

# Attorney General Opinions

THE ATTORNEY GENERAL STATE OF ALABAMA · MONTGOMERY, ALABAMA 36134



CHARLES A. GRADDICK  
ATTORNEY GENERAL

File # 7

January 19, 1979

79-00008

Mr. Norman B. Smoot  
Business Manager  
George Corley Wallace State Community College  
P. O. Drawer No. 1049  
Selma, Alabama 36701

Dear Sir:

In a recent letter addressed to this office, you asked:

"From time to time we have used items of personal property such as automobiles and typewriters that are in need of replacement. Of course, at the time of replacement we no longer have a need for the old item. Is it permissible to trade in such like items for like replacement items provided that it is done under bid where required by law?"

There is no provision in state law for trade-in of state property. Code of Alabama 1975, Section 41-16-100, provides for methods of disposal of state property by public auction or sealed bids. I have enclosed a photostat of Section 41-16-100, supra, for your convenience.

If I may be of any further assistance to you regarding this matter, please do not hesitate to contact me.

Very truly yours,

CHARLES A. GRADDICK  
Attorney General

By -

*Patrick L. Robinson*

PATRICK L. ROBINSON  
Assistant Attorney General

PLR/dc

Enclosure

82-00326

# OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK  
ATTORNEY GENERAL  
STATE OF ALABAMA

MAY 10 1982

JAMES R. SOLOMON, JR.  
DEPUTY ATTORNEY GENERAL  
WILLIAM M. BEKURS, JR.  
EXECUTIVE ASSISTANT  
WALTER S. TURNER  
CHIEF ASSISTANT ATTORNEY GENERAL  
JANIE NOBLES  
ADMINISTRATIVE ASSISTANT

ADMINISTRATIVE BUILDING  
64 NORTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (205) 834-5150

Major General Henry H. Cobb, Jr.,  
Adjutant General  
State Military Department  
1720 Federal Drive  
Montgomery, AL

Armory Commission - State  
Property - Competitive Sale Law

Section 41-16-100, Code of  
Alabama 1975, is not violated by  
Military Department trading in  
obsolete weapons on new weapons.

Dear General Cobb:

The Attorney General is in receipt of your request for an opinion dated April 12, 1982, wherein you posed the following question:

Does the Armory Commission of Alabama have the authority, based on the above-referenced 1971 Attorney General's opinion, to negotiate a contract for trading of the weapons in our inventory for late model, high powered, sniper rifles?

It is the opinion of the Attorney General that the Armory Commission of the State of Alabama has the authority to dispose of obsolete weapons by trading in those weapons rather than by conducting a public auction. Section 41-16-100(a) was amended in 1979 to specifically exempt certain types of property, the disposal of which is otherwise provided for

Major General Henry H. Cobb, Jr.  
Page Two

by law or which, by nature, are incapable of sale by auction or bid from the provisions of §41-16-100 providing that the sale or disposal of tangible personal property owned by the State shall be let by free and open competitive public auction or sealed bids.

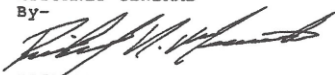
It is the opinion of the Attorney General that the obsolete weapons described in your opinion request clearly fall within §41-16-100(a)(9) as a type of property, the disposal of which is by nature incapable of sale by auction or bid. The opinion of the Attorney General dated April 7, 1971, correctly states the grave problems the State could possibly encounter in auctioning weapons. It is further the opinion of the Attorney General that certain of the weapons described in your request for an opinion are not subject to auction, sealed bid, or trade in on new weapons. In consultation with agents of the Treasury Department's Bureau of Alcohol, Tobacco and Firearms, it is the opinion of the Attorney General that the fully automatic weapons and the gas weapons should either remain in the inventory of the Armory Commission or be destroyed but in no event should they be sold or traded in on new weapons.

It is therefore the opinion of the Attorney General that the Armory Commission may enter into a contract, subject to the competitive bid law, wherein the obsolete weapons not specifically excepted herein are traded in. The successful bidder on the sale of the new weapons must have the proper federal firearm licenses to possess the obsolete weapons traded in.

I hope that we have provided you with a full and complete answer to your question, and if we may be of further service to you, please feel free to call upon us at anytime.

Sincerely yours,

CHARLES A. GRADDICK  
ATTORNEY GENERAL  
By-

  
RICHARD N. MEADOWS  
Assistant Attorney General

CAG/RNM/mr

85-00274

# OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK  
ATTORNEY GENERAL  
STATE OF ALABAMA

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JAMES R. SOLOWON, JR.  
DEPUTY ATTORNEY GENERAL  
H. WARD MCMILLAN, JR.  
EXECUTIVE ASSISTANT  
TO THE ATTORNEY GENERAL  
WALTER S. TURNER  
CHIEF ASSISTANT ATTORNEY GENERAL  
JANIE NOBLES  
EXECUTIVE ASSISTANT

APR 1 1985

Hon. Jan Cook  
State Auditor  
State Capitol  
Montgomery, Alabama 36130

State Auditor - State  
Departments and Agencies -  
State Property - Surplus  
Property

Department of Economic and  
Community Affairs does not  
regulate disposition of  
non-consumable personal  
property that has not been  
declared to be surplus personal  
property.

Dear Ms. Cook:

This office has received your request for an opinion in  
which you asked:

May the State Auditor Division of Property  
Inventory Control continue to approve  
transfers on non-consumable personal prop-  
erty between departments, as has been done  
in the past, or is § 36-16-8(3) superseded  
by Act 84-249?

The answer to your question is that Act 84-249, now codified  
as Code of Alabama 1975, § 41-16-120 through § 41-16-125,  
(1984 Cum. Supp.), does not wholly supersede Code of Alabama  
1975, § 36-16-8(3) because the Act regulates the disposition  
of all surplus personal property but does not control  
transfer of non-surplus property.

Hon. Jan Cook  
Page Two

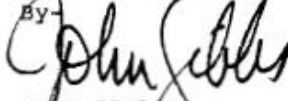
The Department of Economic and Community Affairs is solely responsible for any disposition, including transfers, of "surplus personal property owned by the State." Code of Alabama 1975, § 41-16-120(a) (1984 Cum. Supp.). Surplus property is defined as property that has been declared to be surplus by the appropriate person in an agency and which designation as surplus has been communicated in writing to the head of the Surplus Property Division in the Department of Economic and Community Affairs. Code of Alabama 1975, § 41-16-120(b)(2) (1984 Cum. Supp.).

A transfer of property that has not been declared to be surplus is not controlled by Code of Alabama 1975, § 41-16-120, et seq, but must be approved by the Finance Department as provided in Code of Alabama 1975, § 41-4-180(7). The Property Inventory Control Division's responsibility continues as under existing procedures, see Opinion to Honorable Melba Till Allen, State Auditor, under date of September 29, 1969.

I hope that the above sufficiently answers your question. If this office can be of any further assistance to you, please do not hesitate to let us know.

Sincerely,

CHARLES A. GRADDICK  
ATTORNEY GENERAL

By-  


JOHN GIBBS  
ASSISTANT ATTORNEY GENERAL

CAG:JG:fm

Enclosure

85-396

# OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK  
ATTORNEY GENERAL  
STATE OF ALABAMA

JAMES R. SOLOMON, JR.  
DEPUTY ATTORNEY GENERAL  
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JANIE NORLES  
ADMINISTRATIVE ASSISTANT

JUN 21 1985

ADMINISTRATIVE BUILDING  
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AREA (205) 834-5150

Honorable Henry B. Steagall, II  
Director of Finance  
Department of Finance  
Montgomery, Alabama 36130

Firearms - State Property -  
Competitive Bid Law - Contracts

1. Code of Alabama 1975, Section 41-16-123 is not violated by Department of Finance trading in old weapons as part of the purchase price of new weapons.
2. In determining whether the purchase of new revolvers involves \$2,000 or more, the value of revolvers which are to be traded in must be added to cash purchase price.

Dear Mr. Steagall:

You have requested an opinion from this office which opinion request reads as follows:

"The Department of Finance is contemplating purchasing new service revolvers for the Capitol Police. The Capitol Police currently have on hand 49 service revolvers which they received from the Department of Public Safety in a used condition.

Please advise me if these used revolvers can be (1) legally offered for exchange in connection with the purchase of new ones and (2) whether an invitation to bid has to be issued when the net cost

Honorable Henry B. Steagall, II  
Director of Finance  
Page Two

of the purchase of the new revolvers would be less than \$2,000.00."

In a previous opinion this office held that obsolete weapons fall within the definition in the Code of Alabama 1975, Section 41-16-100(a)(9) as a type of property, the disposal of which is by nature incapable of sale by auction or bid. Informal Opinions of the Attorney General, No. 82-00326, May 10, 1982 (copy enclosed). Although Section 41-16-100(a)(9) has been repealed, it was replaced by Section 41-16-123 which contains identical language.

It is, therefore, the opinion of this office that the service revolvers described in your letter of May 10, 1985, may be offered for exchange in connection with the purchase of new revolvers.

With regard to your second question, the Code of Alabama 1975, Section 41-16-20 provides as follows:

All contracts of whatever nature for labor, services or work or for the purchase or lease of materials, equipment, supplies or other personal property, involving \$2,000.00 or more made or on behalf of any state department, board, bureau, commission, committee, institution, corporation, authority or office shall, except as otherwise provided in this article, be let by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.

