

Disposition of School Property

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In Accordance with Section 13-6-2, NMSA 1978

The District must obtain Approval from either the:

- State Auditor's Office (SAO) or
- Public Education Department (PED),
- State Board of Finance (SBF)

on any and all Dispositions of Property (Lease, Sale, Donation, Exchange, or other Disposition) Depending on the Value of the Sale or the terms of the Lease.

SAO

If the real or personal property is valued at less than \$5,000 and obsolete or unusable, or the district is wanting to demolish a building under \$5,000 in value, approval is only needed from the SAO.

Disposition may be made by:

- Negotiated sale to any Indian nation, tribe or pueblo in NM
- Negotiated sale or donation to other state agencies, local public bodies, school districts, state educational institutions or municipalities
- Sale at Public Auction
- Destruction

Disposal of hazardous materials must be in compliance with Environmental Regulations and Sale through solicitation of written bids through the state purchasing division.

Contact the SAO for specific procedures at (505) 476-3800.

Section 13-6-2 NMSA 1978

PED

- Approval is needed from PED for all personal property or demolition with a value of more than \$5,000 or
- Any sale, trade or lease of real property for a period of less than five years and when consideration is between \$5,000 and \$25,000.
- PED Checklist, Forms & Flow Chart on CD

<http://www.ped.state.nm.us/CapitalOutlay/disposition.html>

Section 13-6-2.1 NMSA 1978

Dispositions Requiring

State Board of Finance Approval (SBOF):

- Any sale, trade or lease of school property for a period of more than 5 years.
- Any sale, trade or lease of school property for a consideration of more than \$25,000.
- See SBOF Regulation, NMAC 1.5.23.9 and 1.5.23.10 (Regulation on CD)

Requirements for Sale or Trade

1. Form of quitclaim deed (not warranty deed or special warranty deed).
2. Copy of a current (12 Months) unrestricted appraisal and a report of review by the Property Tax Division of the Tax and Revenue Department. (Not required if buyer is a governmental entity.)
3. Description of the reason for the sale or trade.

Requirements for Sale or Trade

4. Description of the selection process used to determine the purchaser (competitive sealed bid, public auction, negotiation).
5. Purchase price and, if applicable, the cost per square foot, cost per acre, or cost per acre foot of water rights, etc. (for both properties if trade).

Requirements for Sale or Trade

6. Purchase and Sale Agreement.

7. Resolution or minutes of the governing body authorizing the sale or trade and containing a provision making the sale or trade subject to approval of the Board of Finance.

8. Approval by the State Engineer of the transfer of water rights.

Requirements for Sale or Trade

9. If the property includes a building, the school district must show some evidence that:
 - a) the building does not meet public school outlay council occupancy standards; or
 - b) that all charter schools located in the district have declined use of the building.

Requirements for Leases

Board approval is required if the school district wishes to lease (or sublease) properties it owns (or leases) if:

- a) the term of the lease or sublease is for a period of 5 years or more (including options);
or
- b) the consideration over the lease term (including options) is more than \$25,000.

SBOF Will Require:

1. Current (12 months) unrestricted appraisal or other evidence of fair market value (rarely accepted), and a Report of Review by the Property Tax Division of the Tax and Revenue Department. (Not required if tenant is a governmental entity.)
2. Copy of the lease.
3. Resolution from the governing body specifically approving the lease and containing a provision making the lease subject to Board of Finance approval.

SBOF Will Require:

4. Reason for leasing.
5. Description of the selection process used to determine tenant (competitive sealed bid, public auction or negotiation).
6. If the consideration being given is something other than money, evidence that the selection of the tenant complies with the procurement code and the lease complies with applicable laws.

SBOF Will Require:

7. If the property includes a building, the school district must show some evidence that:
 - a) the building does not meet public school outlay council occupancy standards; or
 - b) that all charter schools located in the district have declined use of the building.

Submission of Requests to Board of Finance

- Hard copy and electronic copy must be submitted on or before the meeting deadline.
- Failure to submit a complete application in the proper format can result in having to resubmit the request.

Tips for Submitting Requests for Approval

- The sale agreement or lease should contain a provision stating that it is contingent upon Board of Finance approval.
- Include a third-party opinion letter or other credible evidence stating that the property does not meet public school outlay council occupancy standards.

Tips for Submitting Requests for Approval

- Consult with legal counsel early in the process to avoid unnecessary delays.
- Make sure the application for approval complies with all requirements or the application will be rejected.

Common Requirements and Issues

- Non-Appropriation Clause for Bateman Act and Article IX, Section 11 Contingent Liabilities/District Indebtedness
- Future Lease Amendments must have prior SBOF Approval
- Appraisals must be “unrestricted” and for Leases must contain market rent analysis
- Be prepared for Background Questions
- No indemnification of opposing parties
- No contingent liabilities or obligations

BEFORE SUBMISSION TO SBOF CHECK FOR . . .

- Deeds establishing good title in the local school board
 - No reversionary clause
 - Use restrictions?
- Sound Purchase Agreement/Lease (Protect the interests of the district)
- Title commitment with no standard exceptions, conditions or qualifications
- Closing costs and title policy: who pays?
- Selecting Closing Agent
- Current Survey (within 12 months) of the Property and Improvements
- Current Appraisal
- Inspection Reports
 - Environmental, engineering, mechanical, archeological
- Handling requests for repairs, corrective action



Acquisition of Real Property

- Similar Issues, but
 - SBOF Approval is not required!
- It is still essential to perform careful “due diligence” to avoid defects in title or in the condition of the property being acquired.
- Contract carefully!

Contact Information

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