

January 9, 2019

The Honorable Steven D. Barnett
Carroll County Prosecuting Attorney
7 East Main Street
Carrollton, Ohio 44615

SYLLABUS:

2019-002

A board of county commissioners has the discretion to dispose of personal property of the county that the board has determined is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, and that is valued at \$2,500 or less, in several ways, including by selling the property by internet auction pursuant to R.C. 307.12(E) or by selling the property by private sale, as set forth in R.C. 307.12(B)(1).



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OPINION NO. 2019-002

The Honorable Steven D. Barnett
Carroll County Prosecuting Attorney
7 East Main Street
Carrollton, Ohio 44615

Dear Prosecutor Barnett:

We have received your request regarding the authority of a board of county commissioners to dispose of personal property of the county pursuant to R.C. 307.12. In December 2014, the Carroll County Board of Commissioners purchased a laptop computer for the use of the Carroll County Court of Common Pleas. *See* R.C. 307.01(A) (“[a] courthouse ... shall be provided by the board of county commissioners when ... needed. ... The board shall also provide equipment ... as it considers reasonably necessary for the proper and convenient conduct of county offices, and such facilities as will result in expeditious and economical administration of such offices”). The Judge of the Carroll County Court of Common Pleas, whose term expired on December 31, 2018, used the laptop computer during his judgeship. The laptop computer contains the former judge’s private notes, judicial writings, and other materials.

The former judge requests that the Carroll County Board of Commissioners sell the laptop computer to him pursuant to R.C. 307.12(B). R.C. 307.12(B)(1) authorizes a board of county commissioners to sell personal property by private sale when the board finds that the property “is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, and when the fair market value of the property to be sold ... is, in the opinion of the board, two thousand five hundred dollars or less.” The laptop computer is valued at less than \$2,500.

The Carroll County Board of Commissioners maintains a policy whereby the board disposes of “unneded” personal property of the county valued at \$2,500 or less by internet auction, as set forth in R.C. 307.12(E), and has adopted a resolution to this effect. R.C. 307.12(E) provides, in pertinent part, that “[n]otwithstanding anything to the contrary in division (A), (B), or (G) of this section and regardless of the property’s value, the board of county commissioners may sell personal property ... that is not needed for public use, is obsolete, or is

unfit for the use for which it was acquired, by internet auction.” You ask whether the Carroll County Board of Commissioners is required to sell the laptop computer to the former judge under R.C. 307.12(B) or whether the board may sell the laptop computer by internet auction pursuant to R.C. 307.12(E).

R.C. 307.12(B) states that a board of county commissioners “may” dispose of personal property of the county that is valued at \$2,500 or less and that the board finds “is not needed for public use, is obsolete, or is unfit for the use for which it was acquired,” in one of two ways. First, pursuant to R.C. 307.12(B)(1), the board of county commissioners may “[s]ell the property by private sale, without advertisement or public notification.” Second, pursuant to the guidelines set forth in R.C. 307.12(B)(2), the board of county commissioners may “[d]onate the property to an eligible nonprofit organization that is located in this state.” The use of the word “may” in R.C. 307.12(B) indicates that it is not mandatory that a board of county commissioners dispose of personal property of the county pursuant to R.C. 307.12(B)(1) or (2). *See generally Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one) (“[i]n statutory construction, the word ‘may’ shall be construed as permissive and the word ‘shall’ shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage”).

R.C. 307.12(E) states that “[n]otwithstanding anything to the contrary in ... [R.C. 307.12(B)] ...and regardless of the property’s value,” a “board of county commissioners may sell personal property” of the county by internet auction “that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired.” By its plain language, R.C. 307.12(E) confers upon a board of county commissioners the discretion to sell personal property of the county by internet auction instead of by private sale pursuant to R.C. 307.12(B)(1). In this instance, the Carroll County Board of Commissioners has exercised the discretion conferred upon it by R.C. 307.12(E) to adopt a resolution expressing its intent to sell personal property of the county valued at \$2,500 or less, by means of internet auction. It is well within the authority of a board of county commissioners to sell unneeded, obsolete, or unfit personal property of the county in this manner. Accordingly, in response to your question, we conclude that the Carroll County Board of Commissioners is not required to sell the laptop computer under R.C. 307.12(B), and may sell the laptop computer by internet auction pursuant to R.C. 307.12(E).

In sum, it is our opinion, and you are hereby advised that a board of county commissioners has the discretion to dispose of personal property of the county that the board has determined is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, and that is valued at \$2,500 or less, in several ways, including by selling the property by internet auction pursuant to R.C. 307.12(E) or by selling the property by private sale, as set

The Honorable Steven D. Barnett

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forth in R.C. 307.12(B)(1).

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a large initial "M" and a long, sweeping tail.

MICHAEL DEWINE
Ohio Attorney General