It is the opinion of this office that in determining whether the purchase of new revolvers involves \$2,000 or more the value of the revolvers which are to be exchanged must be added to the cash purchase price.

I hope I have fully answered your inquiry with regard to this matter.

Sincerely yours,

CHARLES A. GRADDICK  
Attorney General  
BY:

  
JACK M. CURTIS  
Assistant Attorney General

JMC/dn

88-00049

OFFICE OF THE  
ATTORNEY GENERAL

DON SIEGELMAN  
ATTORNEY GENERAL  
MONTGOMERY, ALABAMA 36130  
(205) 261-7400



STATE OF ALABAMA

NOV 4 1987

Honorable Jan Cook  
State Auditor  
State Auditor's Office  
Alabama State House  
Montgomery, Alabama 36130

State Agencies - Surplus  
Property - Competitive Bid Law

Code of Alabama 1975, Section  
41-16-120 et seq. does not  
provide for trade-in of state  
nonconsumable personal property  
other than the exceptions found  
in Section 41-16-123.

Dear Ms. Cook:

The Attorney General received your request for an opinion regarding the trading in of state owned nonconsumable property under Act No. 84-249, Acts of Alabama 1984, p. 392. Act No. 84-249 which is codified at Code of Alabama 1975, Section 41-16-120 through Section 41-16-125 concerns the disposition of surplus property belonging to the State of Alabama. In your request you asked the following questions:

1. Does Act 84-249 provide for trade-in of State nonconsumable personal property on like items other than the exceptions enumerated in this Act?
2. Under what circumstances may the State Agency for Surplus Property authorize an agency to trade-in nonconsumable personal property?
3. May the Surplus Property Division promulgate rules that are in conflict with the restraints of the Act?

Honorable Jan Cook  
Page Two

Regarding your first question, the answer is in the negative. Section 41-16-123 provides for the disposition of tangible personal property of the state. It states:

This section shall apply only to that property that has been held by the division for a period of not less than 60 days from the date said property is first published in the list of surplus property, as set out in subsection (b) of section 41-16-121, and not purchased by any agency as set out in subsection (e) of section 41-16-120.

(1) All contracts made by, or on behalf of, the state of Alabama, or any department, board, bureau, commission, institution, corporation, or agency thereof, of whatever nature for the sale or disposal of tangible personal property owned by the state of Alabama, other than:

- a. Alcoholic beverages;
- b. Products of the Alabama Institute for Deaf and Blind;
- c. Barter arrangements of the state prison system;
- d. Books;
- e. School supplies;
- f. Food;
- g. Property used in vocational projects;
- h. Livestock;
- i. Property owned by any state college or university not under the control of the board of education of the state of Alabama, which has trade-in value which may be credited against the cost of replacement property purchased in accordance with the Alabama competitive bid laws; and
- j. Types of property, the disposal of which is otherwise provided for by law or which, by nature, are incapable of sale by auction or bid, shall be let by free and open competitive public auction or sealed bids.

According to this provision all tangible personal property of the state, other than that in the exceptions listed therein,

Honorable Jan Cook  
Page Three

held by the surplus property division of the Department of Economic and Community Affairs for a period of more than 60 days after it has been published on the surplus property list and not purchased by an eligible agency, is to be sold or disposed of by open competitive public auction or sealed bids. See the opinion of the Attorney General to Mr. W. M. "Bill" Rushton, Director of the Department of Economic and Community Affairs dated June 5, 1985.

My study of the statutory provisions discussed herein does not reveal any authority for the trading in of any tangible personal property including nonconsumable personal property of the state other than that property in the exceptions enumerated in Section 41-16-123. Thus, Act No. 84-249 as codified does not provide for the trade-in of state nonconsumable personal property on like items other than in the exceptions set out in the statute.

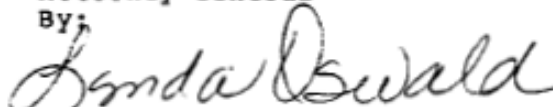
Turning to your second question, the State Agency for Surplus Property may authorize a state agency to trade-in nonconsumable property in certain very limited instances. For example, in an opinion to the Honorable Henry B. Steagall, II, Director of Finance dated June 21, 1985, it was concluded that old weapons could be traded in as part of the purchase price of new weapons without violating Section 41-16-123 because such weapons by their nature are incapable of sale by public auction or sealed bid, thus coming within exception of Section 41-16-123.

Regarding your final question, the answer is in the negative. Rules and regulations and administrative action can neither diminish nor enlarge statutory policy. Jefferson County Board of Education v. Alabama Board of Cosmetology, 380 So.2d 913 (Ala.Civ.App. 1980). Thus, the Surplus Property Division cannot promulgate rules that are in conflict with Code of Alabama 1975, Section 41-16-120 et seq.

I hope that your questions have been adequately answered. If our office can be of further service to you, please let us know.

Yours very truly,

DON SIEGELMAN  
Attorney General  
By:



LYNDA K. OSWALD  
Assistant Attorney General

DS/LKO/dn

# OFFICE OF THE ATTORNEY GENERAL



93-00030

JIMMY EVANS  
ATTORNEY GENERAL  
STATE OF ALABAMA

OCT 8 1992

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (205) 242-7300

Honorable Ronald L. Jones  
Chief Examiner  
Department of Examiners of Public Accounts  
50 N. Ripley Street  
Montgomery, Alabama 36130

Examiners of Public Accounts -  
Audits - State Property - State  
Agencies

Chief examiner has authority to  
require designation of property  
managers to be in writing, as  
well as to prescribe the form  
and contents of property  
receipts.

Dear Mr. Jones:

This opinion is issued in response to your request for an  
opinion of the Attorney General.

## QUESTION I

Pursuant to Code of Alabama 1975,  
Section 41-5-23, does the Chief Examiner of  
the Department of Examiners of Public  
Accounts have the authority to prescribe the  
form of the designation of the property  
manager by the various departments as  
required by Code of Alabama 1975, Section  
36-16-8(1)?

FACTS AND ANALYSIS

Section 36-16-8(1) provides that the head of each department or agency of the state shall designate one of its employees as property manager whose duty shall be to make and keep a full and complete inventory of all nonconsumable personal property, excluding books. In your request for an opinion, you stated that these designations are frequently not made in writing so as to be a part of the records of a department. Section 41-5-23 states:

"Every state and county officer shall keep the books, records and accounts and make the reports of his office in accordance with such systems, procedures and forms as may be prescribed by the chief examiner. . . ."

The designation of the property manager is mandated by statute as an element of the maintenance of inventories and records for property accountability, and must be kept in accordance with any requirements prescribed by the chief examiner.

CONCLUSION

The chief examiner may require that the designation of the departmental property managers of the various state departments be in writing, pursuant to the authority of the chief examiner set forth in Section 41-5-23.

QUESTION II

Does the chief examiner have the authority to prescribe the form and contents of the receipt for property required by Section 36-16-8(2) to be maintained by the property manager?

FACTS AND ANALYSIS

Section 36-16-8(2) provides that the property manager of a department is the custodian of that department's property and requires him to obtain a written receipt whenever an item of

property is entrusted to other employees or officers of the department. This receipt is an element of the property accountability process, and its form and contents are subject to the authority of the chief examiner to prescribe as provided by § 41-5-23. However, as the receipt is an adjunct document to the departmental inventory, the receipt should contain as a minimum the information required by Section 36-16-8(1) of inventories, to-wit: complete description, manufacturer's serial number, cost price, date of purchase, location and custodial agency, responsible officer or employee, and the state property control marking. It should also contain the signature of the responsible officer or employee acknowledging the receipt of the property as well as other requirements prescribed by the chief examiner.

CONCLUSION

Pursuant to Section 41-5-23, the chief examiner may prescribe the form and contents of the receipt for property required by Section 36-16-8(2).

I hope that I have satisfactorily answered your questions. If I can be of further assistance to you, please do not hesitate to call upon me.

Sincerely,

JIMMY EVANS  
Attorney General  
By:

  
JAMES R. SOLOMON, JR.  
Chief, Opinions Division

JE/JWW/dh

09760

# OFFICE OF THE ATTORNEY GENERAL

96-00130

JEFF SESSIONS  
ATTORNEY GENERAL  
STATE OF ALABAMA

FEB - 9 1996

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
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AREA (334) 242-7300

Honorable Pat Duncan  
State Auditor  
State of Alabama  
The State Capitol  
Montgomery, Alabama 36130

State Auditor - State  
Property - Inventory -  
Depreciation - Negligence

The State Auditor should recover the value of property lost by state officials or employees, and not the "cost price" thereof. The value of property is ascertained by a consideration of various factors including depreciation. The State Auditor may authorize state departments to consider depreciation in determining the value of personal property.

Dear Mrs. Duncan:

This opinion is issued in response to your request for an opinion from the Attorney General.

## QUESTION

May the State Auditor's Office authorize departments to take depreciation from the value of an item of personal property, stolen or destroyed due to the negligence of a state employee, and for which the employee must make financial restitution to the State of Alabama?

### FACTS AND ANALYSIS

The State Auditor is charged with the responsibility of maintaining personal property accountability for the State of Alabama. Code of Alabama 1975, § 36-16-8 requires the State Auditor through the Property Inventory Control Division to administer a property control system consisting of inventories of state property by departments, procedures for the appointment of departmental property managers, written receipts for state property by employees in possession of property and biannual verification of inventories. Every state officer and employee is strictly accountable for all personal property assigned to him and in his possession.

