

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 44

DEPARTMENT OF ADMINISTRATION - Statutory authority to acquire and dispose of state property;  
PROPERTY, PERSONAL - State property;  
PURCHASING - Exclusive authority of Department of Administration for state property;  
STATE AGENCIES - Lack of authority to trade in state property without Department of Administration approval;

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STATUTES - Construction;  
MONTANA CODE ANNOTATED - Sections 1-2-101, 2-17-202, 18-4-101, 18-6-101, 18-6-102.

HELD: State agencies do not have authority to trade in state property without approval by the Department of Administration.

15 December 1981

Morgan Langan, Chief  
Surplus Property Bureau  
Department of Administration  
Mitchell Building  
Helena, Montana 59620

Dear Mr. Langan:

You requested an opinion concerning the authority of state agencies to trade in state property under section 18-6-101, MCA.

Section 18-6-101, MCA, reads:

Power to sell state property--proceeds credited to general fund. (1) The department [of administration] has exclusive power, subject to the approval of the governor, to sell or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service equipment, or other personal property of every kind owned by the state but not needed or used by any state institution or by any department of state government.

(2) Unless otherwise provided by law, the department shall credit the general fund with all money received.

(3) Whenever the personal property was accounted for in a revolving fund or designated subfund account, the proceeds of the sale shall be credited to the appropriate revolving fund or designated subfund account.

Section 18-6-102, MCA, permits interagency transfer of property with the Governor's approval.

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Under section 18-4-101, MCA, the Department of Administration must "make or supervise the making of all purchases, leases, or rentals of goods and services for ...each state agency, institution, and official." [Emphasis added.] There is no statute that specifically authorizes a state agency to engage in the kind of transaction commonly referred to as a "trade-in," that is to say, trading in old articles at a commercial establishment for new ones.

Section 2-17-202, MCA, requires state agencies to keep inventories of all personal property. This section in no way authorizes any individual or agency to sell or otherwise dispose of or acquire property. State ex rel. Olson v. Sundling, 128 Mont. 596, 281 P.2d 499 (1955).

The intent of the Legislature is to be determined from the text of the statutes if the language therein is clear, plain and unambiguous. Montana Department of Social and Rehabilitation Services v. Angel, 176 Mont. 293, 577 P.2d 1223 (1978). The rules of statutory construction prohibit the insertion of matter that the Legislature has omitted. § 1-2-101, MCA. On this basis it is clear that the Legislature intended the methods set forth in the statutes to be the exclusive ones for acquisition and disposal of state property. See Holtz v. Babcock, 143 Mont. 341, 389 P.2d 869, 883 (1963). The language in the statutes does not, however, preclude an agency from trading in property with the approval of the Department of Administration. The Legislature conferred broad powers on the Department, to "sell or otherwise dispose of or to authorize the sale or other disposition," and to "make or supervise the making of all purchases." §§ 18-6-101, 18-4-101, MCA.

THEREFORE, IT IS MY OPINION:

State agencies do not have authority to trade in state property without approval by the Department of Administration.

Very truly yours,

MIKE GREELY  
Attorney General