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Formal Advisory Opinion 2005-1 Police Department Employees' Participation in Police Auctions

Opinion Summary

Police Department employees, their family members, and their representatives may not participate in police auctions that dispose of property seized because it would create an actual conflict of interest for employees involved in the seizure, maintenance, disposal, or sale of the property and the appearance of impropriety for other department employees.

Question Presented

May police department employees participate in the department-sponsored public auctions to dispose of seized property?

Facts

Historically, the City of Atlanta has placed no restrictions on its employees' participation in public auctions that the city holds to dispose of surplus equipment or seized property. This lack of regulation means that any city employee has been able to participate in any public city auction on the same basis as any other member of the public. In particular, police department employees have been able to participate in the police department's public auction, whether they are involved in seizing the property, deciding to dispose of the property, or working as an employee at the auction.

In October 2004, the department's field inspections section requested an informal advisory opinion from the Ethics Officer on the department's policy concerning employee participation in the police auctions. The Ethics Officer concluded that it "would create a potential conflict of interest and the appearance of impropriety for a police officer or department employee involved in the acquisition or disposition of property in police custody to bid on and purchase that property" at the police auction. In December 2004, Chief Richard Pennington requested that the Board of Ethics address the same issue in a formal opinion.

State law regulates the disposal of seized property, which includes personal property that is the subject of a crime or has been abandoned. OCGA § 17-5-54 gives law enforcement agencies the authority to dispose of any personal property in their custody that is unclaimed 90 days after its seizure or after the final judgment in a case and is no

longer needed in a criminal investigation or as evidence. The chief of police must apply to the superior court for a court order to dispose of the property. The chief may seek to retain the property for official use, sell the property, or discard the property as salvage or nonserviceable equipment. To sell the property, the department must advertise for four weeks in the county legal organ, describing each item, advising owners how to contact the agency to reclaim it, and giving notice of the date, time, and place of the public sale.

City law also has a code provision regulating the disposal of stolen property. It provides for the sale of unclaimed property, establishes a procedure for a person to claim title to the property, sets out the records the department must keep, and provides that any proceeds from the sales shall be turned over to the city's chief financial officer. See § 98-49.

In the City of Atlanta, the Property Control Unit in the Police Department logs, stores, tracks, maintains, and disposes of the seized property. Every few months, the Property Control Unit reviews its inventory to identify property that is no longer needed as evidence or that remains unclaimed; the unit's head decides whether to destroy, retain, or sell the property at the police auction. The department hires a private company to serve as auctioneers, and department employees work at the auction. Unlike many public auctions, there is no pre-sale inspection of the property; the property is sold in lots and first seen by bidders when placed up for bid. The auctions do not involve motor vehicles, weapons, or drugs.

Discussion

The purpose of the Code of Ethics is to prohibit city officials and employees from engaging in transactions or having financial or personal interests that conflict with their official duties or tend to impair their judgment in performing their duties. See section 2-802. The code seeks to prevent both actual and potential conflicts of interest.

Employees owe a fiduciary obligation to the city that requires them to place the city's best interests above their own private interests. Section 2-812 prohibits employees from participating directly or indirectly in any recommendation or decision in which they, their immediate family, or a related business have a financial or personal interest. Based on this provision, the employees in the Property Control Unit are precluded from participating in the public police auction because they are involved, directly or indirectly, in identifying property ready for disposal and in deciding how to dispose of the seized property. It raises a potential, if not actual, conflict of interest for the same individual to make the decision that property in the department's custody should be sold and then purchase that property at the police auction. This personal interest in the property would tend to impair the decision maker's judgment and conflict with his or her official duties in determining whether the department should retain the property for its own use, destroy or discard it, or sell the property to the public.

Section 2-819 prohibits employees from using confidential information acquired in their official capacity to advance their own financial or personal interests. Under this provision, the employees in the property control unit; the employees who work at the auction; and the officers who are involved in seizing, impounding, or otherwise acquiring property should not be able to subsequently purchase the property at a police auction. In each instance, the employees have access to inside information about the property to be sold that is not available to other persons who attend the public auction, especially

since there is no preview of the items prior to the auction. It would create the appearance of impropriety and a potential conflict of interest for the same individual to process, handle, or seize property in his official capacity and then subsequently purchase that same piece of property for his own personal use. To protect the integrity of the process, there needs to be a total separation between the department employees who make the decisions to acquire and dispose of the property and the persons who may benefit from those decisions by purchasing property at the police auction.

In a similar situation, the Ethics Officer in two informal advisory opinions concluded that a city employee may not purchase surplus police motorcycles when he recommends that they be declared surplus city equipment and a city automotive technician may not purchase a motor vehicle that he has serviced as a city employee. As a result, the Motor Transport Services division in the Department of Public Works adopted a policy that precludes its employees from buying equipment or vehicles that they “worked on or had input in the decision” to surplus.

Although the Ethics Officer in her informal advisory opinion initially limited the ban to employees involved in the acquisition or disposition of the seized property, the Board of Ethics believes that the better policy is to follow the rule under state law and adopt a department-wide ban on employee participation. OCGA § 45-10-23 makes it unlawful for a full-time state employee to transact any business, including the purchase of surplus property, with the state agency that employs the individual. In addition, the Board is concerned about the appearance of impropriety created when a police department employee bids on property seized by the department. Allowing employees to purchase property seized by other employees within the department would create the justifiable impression in the public of a conflict between the employee’s official duties in seizing and disposing of the property and the employee’s personal and financial interests. See § 2-802. Finally, it would be difficult to enforce a rule against employee participation on a case-by-case basis due to the nature of the auction, the type and volume of property sold, and the number of department employees.

In conclusion, the Board does not believe that any police department employee, family member of the employee, or representative of the employee should participate in the auctions that the department sponsors to dispose of property that department employees have seized, maintained, or selected for sale at the auction.

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City of Atlanta Board of Ethics

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