Whenever a piece of state property is lost and the person entrusted with the property is called upon to pay for it, the question naturally arises as to the extent of his financial responsibility, or rather, how much must he pay? The inventories that are maintained by the various departments contain certain information about each individual piece of property, including the "cost price." Section 36-16-8(1). However, property is not placed upon the inventory unless its "value" exceeds five hundred dollars. Section 36-16-8(1). The Legislature has very plainly distinguished between the value of property and its cost price on the face of § 36-16-8. Therefore, the Attorney General is of the opinion that the correct measure of damages for lost or destroyed property is its value.

Black's Law Dictionary, Sixth Ed., defines "value" as "the estimated or appraised worth of any object or property, calculated in money." Webster's Ninth New Collegiate Dictionary states that value is "the monetary value of something; the marketable price." Salable value, actual value, market value, fair value, reasonable value, and cash value may all mean the same thing and may be designed to effect the same purpose. Cummings v. National Bank, 101 U.S. 153, 25 L.Ed 903. The meaning of actual cash value, a term of insurance art, was recently considered by the Alabama Supreme Court:

"[I]n ordinary usage 'actual cash value' is a 'fairly common-sense term meaning a fairly common-sense thing; it means the value of something, whatever that something happens to be, for cash.' He then added that, in insurance jargon, it means 'replacement cost minus depreciation.' Simon White, a London -based 'claims

settler' who handles the claims of Lloyd's, London, testified that the term is defined within the industry as 'replacement cost, less an allowance for depreciation, wear and tear,' and that this definition was 'universal' in the settling of insurance claims.

Ballard v. Lee, 1995 Ala. LEXIS 394 (S.Ct. 1995).

The value of property as that term appears in § 36-16-8 is not necessarily its original "cost price." Although the Attorney General does not adopt wholesale the definition of "actual cash value," it is clear that whenever seeking compensation from a state official or employee for lost property, the State Auditor and the state agency must determine the value of the lost property through consideration of such factors as original cost, depreciation, possible appreciation, wear and tear, cost of repair or replacement, obsolescence, remaining useful life and such other factors appropriate to the circumstances.

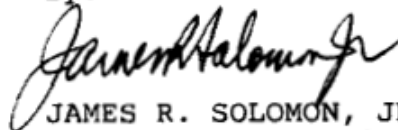
#### CONCLUSION

The State Auditor should recover the value of the property lost by state officials or employees, and not the "cost price" thereof. The value of property is ascertained by a consideration of various factors including depreciation. The State Auditor may authorize state departments to consider depreciation in determining the value of personal property.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact Jack W. Wallace, Jr., Legal Division, Examiner of Public Accounts.

Sincerely,

JEFF SESSIONS  
Attorney General  
By:



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

# OFFICE OF THE ATTORNEY GENERAL

97-00035



JEFF SESSIONS  
ATTORNEY GENERAL  
STATE OF ALABAMA

NOV 5 1996

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (334) 242-7300

Honorable Pat Duncan  
State Auditor  
State of Alabama  
The State Capitol  
Montgomery, AL 36130

State Departments and  
Agencies - State Property  
- Lease-Purchase  
Agreements - Inventory

The provisions of Code, § 36-16-8 require inventory accountability of all property where title has vested in the State and of all property acquired by other means even though title has not vested in the State. Generally, in a lease purchase, title passes when the option to purchase is exercised. In an installment sale, title passes upon delivery of the property to the buyer.

Dear Mrs. Duncan:

This opinion is issued in response to your request for an opinion from the Attorney General.

## QUESTION

Taking into account Code of Alabama 1975, §§ 36-16-1 through 36-16-11, as it applies to property inventory procedures, at what point is an item of personal property considered State property for inventory accountability

purposes if it is obtained by a State agency through a lease-purchase or installment-sales agreement?

#### FACTS AND ANALYSIS

The State Auditor is charged with the responsibility of maintaining personal property accountability for the State of Alabama. Code of Alabama 1975, § 36-16-8, 1996 Cumulative Supplement, requires the State Auditor through the Property Inventory Control Division to administer a property control system consisting of inventories of State property by departments, procedures for the appointment of department property managers, written receipts for State property by employees in possession of property and biannual verification of inventories. Code, § 36-16-8 provides in part that:

" . . . the head of each department or agency of the state shall designate one of its employees as property manager for the department or agency. Except for books, the property manager shall make a full and complete inventory of all nonconsumable personal property and certain other items or personal property deemed important or sensitive enough by the Property Inventory Control Division to be included in the inventory of State property of the value of five hundred dollars (\$500) or more owned by the State and used or acquired by the department or agency. . . ." (Emphasis added.)

The language "or acquired" was added to § 36-16-8 by a 1995 amendment; Act No. 95-147, p. 209, § 1. Prior to this amendment this section stated "owned by the state and used by said department or agency." Since it cannot be presumed that the Legislature used or added language without any meaning or application, we must determine what meaning should be given to this additional language. Robinson v. State, 361 So.2d 1113 (Ala. 1978). The word "acquired" as used in this section must have a different meaning than the word "owned." Generally, "own" means to "have a good legal title; to hold as property." Black's Law Dictionary, Fifth Edition, p. 996. "Acquire" has various meanings including "to gain by any means, usually by one's own exertions; to get as one's own; to obtain by search, endeavor, investment, practice, or purchase;

receive or gain in whatever manner; come to have. . . . It does not necessarily mean that title has passed." Black's Law Dictionary, p. 23. "Acquire" has also been held to mean to obtain by lease. 1A Words and Phrases, p. 130. It should also be noted that the disjunctive "or" is used between owned/acquired to indicate an alternative between the two. Based upon these definitions, property should be inventoried when the state has title to the property and uses the property or when the state has use and control of the property, even though it may not have title to the property.

An "installment sale" is defined as "a sale of personal property in which the purchase price is payable in installments . . . usually, although not necessarily, a conditional sale in reference to the security provided by the contract for the payment of the purchase price. . . ." Ballentine's Law Dictionary, Third Edition. A "lease with an option to purchase" is defined as "a lease under which the lessee had the right to purchase the property." Black's Law Dictionary, p. 801. It is further stated that "the price and terms of the purchase must be set forth for the option to be valid 'and' the option may run for the length of the lease period."

A lease rather than a sale occurs when use and possession of the property, but not title, is passed by the transaction. 77 A.C.J.S. Sales § 3. The Attorney General in Opinion No. 88-00304, dated May 26, 1988, written to John Hollis Jackson, Jr., Chilton County Commission, proffered in reviewing a lease-purchase radio equipment agreement that ". . . title does not pass to the lessee until the option to purchase has been exercised." A lease with an option to purchase is indefinite as long as the lessee has not elected to exercise the option to purchase; therefore, there is no immediate vesting of title and no State ownership, until or unless, the option to purchase is exercised by the State. We note, however, under the Uniform Commercial Code a lease-purchase agreement that requires no additional payment or cost at the end of the lease term creates a security interest and the lessor-seller does not retain title. Code of Alabama 1975, § 7-1-201(37); In re: Shelby, 127 Bankr. 682 (Bankr. N.D. Ala. 1991). Thus, each lease-purchase agreement should be reviewed to determine whether it is a true lease purchase or whether a security interest is created.

Generally speaking, with respect to an installment sales contract for personal property, the title to the property passes to the buyer (State) upon the seller's delivery of the property and the seller reserves a

Honorable Pat Duncan  
Page 4

security interest in the property. See, Code of Alabama 1975, § 7-2-401. Although contractual provisions may provide that the vendor retains title to personal property until the final installment payment is received, under the Uniform Commercial Code any retention by the seller of the title in goods delivered to the buyer is in effect a reservation of a security interest. Code of Alabama 1975, § 7-1-201(37) and § 7-2-401. Therefore, any property in the possession of a State agency should be inventoried for purposes of § 36-16-8 even though the final installment payment has not been made by the State.

You are cautioned that every State officer and employee is strictly accountable for all personal property assigned or in his or her possession even though the item is not required to be included in the inventory of the State. See Attorney General's Opinion No. 96-00130 written to you on February 9, 1996.

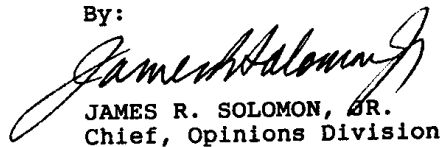
#### CONCLUSION

The provisions of Code, § 36-16-8 require inventory accountability of all property where title has vested in the State and of all property acquired by other means even though title has not vested in the State. Generally, in a lease purchase, title passes when the option to purchase is exercised. In an installment sale, title passes upon delivery of the property to the buyer.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

JEFF SESSIONS  
Attorney General  
By:

  
JAMES R. SOLOMON, SR.  
Chief, Opinions Division

JS/BFS/cb  
D96/F



STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

**2002 - 333**

BILL PRYOR  
ATTORNEY GENERAL

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September 10, 2002

Honorable Susan D. Parker  
State Auditor  
The State Capitol  
P.O. Box 300200  
Montgomery, Alabama 36130-0200

Inventory – State Departments and  
Agencies – State Employees – Officers  
and Employees

The property manager within each  
department or agency of the State is  
responsible for maintaining custody of  
state property within that department or  
agency.

