

## **Legal Q&A**

**By Christy Drake-Adams, TML Legal Counsel**

### **What is personal property?**

In the broadest sense, “personal property” is “everything that is subject to ownership not falling under the definition of real estate” and includes things such as money and goods. *San Antonio Area Found. v. Lang*, 35 S.W.3d 636, 640 (Tex. 2000). In contrast, “real property” is “land, and generally whatever is erected or growing upon or affixed to land.” *Id.*

Oftentimes, state law contains a more limited definition of personal property. For instance, a provision of the Transportation Code relating to the city police department’s authority to remove “personal property” from the road or right-of-way defines the term to mean a vehicle, spilled cargo, and certain hazardous materials and substances. TEX. TRANSP. CODE § 545.3051(a)(3).

### **What is salvage and surplus personal property?**

Under state law, “salvage property” generally refers to personal property that is damaged, used, or consumed so that it has no value for the purpose for which it was originally intended. *See, e.g.,* TEX. GOV’T CODE § 2175.001; TEX. LOC. GOV’T CODE §§ 263.151, 352.002. And “surplus property” generally refers to personal property that is not needed or required for an entity’s foreseeable needs but still has some usefulness for the purpose it was originally intended; it may or may not have value. *See, e.g., id.*

### **Under what authority does a city dispose of its personal property?**

For general law cities, the fundamental authority for the disposition of personal property is found in Chapter 51 of the Local Government Code. Under that Chapter, a Type A city may “lease, grant, or convey” property, and a Type B city may “dispose of” personal property. TEX. LOC. GOV’T CODE §§ 51.015, 51.034. A Type C city generally has, depending on certain factors, the same authority as a Type A or B city. *Id.* §§ 51.051–.052.

Authority to dispose of personal property is also found in statutes outside of Chapter 51. For example, a city with a population of more than 5,000 is authorized to sell or lease automated information systems software that the city develops. TEX. LOC. GOV’T CODE § 253.007.

For home rule cities, the authority to dispose of personal property may be addressed in the city’s charter. The City of Brownwood’s Charter, for instance, authorizes the purchasing division to “sell surplus, obsolete, or unused supplies, materials, and equipment.” BROWNWOOD, TEX., CITY CHARTER art. IV, § 50(d) (1955); *see also* Tex. Att’y Gen. Op. No. GA-0506 (2007) (discussing a home rule city’s authority to sell compost). In response to a 2008 survey, approximately 19 percent of home rule cities indicated that they have a charter provision that sets limits on the sale of personal property.

### **Are there any constitutional limitations on a city’s authority to dispose of its personal property?**

Yes. In undertaking a transaction to dispose of personal property—regardless of whether the property is sold, leased, donated, or disposed by other means—a city should always consider the constitutionality of the transaction.

Of particular relevance are those provisions of the Texas Constitution that work to prevent the gratuitous application of public funds for private purposes. TEX. CONST. arts. III, § 52(a) (prohibiting the legislature from authorizing a city to “grant public money or thing of value in aid of, or to any individual, association or corporation”), XI, § 3 (prohibiting a city from making any appropriation or donation to a private corporation or association). A transaction to dispose of personal property does not violate these provisions of the constitution if: (1) it has as its predominant purpose the accomplishment of a public purpose of the city (as opposed to a private purpose); (2) the city places sufficient controls on the transaction to ensure that the public purpose is carried out; and (3) the city receives a return benefit. *See* Tex. Att’y Gen. Op. Nos. GA-0583 (2007) (discussing the lease of a county-owned generator to a radio station), GA-0085 (2003) (discussing the sale of county-owned dirt to a private party), GA-0084 (2003) (discussing a city’s conveyance of personal property and equipment to a volunteer firefighter-EMS association).

**What procedures must a city follow to sell, convey, or otherwise dispose of its personal property?**

It depends upon the nature of the property at issue and provisions that govern that property. Thus, the precise manner in which a city may dispose of any particular personal property may depend on state law, city charter, and local policies or ordinances.

That being said, for most items of personal property there is no general statutory scheme that dictates the manner of disposition. In other words, there is no statute that generally requires that a city hold an auction or advertise and receive bids to sell its personal property. *See* TEX. LOC. GOV’T CODE § 252.022(a)(12)(C) (providing that personal property sold by a city is exempt from Local Government Code Chapter 252). Cities sometimes use these procedures, however, in order to avoid any appearance of impropriety in the transaction.

**Are there specific statutory procedures that a city must follow to dispose of its salvage or surplus personal property?**

No. Unlike other local governments in Texas, there are no statutes expressly concerning the procedures for the disposition of a city’s salvage and surplus personal property. Compare, for example, Local Government Code Section 263.152 governing the manner in which the commissioners court of a county may dispose of surplus or salvage property.

Cities sometimes have local ordinances, policies, or charter provisions that address this issue. For instance, the court in *City of Houston v. Kallina* describes a Houston ordinance as providing that “any surplus personal property that has a fair market value of not more than \$15.00 may, at the discretion of the city purchasing agent, be destroyed or disposed of in any lawful manner.” *City of Houston v. Kallina*, 97 S.W.3d 170, n.3 (Tex. App.—Houston [14th Dist.] 2003, pet. denied).

Every city should consider adopting policies that govern the disposition of such property. And in the absence of such policies a city should, at a minimum, take the following steps:

- (1) determine the fair market value (if any) of the property;
- (2) have the city council adopt a resolution finding that the property is surplus or salvage, and specifying how the property is to be disposed (e.g., sold, destroyed, recycled) and who is responsible for the disposition; and
- (3) have the city council make findings or take action that may be necessary to ensure that the disposition of the property does not run afoul of the constitution (see discussion above).

### **What rules govern a city's handling and disposition of a third-party's personal property?**

It depends upon the nature of the property at issue and provisions that govern that property. Following is a non-exhaustive list of state statutes that govern a city's handling and disposition of a third-party's property:

- Texas Code of Criminal Procedure, Chapter 59 – contraband that has been forfeited
- Texas Health and Safety Code, Chapter 821 – treatment and disposition of impounded animals
- Texas Property Code, Chapter 74 – abandoned personal property valued at over \$100
- Texas Property Code, Chapter 76 – abandoned personal property valued at \$100 or less
- Texas Transportation Code, Chapter 22 – aircraft abandoned at a city airport
- Texas Transportation Code, Chapter 683 – abandoned and junked motor vehicles

The precise manner in which a city may handle and dispose of a third-party's personal property may depend on state law, city charter, and local policies or ordinances.