

**WICHITA COUNTY AUDITOR****Cheryll A. Jones**  
**COUNTY AUDITOR****RQ-0559-KP**

August 16, 2024

Honorable Ken Paxton  
Attorney General for the State of Texas  
PO Box 12548  
Austin, TX 78711-2548

RE: Opinion Request – Wichita County  
Whether a Commissioners' Court is can sell surplus property without a designee, sales  
can be posted prior to authorization, required notice for sales and required disclosures.

Dear Sir,

This letter serves a formal request for your opinion regarding the requirement of a County Commissioners' Court to appoint a designee for the sale of surplus property, items listed for sale prior to Commissioners' Court authorization, notice requirements for items valued over \$500 sold on an auction site and required conflict of interest disclosures.

**BACKGROUND**

On June 18, 2024, the Wichita County Commissioners' Court in a 5-0 vote, authorized for a piece of county property, a 2005 Chevy Silverado 2500HD Ext. Cab pickup truck which belonged to precinct 4 and driven by the Commissioner, to be deemed surplus and sold at auction. Wichita County has never appointed a commissioner to be a designee to sell or auction off surplus property for the County. Commissioner for precinct 4, coordinated the sale with the auction site. Wichita County has also never adopted any rules governing online auctions.

This item was listed on an auction site on June 17, 2024 and the first bid took place prior to being deemed as surplus and authorized to be sold. The value of the item is greater than \$500 and there was never a posting in the paper regarding the sale of the property. The commissioner that coordinated the sale, prior to Commissioners' Court authorization, also bid on the item and ultimately was the highest bidder and did not recuse himself from the vote to deem the vehicle as surplus property.

During the auction period, the vehicle was continuing to be driven by the commissioner for precinct 4. The auction closed on July 16, 2024. The vehicle was still being driven by the commissioner prior to the sale of the property on July 19, 2024 with the county tags and emblem still intact even though he receives an auto allowance from the County. The commissioner did not submit payment for the vehicle until July 25, 2024.

The surplus vehicle belonged to Precinct 4, was being driven and the commissioner for precinct 4 and was purchased by the commissioner for precinct 4, creating a substantial interest in the vehicle that was not disclosed by Local Government Code 171.004. Who knows more about the vehicle than the commissioner driving the vehicle on a daily basis and did not abstain from the vote.

## **QUESTIONS**

1. Whether a commissioner can sell surplus property without being appointed by the Commissioners' Court as a designee?
2. If there is no designee, who is authorized to sell surplus property?
3. Whether a commissioner may list items for auction prior to the Commissioners' Court deeming property as surplus?
4. Whether items worth more than \$500 listed on an auction site are required to be posted in the newspaper of general circulation in the county prior to the auction?
5. Whether the commissioner selling items for surplus may personally bid on auction items?
6. If a commissioner can purchase/bid on surplus property, are they required to file a conflict of interest disclosure with the County Clerk?
7. Whether a commissioner that purchases surplus property can take possession of property prior to submitting payment, receiving title and removal of County emblems and tags has been completed?
8. During the period between July 16 and July 25, who does the property belong to, the County or the winning bidder?
9. Since the commissioner is in control of the asset after winning the bid, is he allowed to continue to drive the asset as the commissioner or is he driving in his personal capacity with County logos and County plates?
10. If repairs are done after the bid is closed but before title transfer is done, are those to be paid by the County or paid by the commissioner, personally?

## **STATUTES RELATED TO QUESTIONS:**

1. **Local Government Code Section 263.001. SALE OR LEASE OF REAL PROPERTY.**  
(a) The commissioners court of a county, by an order entered in its minutes, may appoint a commissioner to sell or lease real property owned by the county. The sale or lease must be made at a public auction held in accordance with this section unless this chapter provides otherwise. (b) The appointed commissioner must publish notice of the auction before the 20<sup>th</sup> day before the date the auction is held. The notice must be published in English in a newspaper in the county in which the real property is located

and in the county that owns the real property if not the same county. The notice must be published once a week for three consecutive weeks before the date the auction is held.

2. **Local Government Code Section 263.0152. DISPOSITION.** (a) The commissioners court of a county may:
  - (1) periodically sell the county's surplus or salvage property by competitive bid or auction, except that competitive bidding or an auction is not necessary if the purchaser is another county or a political subdivision within the county that is selling the surplus or salvage property;
3. **Local Government Code Section 263.153. NOTICE.** (a) The commissioners court shall publish notice of a sale of surplus or salvage property in a least one newspaper of general circulation in the county. (b) The notice must be published on or after the 30<sup>th</sup> day but before the 10<sup>th</sup> day before the date of the sale. (c) A county that contracts with an auctioneer licensed under Chapter 1802, Occupation Code, who uses an Internet auction site offering online bidding through the Internet to sell surplus or salvage property under this subchapter having an estimated value of not more than \$500 shall satisfy the notice requirement under this section by posting the property on the site for at least 10 days unless the property is sold before the 10<sup>th</sup> day.
4. **Local Government Code Section 263.157. TITLE.** If a purchaser of surplus or salvage property at a sale held in accordance with this subchapter complies in good faith with the conditions of the sale and the applicable rules of the commissioners court, the purchaser obtains good title to the property.
4. **Local Government Code Section 171.004. AFFIDAVIT AND ABSTENTION FROM VOTING REQUIRED.** (a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:
  - (1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
  - (2) in the case of a substantial interest in real property, it ins reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.(b) The affidavit must be filed with the official record keeper of the governmental entity. (c) If a local public official is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

Thank you for the time and assistance in this matter. I would be glad to provide any additional information that you may require to address this important matter to the Wichita County citizens.

Sincerely,



Cheryll A. Jones  
Wichita County Auditor