When property is assigned to a specific  
employee within the department or  
agency, that employee is to execute a  
written receipt of the property.

The execution of this document  
relieves the property manager of  
responsibility for the property and  
makes the employee receiving the  
property strictly accountable for it  
should it be lost due to the employee's  
neglect or willful action.

Dear Dr. Parker:

This opinion of the Attorney General is issued in response to your  
request.

QUESTION

Does section 36-16-8(2) of the Code of  
Alabama provide that an employee or officer who

completes a hand receipt assumes responsibility for that property, and does section 36-16-8(4) provide that that officer or employee is strictly accountable for all personal property assigned to his custody once he completes a hand receipt?

#### FACTS AND ANALYSIS

Section 36-16-8 of the Code of Alabama provides, in pertinent part, as follows:

The Property Inventory Control Division shall establish a control in the following manner of all nonconsumable state personal property not exempt under Section 36-16-11.

(1) The head of each department or agency of the state shall designate one of its employees as property manager for the department or agency. Except for books, the property manager shall make a full and complete inventory of all nonconsumable personal property and certain other items of personal property deemed important or sensitive enough by the Property Inventory Control Division to be included in the inventory of state property of the value of five hundred dollars (\$500) or more owned by the state and used or acquired by the department or agency. The inventory shall show the complete description, manufacturer's serial number, cost price, date of purchase, location, and custodial agency, responsible officer, or employee, and the state property control marking. A copy of the inventory shall be submitted to the Property Inventory Control Division on October 1 and April 1 of each year. Each inventory shall show all property acquired since the date of the last inventory. When any inventory fails to show any property shown on the previous inventory, then a complete explanation accounting for the property or the disposition thereof shall be attached to the inventory and submitted to the Property Inventory Control Division. All property managers

shall keep at all times in their files a copy of all inventories submitted to the Property Inventory Control Division, and the copies shall be subject to examination by any and all state auditors or employees of the Department of Examiners of Public Accounts.

(2) Each property manager shall be the custodian of, and responsible for, all property in his or her department or agency. When any property is entrusted to other employees or officers of the department or agency, the property manager shall require a written receipt of the property so entrusted, which receipt shall be executed by the person receiving the property. In that event, the property manager shall be relieved of responsibility of the property, and the employee or officer of the department or agency shall be responsible for the property.

\* \* \*

(4) Biannually, the Property Inventory Control Division shall conduct an inventory of all such state personal property excluding historical materials in the custody of the Department of Archives and History, holding every officer or employee strictly accountable for all personal property assigned to his or her custody.

ALA. CODE § 36-16-8 (2001).

This section places the responsibility of maintaining custody of state property to the property manager within each department or agency. *See* ALA. CODE § 36-16-8(2) (2001). It also provides, however, that once property is assigned to a specific employee within the department or agency, that employee is to execute a written receipt of the property. *Id.* The execution of this document relieves the property manager of responsibility for the property. *Id.* It makes the employee receiving the property strictly accountable for the property should it be lost due to the employee's neglect or willful action. ALA. CODE § 36-16-8(4) (2001).

State law expressly empowers the Attorney General to commence an appropriate action to recover "the value of any personal property lost to

Honorable Susan D. Parker  
Page 4

the state due to the neglect or willful act of the person having the custody of the property.” ALA. CODE § 36-16-9 (2001). Such an action would properly be commenced against the person who has completed a hand receipt accepting responsibility for the property. If no employee or officer had completed a hand receipt accepting responsibility for the property, a suit could be commenced against the property manager, who would retain custody and responsibility for the property.

### CONCLUSION

The property manager within each department or agency of the State is responsible for maintaining custody of state property within that department or agency. When property is assigned to a specific employee within the department or agency, that employee is to execute a written receipt of the property. The execution of this document relieves the property manager of responsibility for the property and makes the employee receiving the property strictly accountable for it should it be lost due to the employee’s neglect or willful action.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Troy King of my staff.

Sincerely,

BILL PRYOR  
Attorney General  
By:



CAROL JEAN SMITH  
Chief, Opinions Division

BP/CJS/TRK  
75789v2/44504



2003 - 067

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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January 17, 2003

Honorable Susan D. Parker  
State Auditor  
The State Capitol  
P.O. Box 300200  
Montgomery, AL 36130-0200

Retirement - Weapons - Law  
Enforcement - Pistols

A law enforcement officer retiring  
from the Department of Public  
Safety may be awarded certain  
pieces of equipment as may be  
determined by the Department.

Dear Dr. Parker:

This opinion of the Attorney General is issued in response to your  
request.

QUESTION ONE

When an employee is a merit system  
employee with law enforcement status at one  
state agency and, consequently, receives a politi-  
cal appointment to another state agency with law  
enforcement status and retires from state service  
as law enforcement, which agency is responsible  
for retirement benefit of his or her badge and  
pistol?

FACTS AND ANALYSIS

From the attachments that are included with your request letter, we  
know that the question concerns Col. James H. Alexander, who states  
under oath that he retires from the Alabama Department of Public Safety

on January 1, 2003. This is the Department where he was employed at the time of his retirement, so the statutes governing retirement from that Department govern.

Section 32-2-26 of the Code of Alabama states as follows:

Any person who, at the time of his retirement, is employed by the State Department of Public Safety as a state trooper or other law enforcement officer shall receive, as a part of his retirement benefit, without cost to him, his badge, pistol and such other equipment as the Department of Public Safety may designate.

ALA. CODE § 32-2-26 (1999).

#### CONCLUSION

When a law enforcement officer retires from the State Department of Public Safety, that agency is responsible for providing, as part of his or her retirement benefit, his or her badge and pistol.

#### QUESTION TWO

What constitutes such other equipment?  
Does this imply an individual may receive more than one pistol as a retirement benefit?

#### FACTS AND ANALYSIS

In his affidavit, Col. Alexander states that, pursuant to the above Code section, he will retire with his badge and pistol, and "I will also retire with a Glock .40 caliber handgun, serial number AST0121, for the purpose of transferring this gun to Denise Nichols, the widow of Alabama State Trooper Brian Nichols who was killed in the line of duty on 02-17-2002."

The statutory language "and such other equipment as the Department of Public Safety may designate" gives the Department discretion to determine what other equipment may be transferred. It is the opinion of

this Office that the transfer of the second pistol would not be an abuse of discretion granted to the Department by the cited Code section. The responsible officials in the department should remember that these transfers will be reviewed by the Department of Examiners of Public Accounts and that a transfer of equipment that is an abuse of discretion may result in a chargeback to the responsible officials.

### CONCLUSION

At the determination of the Department of Public Safety, a second pistol may be awarded to a retiring officer of that Department.

### QUESTION THREE

Can the Department of Public Safety also award the deceased officer's survivor the deceased officer's pistol as the Department of Public Safety may designate?

### FACTS AND ANALYSIS

This question is prompted by Col. Alexander's stated intention of presenting an officer's widow with the second pistol that is being given to him. You cited section 36-21-8.1(a) of the Code of Alabama, which states as follows:

Any peace officer or law enforcement officer as defined by subsection (4) of section 36-21-40, who is killed in the line of duty shall have provided to the deceased officer's survivor, as determined by the deceased officer's department head, the badge which was assigned to said officer at the time of his death.

ALA. CODE § 36-21-8.1(a) (2001).

Clearly, the pistol cannot be given to the spouse under this Code section. There is, however, nothing improper with Col. Alexander presenting the widow with the pistol if it is given to him at his retirement. It is his property at that point, and he may do as he will with it, provided all

Honorable Susan D. Parker  
Page 4

state and federal requirements that govern the transfer of firearms are met.

CONCLUSION

A widow of a peace officer killed in the line of duty may receive the officer's badge and may be given his pistol if it has been lawfully transferred to another law enforcement officer at his retirement should the new owner wish to present it to her.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Walter S. Turner of my staff.

Sincerely,

BILL PRYOR  
Attorney General

By:



CAROL JEAN SMITH  
Chief, Opinions Division

BP/CJS/WST/kh

85594v2/47484



2003-180

STATE OF ALABAMA  
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July 2, 2003

Honorable Beth Chapman  
State Auditor  
State of Alabama  
The State Capitol  
Montgomery, Alabama 36130-0152

State Auditor - Electronic Inventory  
Control System - Fees - Expenses -  
Montgomery County

The State Auditor may require state  
agencies to use an electronic  
inventory control system established  
or specified by the State Auditor.

Absent constitutional or statutory  
authority, the State Auditor may not  
charge state agencies for services,  
fees, maintenance cost, or other cost  
expenses incurred or associated with  
maintaining its electronic inventory  
control system.

Dear Ms. Chapman:

This opinion of the Attorney General is issued in response to your  
request.

QUESTION I

Can the State Auditor require all state  
agencies to use the electronic inventory system  
established by the State Auditor?

FACTS AND ANALYSIS

The State Auditor desires to require all state agencies to use an electronic control system, namely Protégé, when making statutorily required inventory reports. The powers, functions, and duties of the State Auditor, a constitutional officer, are found in the 1901 Constitution of Alabama and sections 36-16-1, et seq. of the Code of Alabama. Section 36-16-7 creates a Property Inventory Control Division within the Office of the State Auditor. Sections 36-16- 8 through 36-16-11 apply to property inventory procedures. Section 36-16-8 provides, in part, as follows:

The Property Inventory Control Division shall establish a control in the following manner of all nonconsumable state personal property not exempt under Section 36-16-11.

