

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

August 10, 2018

Bennie L. Jones, Jr., Esquire
Kemper County School District
P.O. Box 357
West Point, MS 39773

Re: Surplus School Property

Dear Mr. Jones:

Attorney General Jim Hood has received your opinion request and has assigned it to me for research and reply.

Issues Presented

In your request, you provide:

An independent contractor for the school district who provides public relation services for the School District is on the Board of Directors of a 501(c)(3) non-profit organization that provides certain services to the subject school district's students such as general outreach services.

The school district at various times designates certain inventory items to be declared to be obsolete and/or as surplus items and/or are in such a state of disrepair that they are not being used by the school district, and that it would not be economically feasible for the school district to restore such items to an operable condition. Depending on the condition of the items the district will discard these items some time including various types of computers; such as desk tops, tablets, i-pads, monitors, and peripherals.

Please advise whether or not it is lawful for the school district to donate and transfer such personal property to the 501(c)(3) non-profit for refurbishing at the expense of the non-profit to be given to college bound students, or organizations/ community centers / after school programs assisting with student and parental education?

Applicable Law and Response

Section 17-25-25 of the Mississippi Code authorizes a county, municipality or school district to “sell or dispose of any personal property or real property belonging to the governing authority when the property has ceased to be used for public purposes or when, in the authority's judgment, a sale thereof would promote the best interest of the governing authority.”¹ Section 17-25-25(5) specifically provides:

If the governing authority finds that the fair market value of the personal property or real property is zero and this finding is entered on the minutes of the authority, then the governing authority may dispose of such property in the manner it deems appropriate and in its best interest, but **no official or employee of the governing authority shall derive any personal economic benefit from such disposal.** (Emphasis added)

Thus, in order to donate the personal property to the non-profit organization, the school board would have to find that the fair market value of the property is zero and that donating it to the non-profit organization is appropriate and in the school district's best interest.² If any school official or employee would derive any personal economic benefit from the donation of the personal property to the non-profit organization, it would be prohibited under Section 17-25-25(5). With respect to computers, specifically, you may also want to review Section 37-7-459, which allows school districts to sell computers, peripheral equipment and adaptive devices to students under certain circumstances.

We refer you to the Mississippi Ethics Commission to determine whether the Ethics in Government Laws are implicated.

If we may be of further service, please let us know.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Beebe Garrard
Special Assistant Attorney General

¹This authority is specifically extended to school districts under Section 37-7-455(2).

² It appears from your request that although you provide computers as a specific example, you are also asking about different types of unused property. It is unclear whether any of the property in question has any fair market value or whether you are limiting your request to property with a fair market value of zero. Depending upon the specific factual scenario and the property in question, the school district may be able to dispose of property under Sections 37-7-451 through 37-7-483. For further discussion, see MS AG Op., Dickerson (May 8, 2009). Please note that the Dickerson Opinion was issued in 2009, prior to the 2012 enactment of Section 17-25-25.