 307.12 (D).

If a board of county commissioners wishes to transfer any items of unneeded personal property to any entity other than the federal or state government, or any political subdivision in the state, the board may dispose of it in one of two ways, depending on the property’s market value.

If the fair market value of the unneeded property item is more than \$2,500, the board may offer the property for sale at a public auction, or by sealed bid to the highest bidder, following public notification. If the fair market value of the property item is \$2,500 or less, it may be sold as the board sees fit, including by private sale without advertisement or public notification.

Also, since the enactment of House Bill 226 of the 124th General Assembly in 2002, boards of county commissioners have had the authority to sell any unneeded personal property by Internet auction, regardless of its estimated fair market value. County Advisory Bulletin 2002-02 explains the provisions of this authority in more detail.

In addition, House Bill 226 granted boards of county commissioners the authority to discard or salvage any unneeded personal property that it deems *valueless*. Note that valueless property is different from property that is not needed for public use, obsolete, or unfit for the purpose for which it was intended.

Under a separate provision of law, motor vehicles valued at between \$2,500 and \$4,500 may be donated to specified 501 (c)(3) organizations for the transportation needs of participants in either of the following programs: the Ohio Works First program established under ORC Chapter 5107 or the Prevention, Retention, and Contingency Program established under ORC Chapter 5108. ORC 307.12 (A).

Changes Made by House Bill 323

In House Bill 323, the General Assembly granted boards of county commissioners, as well as boards of township trustees and school boards, new authority to dispose of unneeded personal property, *with an estimated fair market value of \$2,500 or less*.

This property may now be donated to any 501 c (3) organization, as described in 26 United State Code section 501(a) and section 501 c (3), that is exempt from federal taxation, and that is located in Ohio.

Section 501 c (3) organizations are those that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international sports competition, or for the prevention of cruelty to children or animals. No part of the net earnings of a 501 c (3) organization may inure to the benefit of any private shareholder or individual. No substantial part of their activities generally may be the carrying on of propaganda or otherwise attempting to influence legislation. Nor may any part of its activities involve participating in, or intervening in political campaigns on behalf of, or in opposition to, any *candidate* for public office.

A board of county commissioners may make donations to eligible non-profit corporations only after adopting a resolution creating a program for these donation purposes. ORC 307.12 (B) (2). The new authority applies only to items of unneeded personal property owned by a board of county commissioners, *not to real property*.

Board Resolution to Create the Donation Program

To create a donation program for unneeded personal property, a board of county commissioners must adopt a resolution that contains the following information:

- A. A statement of its intention to make the unneeded personal property available to Ohio-located 501 c 3 organizations;
- B. Guidelines and procedures necessary to implement the donation program;
- C. An indication of whether the donation program will be conducted by the board of county commissioners itself, or by a representative under contract with the board of county commissioners;
- D. If that representative is known at the time the resolution is adopted, contact information for that representative, such as name, address and phone number; and
- E. A requirement that any nonprofit organization wishing to obtain donated unneeded personal property submit a written notice to the board of county commissioners or the board's representative. That written notice is to include evidence that the organization is exempt from federal taxation and is located in Ohio, a description of the organization's primary purpose, a description of the types of property it is requesting, and the name, address and phone number of the organization, or its program agent as designated by the organization's governing board.

Public Notices of Board Donation Program

After the board establishes a donation program through the adoption of a resolution, the board must publish at least twice, in a newspaper of general circulation in the county, notice of its intent to donate unneeded property to 501 c 3 organizations. The newspaper notice must summarize the content of the resolution.

A similar notice also must also be posted continually in the office of the board of county commissioners, and in the office of the county auditor. If the county maintains an Internet web site,

the notice also must be posted continually on the web site. ORC 307.12 (B) (2).

Maintaining Lists of Eligible Organizations and Unneeded Property Items To Be Offered

A board of county commissioners that establishes a donation program, or the board's representative, must maintain a list of all eligible 501 c 3 organizations that submit written notices to them as described in section 3 above. In addition the board, or its representative, must maintain a list of unneeded personal property items that are being offered under the donation program. These lists must be posted continually in the office of the board of county commissioners, in the office of the county auditor, and on the county's Internet web site, if the county has one. ORC 307.12 (B) (2).

Donations – Priority Ranking Among Eligible Non-Profit Corporations

A board of county commissioners, in a separate resolution from the one described in section 3 above, may list the organizations that are to be given priority for the donation of a particular unneeded property item or type of item. In this list, the reasons for giving a particular non-profit corporation priority for a particular property item or type of item must be stated.

An item of property that appears on the board's donation list must be given by the board to the first eligible non-profit corporation that expresses an interest in the item, unless the board has singled out a specified eligible non-profit corporation for a particular item or type of item. ORC 307.12 (B) (2). A board of county commissioners may give priority to a specified non-profit corporation if the purposes of the non-profit have a direct relationship to the specific public purposes of programs provided by, or administered by, the board of county commissioners.

Ethics Law Considerations

If a member of a board of county commissioners, any member of a commissioner's family, or any business associate of a commissioner is a trustee, officer, board member, or employee of any eligible non-profit corporation that is going to receive an item of unneeded personal property donated by the board of county commissioners, then the board of county commissioners must consult with the Ohio Ethics Commission before making the donation. The board also must comply with Ohio's ethics laws in ORC Chapter 102 and the laws against unlawful contracts in ORC Chapter 2921 before making the planned donation. ORC 307.12 C.

This mandate to consult with the Ethics Commission also was applied in House Bill 323 to cases in which a board of county commissioners intends to *sell* any items of unneeded personal property to an eligible non-profit corporation.

Fiscal Impacts for Counties

Boards of county commissioners may experience a minimal increase in costs if they chose to implement a donation program under House Bill 323. This increase would be caused primarily by the newspaper notice requirements and, possibly, by the hiring of an agent or representative to conduct the donation program.

Boards also may experience a small decrease in revenue if they choose to implement a donation

program, instead of selling the unneeded personal property items.

On the other hand, a donation program may reduce costs for counties if they no longer are forced to place unneeded property items in storage, or if they no longer need to hire an auctioneer to sell the property.

If you have questions about House Bill 323 please contact Doug Putnam or Brad Cole of the CCAO staff at 614-221-5627 or at dputnam@ccao.org or bcole@ccao.org

Prepared by the County Commissioners Association of Ohio (CCAO)
37 West Broad Street - Suite 650
Columbus, OH 43215
Phone: 614-221-5627
Fax: 612-221-6986
Internet Web Site Address: www.ccao.org