(1) The head of each department or agency of the state shall designate one of its employees as property manager for the department or agency. Except for books, the property manager shall make a full and complete inventory of all nonconsumable personal property and certain other items of personal property deemed important or sensitive enough by the Property Inventory Control Division to be included in the inventory of state property of the value of five hundred dollars (\$500) or more owned by the state and used or acquired by the department or agency. The inventory shall show the complete description, manufacturer's serial number, cost price, date of purchase, location, and custodial agency, responsible officer, or employee, and the state property control marking. A copy of the inventory shall be submitted to the Property Inventory Control Division on October 1 and April 1 of each year. Each inventory shall show all property acquired since the date of the last inventory. When any inventory fails to show any property shown on the previous inventory, then a complete explanation accounting for the property or the disposition thereof shall be attached to the inventory and submitted to the Property Inventory Control Division. All

property managers shall keep at all times in their files a copy of all inventories submitted to the Property Inventory Control Division, and the copies shall be subject to examination by any and all state auditors or employees of the Department of Examiners of Public Accounts.

ALA. CODE § 36-16-8(1) (2001).

Section 36-16-10 provides, in part, that "[t]he Chief of the Property Inventory Control Division shall have the authority to carry out the provisions of Sections 36-16-8 through 36-16-11, and shall require that each department, office, bureau, board or agency of the state carry out fully the provisions of Sections 36-16-8 through 36-16-11 applicable to such department, office, bureau, board or agency." ALA. CODE § 36-16-10 (2001).

A state entity and/or official may not exceed the statutory authority granted by the State Legislature and/or Constitution of Alabama. Administrative implementation cannot deviate from principle and policy of statute, and rules and regulations; and administrative action cannot subvert or enlarge upon statutory policy or rules and regulations therein set down. *Ala. State Bd. of Optometry v. Busch Jewelry Co.*, 261 Ala. 479, 75 So. 2d 121 (1954); *Jefferson Co. Bd. of Educ. v. Ala. Bd. of Cosmetology*, 380 So. 2d 913. A state agency's actions should be within "its statutory and constitutional powers." *Ex parte Ala. Bd. of Nursing*, 835 So. 2d 1010 (Ala. 2001). While an administrative agency, being a creature of the Legislature, has only those powers conferred upon it by legislation, *Ex parte City of Florence*, 417 So. 2d 191 (Ala. 1982), these powers may be granted either expressly or by implication. *Woodruff v. Beeland*, 220 Ala. 652, 127 So. 235 (1930). The fundamental rule of statutory interpretation is to determine and to give effect to the intent of the Legislature. *Ex parte State Dep't of Revenue*, 683 So. 2d 980, 983 (Ala. 1996).

The State Auditor, through her Property Inventory Division, is responsible for maintaining a complete and accurate inventory of all non-consumable personal property owned by the State of Alabama that is not specifically exempted by law. Section 36-16-8 charges the Auditor with collecting specific information on each item of such property and conducting biannual inspections to account for the property. Property managers in each state department are to be held strictly accountable for property entrusted to their custody. In order for the Auditor to fulfill these responsibilities, she may establish a uniform system of reporting and accountability including an electronic inventory control system and

prescribe methods, formats, and media reasonably available to state agencies to be used in reporting the required information.

The State Auditor should work with those state agencies that are unable to establish the requested uniform system to find a reasonable method of compliance. For example, the Auditor may furnish some of the necessary software or hardware to the agency.

### CONCLUSION

The state Auditor may require State agencies to use an electronic inventory control system established or specified by the State Auditor.

### QUESTION II

Can the State Auditor charge state agencies for services, fees, maintenance cost, or other cost expenses incurred from maintaining an electronic inventory control system established by the State Auditor?

### FACTS AND ANALYSIS

Section 36-16-5 of the Code of Alabama provides for fees for services rendered by the State Auditor and reads as follows: "[t]he Auditor must charge \$.50 for each impression of his official seal for private or personal use and, for other services, he must charge the same fees as the Secretary of State for similar services. All such fees shall be paid into the State Treasury." ALA. CODE § 36-16-5 (2001).

There are no statutory provisions allowing either the State Auditor or State Treasurer to assess a state agency a fee, maintenance cost, or other charge for maintaining an electronic inventory control system. The Office of the Attorney General has frequently held that there must be specific statutory authorization permitting the assessing and collection of a fee. Where a statute enumerates certain things on which it is to operate, the statute must be construed to exclude all things not expressly mentioned. *Ex parte Holladay*, 466 So. 2d 956, 960 (Ala. 1985); Opinion to Honorable H. A. Lloyd, Attorney for the West Alabama Mental Health Board, dated December 11, 2001, A.G. No. 2002-091. When the language of a statute is plain and unambiguous, the statute should be construed to

Honorable Beth Chapman  
Page 5

mean exactly what it says. *State v. Robinson Land and Lumber Co. of Ala.*, 262 Ala 146, 77 So. 2d 641 (1954).

There is neither constitutional or expressed or implied statutory authority permitting the State Auditor to charge state agencies for services, fees, maintenance cost, or other cost expenses incurred from maintaining an electronic inventory control system established by the State Auditor.

### CONCLUSION

Absent constitutional or statutory authority, the State Auditor may not charge state agencies for services, fees, maintenance cost, or other cost expenses incurred or associated with maintaining its electronic inventory control system.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Aaron W. Nelson, Legal Division, Department of Examiners of Public Accounts.

Sincerely,

BILL PRYOR  
Attorney General  
By:



CAROL JEAN SMITH  
Chief, Opinions Division

BP/AWN  
104889v1/52996



2011-022

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

December 22, 2010

TROY KING  
ATTORNEY GENERAL

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Honorable Richard J. Laird  
Member, House of Representatives  
1507 Bonner Drive  
Roanoke, Alabama 36274

Finance Department -- Surplus Property --  
Rescue Squads -- Rules and Regulations --  
Randolph County

The authority to administer the disposition of state-owned surplus property for volunteer ambulance services and volunteer rescue squads passed to the Alabama Department of Economic and Community Affairs ("ADECA") with the enactment of Act 84-249, as codified in section 41-16-120, *et seq.*, of the Code of Alabama.

The Board of Health Ambulance Advisory Board and the Alabama Association of Rescue Squads, Inc., are authorized to screen state-owned surplus property for volunteer ambulance services and volunteer rescue squads, respectively. ADECA is empowered to promulgate rules necessary to implement and administer this program.

Dear Representative Laird:

This opinion of the Attorney General is issued in response to your request.

QUESTION 1

Does the Alabama Department of Economic and Community Affairs administer the disposition of surplus state-owned property in light of the provisions of section 41-4-33.2 of the Code of Alabama?

FACTS AND ANALYSIS

Section 41-4-33.2 of the Code of Alabama was enacted in 1984 as Act 84-619. It states, in its entirety, as follows:

(a) This section shall apply to voluntary nonprofit ambulance services and voluntary nonprofit rescue squads which are operated as a public service for the benefit of the citizens of this state. It is declared that said ambulance services and rescue squads are quasi-public entities that are entitled to receive and use public funds or property appropriated, donated or loaned to them by the state or any county or municipal governing body.

(b) All surplus property owned by the state to be disposed of by sale at auction by the Finance Department shall first be screened by the state Board of Health Ambulance Advisory Board created in Section 22-18-5, and the Alabama Association of Rescue Squads, Inc., to determine if such property may be of use by volunteer ambulance services or volunteer rescue squads respectively. If said entities find such property to be useful to voluntary ambulance services or rescue squads, then the state Finance Director shall loan said property to the voluntary services. The state Finance Director is authorized to promulgate necessary rules to implement this section.

(c) Any property transferred to a volunteer ambulance service or rescue squad under the provisions of this section shall be used exclusively for ambulance and rescue purposes. The use of any such property other than on the business of the volunteer ambulance service or rescue squad is expressly prohibited. Any violation of the provision of this section shall be a Class A misdemeanor punishable as provided under Title 13A.

Final disposition of all properties loaned as a result of this section shall rest with the Finance Department of the state.

The Legislature also passed Act 84-249, which was codified in sections 41-16-120, *et seq.*, of the Code of Alabama. This act created the Surplus Property Division of ADECA. Section 41-16-120 states, in pertinent part, as follows:

(a) The Director of the Department of Economic and Community Affairs shall be responsible for the distribution, transfer, or disposal of all surplus personal property owned by the state and all right, title, interest, and equity in the property shall be transferred to the department for such purpose. The director may delegate to the Director of the Surplus Property Division such supervision and control of the distribution or disposal of state owned surplus personal property.

.....

(e) The division shall have authority to sell surplus property at fair market value, as established by the division and set out in its published rules, to eligible entities as defined in subsection (b)(3). Payment for purchases by any of the eligible entities shall be made within 30 days after such purchase. Payment plans may be established at the discretion of the division director or his or her designee within guidelines approved by the Director of ADECA. If payment is not made within 60 days after a purchase, in cases where a payment plan has not been established, then such purchase shall be declared void and in default, and the property shall be returned immediately by the defaulting purchaser to the division.

