

702 KAR 4:090. Property disposal.

RELATES TO: KRS 156.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the State Board for Elementary and Secondary Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education. This administrative regulation is necessary to provide for real property disposal, leases, and easements in accordance with an approved educational program. KRS 156.070 provides that the Kentucky Board of Education shall have the management and control of the common schools.

Section 1. Disposition of Real Property.

(1) School property proposed for disposal shall be surplus to the educational program need of the district as determined by the effective district facility plan. Surplus property includes real property designated as a "Transitional Center" or not listed on the effective district facility plan. Request for approval to dispose of real property shall be submitted in writing to the Kentucky Department of Education. The request shall identify the property by its address and last reported name and include a plan for resolving mortgage liens or other encumbrances. Upon receipt of written contingent approval from the department, the district may start the disposal process using one (1) of the following methods that secures the fair market value for the property and ensures that the district retains no residual interest as owner or lender:

- (a) By public auction;
- (b) By accepting sealed bids; or
- (c) By setting a minimum acceptable price, which is at least the fair market value of the property.

(2) For property disposal by public auction or sealed bids, the proposed sale shall be advertised in accordance with KRS 424.130(1)(b), and the legal notice shall include the following statement: "The board of education reserves the right to reject any and all bids and final approval by the Kentucky Department of Education is required." Following the conclusion of the auction or receipt of bids, the local board of education shall submit the following to the department for review and final approval:

- (a) The appraisal;
- (b) An affidavit attesting to the publication of legal notice;
- (c) Results of the public auction or sealed bids;
- (d) The proposed sale agreement reviewed and approved by the board's attorney; and
- (e) The local board order approving the sale contingent on approval by the department.

(3) For property disposal by setting a minimum acceptable price, the minimum acceptable price shall be the fair market value, which shall be determined by an appraisal from a certified general real property appraiser commissioned by the school district and obtained in connection with the disposal of the property. Following receipt of an acceptable offer to purchase, the local board of education shall submit the following documentation to the department for review and final approval:

- (a) The appraisal;
- (b) The proposed sale agreement reviewed and approved by the board's attorney; and
- (c) The local board order approving the sale contingent on approval by the department.

(4) Upon receipt of written final approval from the department, the local school district may execute the sale agreement. The district shall provide the department with a copy of the executed agreement within thirty (30) days from the date of execution.

Section 2. Disposition by Easement.

(1) Prior to the execution of a proposed easement upon school property, the agreement shall be reviewed by the local district's board attorney. The reviewed agreement and an appraisal from a certified general real property appraiser commissioned by the school district and obtained in connection with the easement shall be submitted to the local board of education for its consideration. Upon approval, the local school district's written board order shall be forwarded to the department for review and approval. The local board of education shall include assurance that disposal will not affect the integrity or usefulness of property crucial to the educational needs of the district.

(2) Proposed easement agreements, including utility and access easement agreements, shall include:

- (a) The parties to the agreement;
- (b) A legal description of the easement;
- (c) Documentation regarding receipt of fair market value as determined by an appraisal from a certified general real property appraiser commissioned by the school district and obtained in connection with the disposal of the property or equivalent valuable consideration;
- (d) A reversionary clause that reverts the property back to the exclusive unrestricted control of the local board of education when the need for the easement no longer exists; and
- (e) A plat by a licensed surveyor indicating the easement boundaries, acreage, and its relationship to the larger property.

(3) Upon receipt of written final approval from the department, the local school district may execute the agreement. The district shall provide the department with a copy of the executed agreement within thirty (30) days from the date of execution.

(4) Temporary and construction easements shall not require department approval but shall include provisions related to the amount of time in effect, and a requirement that any disturbed areas shall be returned to original condition.

Section 3. Disposition by Lease (District as Lessor/Landlord).

(1) Prior to the execution of a proposed lease agreement for school property, the proposed lease agreement shall be reviewed by the local district's board attorney and the board's insurance carrier. The proposed lease agreement shall be submitted to the local board of education for its consideration and a written board order forwarded to the department for review and approval. The local board of education shall provide assurance that the disposal will not affect the integrity or the usefulness of the property subject to the educational need of the district.

(2) The proposed lease agreement shall include the following provisions:

- (a) The parties to the agreement;
- (b) The proposed use and occupation;
- (c) A description of the leased space including square footage and description of common areas if applicable;
- (d) Use of site and parking;
- (e) Term of lease including beginning and ending dates. The term shall include annual renewal and cancellation provisions;
- (f) Determination of fair market value and how payments are to be made;
- (g) Insurance requirements of the parties;
- (h) Identification of the parties' responsibilities for payment of utilities, performance of maintenance, and related supplies;
- (i) Notice provisions;
- (j) Provisions for security;
- (k) Requirements for compliance with established board policies if tenants will be in contact with students; and

- (1) Any other applicable terms or conditions.
- (3) Upon receipt of written final approval from the department, the local school district may execute the lease agreement. The district shall provide the department with a copy of the executed agreement within thirty (30) days from the date of execution.

Section 4. Conflict of Interest. (1) If a local school board uses a third party to dispose of or lease property, the third party shall not have any financial interest in the transaction or adjacent property beyond a standard commission approved by the school board. If the third party has any financial interest in the transaction or adjacent property beyond a standard commission, the third party shall publicly disclose his or her conflict of interest to the local school board and the conflict shall be spread on the local school board's meeting minutes. The local school board shall provide minutes of any such meeting to the department when requesting approval under any section of this administrative regulation.

(SBE 22.070; 1 Ky.R. 1049; eff. 6-11-1975; 8 Ky.R. 329; eff. 12-2-1981; 17 Ky.R. 2029; eff. 2-7-1991; Crt eff. 11-16-2018; 47 Ky.R. 545, 1409, 1557; eff. 5-4-2021.)