



The Commonwealth of Massachusetts
Office of the Inspector General

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September 1, 2004

Town of Bernardston
Board of Selectmen
P.O. Box 504
Bernardston, MA 01337

Dear Selectmen Snow, Brulotte, and Duncan:

I am writing in response to the documents submitted to this Office on June 9, 2004 regarding the disposition of surplus supplies by the Town of Bernardston (Town). Specifically, the Town's auction, held on November 22, 2003 violated M.G.L. ch.30B, §15.

This Office requested documents regarding the Town's above referenced auction for surplus supplies. After a careful review of all the documents, this Office has determined that the Town did not conform to the advertisement requirements.

Pursuant to M.G.L. ch.30B, §15(a), the Town had a duty to determine not only the value of the surplus supplies, but also, whether based on that valuation, it needed to comply with the procedural requirements of M.G.L. ch.30B, §15(b) or (f). Due to the absence of valuation information from the documents supplied by the Board of Selectmen (Board), it is impossible for this Office to determine which section of M.G.L. ch.30B, §15 was violated.

According to the Board minutes dated November 12, 2003, former Board Chairman John Patch announced that on November 22, 2003 the Town would conduct an auction. The minutes state that the Town would be selling five surplus vehicles and other items. This appears to have been the only public notice of the auction.

The Town's ch.30B auction process to dispose of surplus supplies, was not conducted in accordance with the law; M.G.L. ch.30B, §§15(c) and 5(c)(5) states that in an auction to sell surplus supplies, the public notice provided by the governmental body shall:

1. indicate the supply offered for sale,
2. indicate the date and time of the auction,
3. remain posted for at least two (2) weeks in a conspicuous place in or near the office of the governmental body until the time of the auction, and
4. be published at least once, not less than two weeks prior to the time of the auction, in a newspaper of general circulation within the area served by the governmental body.¹

Furthermore, for a supply with an estimated net value of less than \$5000, MGL c.30B requires that a procurement officer dispose of such supplies using written procedures approved by the governmental body. The Town of Bernardston has not adopted such procedures. For the future, this Office recommends the Town draft and approve a set of written procedures for disposition of supplies valued at under \$5000 as soon as practicable. This Office recommends that the procedures include sections devoted to defining:

- (1) what is a surplus supply and a process to declare an item surplus,
- (2) a valuation process for each item determined to be surplus,
- (3) a public notice mechanism providing sufficient time to alert the public and interested parties, and
- (4) the eligibility of Town personnel and officials to participate in the process.

This Office has included a set of written procedures from the City of Gardner (Gardner). Gardner's procedures define when an item is considered surplus - that is, when an item no longer useful to the governmental body, but has resale or salvage value. Gardner states in its procedures that its goal in selling surplus supplies is to optimize its return revenues. Gardner has also established other prudent requirements such as written advertising procedures and quotation requirements. Specifically, Gardner requires that a sale of a surplus supply valued under \$5000 be advertised one time in a newspaper of general circulation. Lastly, Gardner's procedures state that it must seek three quotes from dealers or prospective purchasers and dispose of surplus supplies to the highest responsive bidder in accordance with terms and conditions of sale. Enclosed is a full description of all the written procedures Gardner uses.

Finally, this Office learned that certain Town officials benefited from the surplus auction held on November 22, 2003. This may raise issues under the conflict of interest law. This Office is forwarding this matter to the State Ethics Commission for review.

¹ Notice of sale by bid or auction shall conform with the procedures set forth in paragraph (c) of section five. M.G.L. ch.30B, §15(c).

The Office thanks the Town for its continued cooperation. If you have any questions, please do not hesitate to contact me.

Sincerely,

Barbara J. Hansberry
General Counsel

Cc: Lauren Goldberg
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31 St. James Avenue
Boston, MA 02116

Enclosure