ALA. CODE § 41-16-120 (Supp. 2010).

Reading the relevant parts of the two statutes, sections 41-4-33.2 and 41-16-120, there is a conflict in the administration of the disposition of certain types of surplus state-owned property when comparing the disposition of surplus property for use by volunteer ambulance services and volunteer rescue squads and the disposition of surplus property for other state agencies, generally. Under, however, the principles of statutory construction in Alabama, statutes should be construed so as to harmonize their provisions. *Ala. Dep't of Revenue v. Nat'l Peanut Festival Ass'n, Inc.*, 11 So. 3d 821, 829 (Ala. Civ. App. 2008). Further, "[i]n the event of a conflict between two statutes, a specific statute

relating to a specific subject is regarded as an exception to, and will prevail over, a general statute relating to a broad subject." *Id.* At 829-30.

Consequently, the specific provisions of section 41-4-33.2 should be read as exceptions to the broad provisions of sections 41-16-120, *et seq.*, and the provisions relating to the authority of the Board of Health Ambulance Advisory Board, on behalf of the volunteer ambulance services, and the Alabama Association of Rescue Squads, Inc., on behalf of the volunteer rescue squads, to screen surplus property and to obtain the use, by loan, of any useful equipment, as set out in chapter 4 of title 41, are still in effect and are an exception to the provisions contained in the present surplus property statutes.

In addition, the synopsis to Act 84-249 demonstrates a clear legislative intent that the disposition of state-owned surplus property be administered by ADECA. The synopsis to Act 84-249 reads, in pertinent part, that "[t]o provide that the department of economic and community affairs shall be the administrative state agency for contracts for sales of certain state property heretofore administered by the finance department." 1984 Act 84-249, 392, 392.

The specific exception found in subsection (b) of section 41-4-33.2 states that "[a]ll surplus property owned by the state to be disposed of by sale at auction by the Finance Department" is to be screened by the Board of Health Ambulance Advisory Board. ALA. CODE § 41-4-33.2 (2000). Upon the passage of Act 84-249, the authority to dispose of surplus property owned by the state was transferred to ADECA. Consequently, despite the exception to section 41-16-120 of the Code created for the Board of Health Ambulance Advisory Board and the Alabama Association of Rescue Squads, Inc., by section 41-4-33.2, the process of disposing of all state-owned surplus property lies with ADECA.

#### CONCLUSION

The authority to administer the disposition of state-owned surplus property for volunteer ambulance services and volunteer rescue squads passed to ADECA with the enactment of Act 84-249, as codified in section 41-16-120, *et seq.*, of the Code.

#### QUESTION 2

Will volunteer rescue squads and volunteer ambulance services be allowed to screen state-owned surplus property?

FACTS AND ANALYSIS

As stated previously in this opinion, section 41-4-33.2 of the Code is construed as an exception to the provisions of Act 84-249 that created the Surplus Property Division at ADECA. In harmonizing these statutes, the right of the Board of Health Ambulance Advisory Board and the Alabama Association of Rescue Squads, Inc., to screen surplus property to determine if any such property might be useful to any volunteer ambulance service and volunteer rescue squad, respectively, would remain in force.

Section 41-4-33.2 empowered the named entities to screen surplus property "to determine if such property may be of use by volunteer ambulance services or volunteer rescue squads." ALA. CODE § 41-4-33.2 (2000). Section 41-4-33.2 further required the Finance Director to loan the selected surplus property to the "voluntary services." Reading the two statutes together, the authority to loan the selected surplus property remains, and ADECA is empowered to promulgate rules to implement and administer this program.

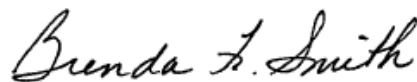
CONCLUSION

The Board of Health Ambulance Advisory Board and the Alabama Association of Rescue Squads, Inc., are authorized to screen state-owned surplus property for volunteer ambulance services and volunteer rescue squads, respectively. ADECA is empowered to promulgate rules necessary to implement and administer this program.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Mose Stuart, Legal Division, Department of Finance.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division



STATE OF ALABAMA  
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August 5, 2022

Honorable Jim Zeigler  
State Auditor of Alabama  
600 Dexter Avenue  
Room S-101  
Montgomery, Alabama 36830

State Auditor – Electronic Inventory  
Control System – State Departments  
and Agencies

The State Auditor's Office may mandate that state agencies upgrade bar code labels to radio frequency identification ("RFID") tags, requiring them to purchase RFID tags from an approved vendor, if it determines that RFID technology is reasonably available to such state agencies.

Dear Mr. Zeigler:

QUESTION

May the State Auditor's Office mandate that state agencies upgrade bar code labels to radio frequency identification ("RFID") tags, requiring them to purchase RFID tags from an approved vendor?

FACTS AND ANALYSIS

You state in your opinion request that the State Auditor's Office has begun to update the barcode scanning software that has been previously used by state agencies with Radio Frequency Identification ("RFID") tags. You state further that, when agencies began using barcode labels to identify an asset with the property number in the management system, the State Auditor's Office used scanning software and barcode scanners to conduct property audits. Although agencies purchased barcode labels from an approved vendor, your Office provided additional ones when the agencies ran out of labels. Noting that not all the agencies have converted to the new RFID system, you ask if the State Auditor's Office may mandate all state agencies to upgrade to the RFID system, requiring them to purchase RFID tags from an approved vendor.

In its opinion to Honorable Beth Chapman, State Auditor, dated Jul. 2, 2003, A.G. No. 2003-180, this Office responded to the State Auditor's request to require state agencies to use the Protégé electronic inventory control system. Although this Office noted that a state agency's authority is limited to "its statutory and constitutional powers," it held that the State Auditor's Office may require state agencies to use a specified electronic database control system, stating:

The State Auditor, through her Property Inventory Division, is responsible for maintaining a complete and accurate inventory of all nonconsumable personal property owned by the State of Alabama that is not specifically exempted by law. Section 36-16-8 charges the Auditor with collecting specific information on each item of such property and conducting biannual inspections to account for the property. Property managers in each state department are to be held strictly accountable for property entrusted to their custody. In order for the Auditor to fulfill these responsibilities, she may establish a ***uniform system of reporting and accountability*** including an electronic inventory control system and ***prescribe methods, formats, and media reasonably available*** to state agencies to be used in reporting the required information.

Honorable Jim Zeigler

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*Chapman*, at pp. 3-4 citing *Ex parte Ala. Bd. of Nursing*, 835 So. 2d 1010 (Ala. 2001), and ALA. CODE §§ 36-16-8 to 36-16-11 (2013) (emphasis added). Therefore, based on its authority to maintain a complete and accurate inventory of state property, the State Auditor's Office was authorized to require all state agencies to use Protégé as a "uniform system of reporting and accountability."

Under the same rationale expressed in *Chapman*, the State Auditor's Office may also require state agencies to adopt specified "methods, formats, and media" to carry out the purposes of section 36-16-8 of the Code, so long as they are "reasonably available." In determining whether mandating the use of a given method, format, or media such as RFID technology is warranted for the administration of section 36-16-8 of the Code, considerable weight and deference should be afforded the agency's interpretation of a statute it administers. *Broadwater v. Blue & Gray Patio Club*, 403 So.2d 209 (Ala. 1981). Courts are required to defer to an agency's reasonable interpretation of a statute with which it is charged with administering. An agency's interpretation of a statute will be deemed reasonable and controlling unless it is arbitrary, capricious, or manifestly contrary to the clear meaning of the statute. *Dawson v. Scott*, 50 F.3d 884 (11th Cir. 1995).

This Office addressed a governmental entity's determination of what constitutes "reasonable availability" in its opinion to Honorable Albert Hall, Member, House of Representatives, dated May 20, 1981, A.G. No. 81-00394. In *Hall*, a local act authorized the Madison County Commission to perform road services on private property if such services and road building materials were not reasonably available from private enterprises. This Office reasoned that "availability" and "reasonable cost" were "abstract terms" as used in the local act and deferred to the Madison County Commission's determination that road building materials were not reasonably available at a reasonable cost from private enterprise firms. *Id.* at p. 4.

Applying the same deference in this case as applied in *Hall*, it is the opinion of this Office that the State Auditor's Office may find that RFID technology is reasonably available to state agencies if it can articulate a rational basis for determining that the adoption of such technology is affordable and reasonably worth any extra expense paid by state agencies. You indicate in your request that your Office has been researching RFID devices for nearly ten years and that, although development costs were prohibitive in the beginning, prices have lowered over time. You also state that Protégé has since been purchased by AssetWorks, the company

Honorable Jim Zeigler

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that has designed the RFID software. This circumstance might ease the process of implementing and maintaining the new system. Finally, many agencies have already converted to the RFID system and the State Auditor's Office may work closely with those agencies that might have difficulty in converting. As this Office stated in *Chapman*, at p. 4, "[t]he State Auditor should work with those state agencies that are unable to establish the requested uniform system to find a reasonable method of compliance" and "may furnish some of the necessary software or hardware to the agency."

#### CONCLUSION

The State Auditor's Office may mandate that state agencies upgrade bar code labels to radio frequency identification ("RFID") tags, requiring them to purchase RFID tags from an approved vendor, if it determines that RFID technology is reasonably available to such state agencies.

I hope this opinion answers your question. If this Office can be of further assistance, please contact John Porter of my staff.

Sincerely,

STEVE MARSHALL  
Attorney General

By:



BEN BAXLEY  
Chief, Opinions Division

SM/JMP/as  
3204106/229079

# 2021-046



STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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August 20, 2021

Honorable Jim Zeigler  
State Auditor of Alabama  
600 Dexter Avenue  
Room S-101  
Montgomery, Alabama 36830

State Auditor – Mental Health Department –  
Inventory

Because section 36-16-11 of the Code of Alabama specifically exempts certain entities from sections 36-16-8 through 36-16-10 of the Code, but fails to exclude the Department of Mental Health, the agency, as a whole, is not exempted from sections 36-16-8 through 36-16-10 of the Code.

Dear Mr. Zeigler:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Is the Alabama Department of Mental Health (“ADMH”), as a whole, exempt from the State Auditor’s inventory duties codified at section 36-16-8 through 36-16-11 of the Code of Alabama?

FACTS AND ANALYSIS

According to your request, the Examiners of Public Accounts has issued an audit report relating to the Department of Mental Health stating, in part, that section 36-16-11 of the Code "exempts the Department [of Mental Health] from the provisions of the Code of Alabama 1975, sections 36-16-8 through 36-16-10." Consistent with the Examiners of Public Accounts Report, ADMH contends that the legislative history of relevant statutes supports the conclusion of the Examiners that ADMH enjoys a statutory exemption from the inventory and property control provisions established in the Code.

In a previous opinion to the Honorable Pat Duncan, State Auditor, this Office described the inventory function of the State Auditor as follows:

The State Auditor is charged with the responsibility of maintaining personal property accountability for the State of Alabama. Code of Alabama 1975, § 36-16-8, 1996 Cumulative Supplement, requires the State Auditor through the Property Inventory Control Division to administer a property control system consisting of inventories of State property by departments, procedures for the appointment of department property managers, written receipts for State property by employees in possession of property and biannual verification of inventories.

Opinion to Honorable Pat Duncan, State Auditor, dated Nov. 5, 1996, A.G. No. 97-00035.

Section 36-16-11 of the Code of Alabama provides the following exceptions to this duty:

There is hereby expressly exempt from Sections 36-16-8 to 36-16-10, inclusive, all livestock, animals, farm and agricultural products and property owned or used by, or in connection with, or under control of, all public schools, universities, colleges, trade schools, Alabama Institute for Deaf and Blind, State Library Service, and all fire control or fire rescue equipment acquired by the Alabama Forestry Commission from sources other than state agencies and subsequently donated to volunteer fire departments pursuant to Section 9-3-19; provided, *Sections 36-16-8 to*

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***36-16-10, inclusive, shall not apply to the Alabama hospitals for the insane and the Partlow State School and Hospital.***

ALA. CODE §36-16-11 (2013). (emphasis added).

ADMH correctly submits that the hospital audit exemption now appearing in section 36-16-11 of the Code originated in Act 627, adopted in 1949. 1949 ALA. ACTS No. 1949-627 (Section 5). ADMH also submits that at that time, the Alabama hospitals for the insane and the Partlow State School and Hospital were the only existing state-operated institutions providing care for those with intellectual disabilities and mental illness. Further, ADMH contends that because Act 1965-881, which created ADMH, vested all the powers, including the hospital audit exemption, of the previously existing agencies in the new ADMH, then, the new ADMH, in its entirety, enjoyed the audit exemption throughout the new agency. 1965 ALA. ACTS No. 1965-881 (Section 8(1)). This argument, however, fails to recognize that Act 1965-881 consolidated numerous other agencies and functions, in addition to the state hospitals, under the umbrella of the newly created ADMH. *Id.*

Act 1965-881 abolished “the board of trustees of Alabama State Hospitals, the board of managers for Partlow State School and Hospital, the Commission on Alcoholism, and the divisions of Mental Health Planning and Mental Hygiene of the State Board of Health . . . .” *Id.* (preamble); *see also*, Opinion to Honorable Virginia A. Rogers, Commissioner of Mental Health and Mental Retardation, dated Jan. 22, 1997 (A.G. No. 97-00091) (discussing of the legislative history of the Alabama Department of Mental Health). The functions of those previous entities were absorbed into the new ADMH. The functions of ADMH, then, after the adoption of Act 1965-881, extended far past Alabama hospitals for the insane and Partlow School to encompass all of Alabama’s citizens, not just the hospitals. *See*, ALA. CODE § 22-50-9 (2015) (“The [ADMH] is hereby authorized to act in any prudent way to provide mental health services and mental retardation services for the people of Alabama.”). Since then, the authority and duties of ADMH have only continued to expand.

Furthermore, and contrary to the position of ADMH, application of the rules of statutory construction more readily support a more limited reading of the hospital audit exemption appearing in section 36-16-11 of the Code. Under the principle of *expression unius est exclusion alterius*, a rule of statutory construction, where a statute enumerates certain things on which it is to operate, the statute must be construed as excluding from its effect all things not expressly mentioned. *Ex parte T.B.*, 698 So. 2d 127, 129 (Ala. 1997); *Ex parte Holladay*, 466 So. 2d 956, 960-61 (Ala. 1985); *City of Birmingham v. Brown*, 241 Ala. 203, 208, 2 So. 2d 305, 309 (1941); *Hall v. Blan*, 227 Ala. 64, 68, 148 So. 601, 603 (1933). Moreover, exceptions to general statutory provisions are to be narrowly and strictly construed. *In re*

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*Anonymous*, 812 So. 2d 1218, 1220 (Ala. Civ. App. 2001); Opinion to Honorable J. Lee McPhearson, Attorney, Choctaw County Commission, dated Dec. 23, 2014, A.G. No. 2015-025. Accordingly, the effect of section 36-16-11 of the Code as an exception to the inventory functions of the State Auditor is subject to a narrow interpretation.

Thus, ADMH is not wholly exempt from sections 36-16-8 through 36-16-10 of the Code. Section 11 specifically excludes certain entities such as "Alabama hospitals for the insane and the Partlow State School and Hospital." Although the hospitals and the Partlow State School and Hospital are operated by the ADMH, they are not the totality of the agency. "The department [of Mental Health] shall be composed of the State Mental Health Commissioner and such divisions and administrative sections as the Mental Health Commissioner may direct." ALA. CODE §22-50-2 (2015). The offices of the department are required to be located at the state capitol. *Id.* Because section 36-16-11 of the Code is silent regarding ADMH, but specifically lists hospitals for the insane and the Partlow State School and Hospital, it must be concluded that the statute does not evidence an intent to exempt the whole of ADMH. Had the legislature intended to exempt the entire ADMH, it could have easily done so. It did not.

#### CONCLUSION

Because section 36-16-11 of the Code of Alabama specifically exempts certain entities from sections 36-16-8 through 36-16-10 of the Code, but fails to exclude the Department of Mental Health, the agency, as a whole, is not exempted from sections 36-16-8 through 36-16-10 of the Code.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

STEVE MARSHALL  
Attorney General

By:



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Chief, Opinions Division

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2020-042



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June 11, 2020

Honorable Jim Zeigler  
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600 Dexter Avenue  
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Montgomery, Alabama 36130

State Auditor – State Agencies –  
Surplus Property – Exceptions

The Surplus Property Division of the Alabama Department of Economic and Community Affairs cannot automatically approve “scrap on site” disposals for wooden furniture that costs less than \$500 and is broken or no longer needed by the owning agency.

This opinion, however, does not preclude the Alabama Department of Economic and Community Affairs from disposing of “types of property . . . . which, by nature, are incapable of sale by auction or bid”, ALA. CODE 41-16-123(1)(j) (2019), through the use of the “Scrap-on-Site” procedures established by the Alabama Department of Economic and Community Affairs Surplus Property Division Procedures, Alabama Administrative Code Rule 305-9-1-.06, and the State Auditor’s Property Inventory Manual.

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Dear Mr. Zeigler:

This opinion of the Attorney General is issued in response to your request.

#### QUESTION

Can the Surplus Property Division of the Alabama Department of Economic and Community Affairs automatically approve "scrap on site" disposals for wooden furniture that costs less than \$500 and is broken or no longer needed by the owning agency?

#### FACTS AND ANALYSIS

Your request sets forth the following facts:

The [Director of the Surplus Property Division of the Alabama Department of Economic and Community Affairs] has contacted our office for guidance on wooden furniture that is less than \$500 (desks, chairs, bookshelves, small tables, etc.) and usually in poor condition or broken by the time it arrives at [the Surplus Property Division]. The majority of agencies are required to send surplus property to [the Surplus Property Division], including items that are not tracked that have an original acquisition cost less than \$500 and are not considered sensitive. However, [the Surplus Property Division] has trouble selling wooden furniture that is less than \$500. They even have trouble giving it away to their eligible donees. When items do not sell after two auctions, they are usually put in the dumpster . . . which [the Surplus Property Division] has to pay to have emptied. In this case, this old and often broken wooden furniture is costing [the Surplus Property Division] to handle.

Honorable Jim Zeigler

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Currently, when an agency has a piece of furniture or equipment that is broken, beyond its useful life, [or] would not be cost efficient to repair, they can send pictures to [the Surplus Property Division] for approval to ["s]crap on [s]ite.["] If approved, the agency is to remove all identifying tags or markings identifying it as State property, then can dispose of it in a dumpster, or by whatever means works best.

These facts are given by way of background for your request's specific question, which was posed to you by the Director of the Surplus Property Division and which you present in your request thus: "Can [the Surplus Property Division] automatically approve ["s]crap on [s]ite["] disposals for any wooden furniture that costs less than \$500 that is broken or that agencies no longer need?"

Sections 41-16-120 to -125 of the Code of Alabama provide for the disposition of surplus personal property owned by the State. ALA. CODE §§ 41-16-120 to -125 (2019); Opinion to Honorable Beth Chapman, State Auditor, dated April 7, 2005, A.G. No. 2005-102. The Director of the Alabama Department of Economic and Community Affairs is "responsible for the distribution, transfer, or disposal of all surplus personal property owned by the [S]tate," but "may delegate to the Director of the Surplus Property Division such supervision and control of the distribution or disposal of [S]tate[-]owned surplus personal property." ALA. CODE § 41-16-120(a) (2019); Opinion to Honorable Richard J. Laird, Member, House of Representatives, dated December 22, 2010, A.G. No. 2011-022. The Surplus Property Division holds the "right, title, interest, and equity" in State-owned surplus personal property, as well as the authority to sell it. ALA. CODE §§ 41-16-120(a), -120(e) (2019); Opinion to Dr. David G. Bronner, Secretary-Treasurer, Retirement Systems of Alabama, dated November 9, 1988, A.G. No. 89-00033. The Surplus Property Division must "periodically publish a list of all surplus property held by it at the time of such publication," and is charged with disposing of any unsold property(i.e., property that has not been purchased by an eligible entity) remaining on the list for sixty days or more. ALA. CODE §§ 41-16-121(b), -123 (2019); Opinion to Honorable W.M. "Bill" Rushton, Director, Alabama Department of Economic and Community Affairs, dated June 5, 1985, A.G. No. 85-00370.

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The general sale-of-surplus property procedure advances as specified in the statute, continuing from pre-sale to post-sale: “All contracts made by or on behalf of the State of Alabama . . . for the sale or disposal of tangible personal property owned by the State of Alabama . . . shall be let by free and open competitive public auction or sealed bids.” ALA. CODE § 41-16-123(1) (2019); Opinion to Honorable William V. Muse, President, Auburn University, dated April 3, 2000, A.G. No. 2000-116. Certain property, however, is excepted from the general sale-of-surplus-property procedure. ALA. CODE § 41-16-123(1)(a)–(m) (2019); Opinion to Honorable Jan Cook, State Auditor, dated November 4, 1987, A.G. No. 88-00049. To determine if any of these exceptions apply with regard to the property in question, we turn to the text of statute.

In statutory interpretation, “[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 56 (2012); see *Ex parte Birmingham Airport Auth.*, 274 So. 3d 964, 967–68 (Ala. 2018) (legislative intent should be gathered from the language of the statute). The words of a statute are given their ordinary, everyday meaning, unless a term has acquired a technical meaning as a result of statutory definition, judicial construction, or other context. SCALIA & GARNER, *supra*, at 69; *LEAD Educ. Found. v. Alabama Educ. Ass’n*, 290 So. 3d 778, 788–89 (Ala. 2019); *Crowley v. Bass*, 445 So. 2d 902, 904 (Ala. 1984); *McWhorter v. State Bd. of Registration for Prof’l Engineers & Land Surveyors ex rel. Baxley*, 359 So. 2d 769, 773 (Ala. 1978).

Using the information provided by your request to give the exceptions a fair reading, only one is potentially availing here: the subsection (j) exception, excluding “[t]ypes of property . . . which, by nature, are incapable of sale by auction or bid” from the general sale-of-surplus-property procedure. ALA. CODE § 41-16-123(1)(j) (2019).

Turning to the meaning of the terms “by nature” and “incapable of sale” in the subsection (j) exception, there is no contextual evidence to support that either term bears a technical meaning. Thus, each term must be given its ordinary, everyday meaning. First, “by nature” can be defined as follows: as a result of inherent qualities; proceeding from the regular character of a person or thing; not dependent on external circumstances. *Naturally*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2003);

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*Naturally*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2011); *Natural*, BLACK'S LAW DICTIONARY (11th ed. 2019). Second, "incapable" can be defined as follows: unable; lacking the necessary ability, capacity, or power; lacking the requirements imposed by the law. *Incapable*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY, *supra*; *Incapable*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, *supra*; *Incapacity*, BLACK'S LAW DICTIONARY, *supra*. Third, "incapable of sale" can be defined as follows: unable to be sold. *See United States v. Bailey*, 77 M.J. 11, 15 (C.A.A.F. 2017) ("The . . . meaning of 'incapable' is one that is generally—and correctly—understood as being unable to do something."); *see also* BRYAN A. GARNER, GARNER'S MODERN ENGLISH USAGE 497 (4th ed. 2016) (advising that "incapable" and "unable" are "basically synonymous").

This Office has had prior occasions to opine on the subsection (j) exception. In a 1985 opinion to Honorable Henry B. Stegall, this Office concluded that obsolete service revolvers were excepted from the general sale-of-surplus-property procedure and could be traded toward the purchase of new service revolvers for the Capitol Police. Opinion to Honorable Henry B. Steagall, II, Director of Finance, Department of Finance, dated June 21, 1985, A.G. No. 85-00396. That conclusion was made with reference to and reliance on another opinion issued by this Office, which had addressed an analogous question three years prior. *Id.* at 2 (citing Informal Opinion to Major General Henry H. Cobb, Jr., Adjutant General, State Military Department, dated May 10, 1982, A.G. No. 82-00326). Because of "the grave problems the State could possibly encounter in auctioning weapons," the earlier opinion reasoned, "the obsolete weapons described in your . . . request clearly fall within [the subsection (j) exception] as a type of property, the disposal of which is by nature incapable of sale by auction or bid." Informal Opinion to Major General Henry H. Cobb, Jr., Adjutant General, State Military Department, dated May 10, 1982, A.G. No. 82-00326.

In 2005 this office further expanded upon the subsection (j) exception. In an opinion to the Honorable Beth Chapman, this Office concluded that obsolete polygraph components were excepted from the general sale-of-surplus-property procedure and could be traded toward the purchase of new polygraph instruments for the Alabama Bureau of Investigation. Opinion to Honorable Beth Chapman, State Auditor, dated April 7, 2005, A.G. No. 2005-102. The components, electronic hardware.

Honorable Jim Zeigler

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known as “DAS boxes,” performed the “central processing” for the Bureau’s polygraph instruments but were “outdated,” “[un]usable for any other purpose,” and “likely [to] bring no money” if sold at surplus. *Id.* at 2. Because “the DAS boxes are specialized items that do not function without accompanying proprietary software and other peripheral equipment that comprises the complete polygraph instrument,” the opinion reasoned, “the Department of Public Safety . . . could determine from the facts that the DAS boxes are obsolete, outdated, and of little or no value and, thus, fall within [the subsection (j) exception] as being items by their nature incapable of sale by auction or bid. *Id.* at 3.

Note the types of property in question in the above opinions. In the *Stegall* opinion, it was dangerous weapons. In the *Chapman* opinion, it was worthless components. In both cases, the types of property involved fit squarely the criteria for the subsection (j) exception, to wit: “[t]ypes of property [*dangerous weapons/worthless hardware*] . . . which, by nature [*as a result of their inherent qualities*], are incapable of sale [*unable to be sold*] by auction or bid.” ALA. CODE § 41-16-123(1)(j) (2019).

Finally, the present facts are distinguishable from those of the *Chapman* opinion. In the *Chapman* opinion, the property in question was “outdated,” “[un]usable for any other purpose,” and “likely [to] bring no money” if sold at surplus. Opinion to Honorable Beth Chapman, *supra*, at 2. The property in question here is “usually in poor condition or broken by the time it arrives”; “[the Surplus Property Division] has trouble selling wooden furniture that is less than \$500 . . . [or even] giving it away to their eligible donees”; and “[w]hen items do not sell after two auctions, they are usually put in the dumpster . . . which [the Surplus Property Division] has to pay to have emptied.” The difference between “outdated” and “usually in poor condition” is that of between “incapable” and “usually incapable”—only the former complies with the statutory text. The latter does not.

For the reasons discussed above, it is the opinion of this Office that no exceptions authorize an agency to automatically “scrap on site” property merely because it costs less than \$500, is broken, or no longer needed by an agency. *See generally* § 41-16-123(1)(a)–(m) (2019).

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CONCLUSION

The Director of the Surplus Property Division of the Alabama Department of Economic and Community Affairs cannot automatically approve “scrap on site” disposals for wooden furniture that costs less than \$500 and is broken or no longer needed by the owning agency.

This opinion, however, does not preclude the Alabama Department of Economic and Community Affairs from disposing of “types of property . . . which, by nature, are incapable of sale by auction or bid”, ALA. CODE 41-16-123(1)(j) (2019), through the use of the “Scrap-on-Site” procedures established by the Alabama Department of Economic and Community Affairs Surplus Property Division Procedures, Alabama Administrative Code Rule 305-9-1-.06, and the State Auditor’s Property Inventory Manual.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Andrew A. Yerbey of my staff.

Sincerely,

STEVE MARSHALL  
Attorney General  
By:



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Chief, Opinions Division

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