



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

December 13, 1988

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002

LO-88-134

Dear Mr. Driscoll:

Because of the tremendous increase in the volume of requests for opinions and open records decisions, we are responding to your request with the enclosed Letter Opinion or Open Records Ruling. A Letter Opinion or Open Records Ruling has the same force and effect as a formal Attorney General Opinion or Open Records Decision, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent Letter Opinion or Open Records Ruling, a formal Attorney General Opinion or Open Records Decision, or a decision of a court of record.

Very truly yours,

A handwritten signature in cursive script that reads "Jim Mattox".

J I M M A T T O X
Attorney General of Texas

JAM/bc
Enclosure



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Houston, Texas 77002

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Dear Mr. Driscoll:

You ask whether the Harris County Purchasing Agent is authorized to destroy certain confiscated and abandoned items that are worthless or otherwise unsalable. In the event he is not authorized to destroy such items, you ask what disposition he should make of items he is unable to sell.

You advise that the county purchasing agent acquires possession of unclaimed articles as the result of the provisions of article 18.17 of the Code of Criminal Procedure. Article 18.17 provides:

(a) All unclaimed or abandoned personal property of every kind, except whiskey, wine and beer, seized by any peace officer in the State of Texas which is not held as evidence to be used in any pending case and has not been ordered destroyed or returned to the person entitled to possession of the same by a magistrate, which shall remain unclaimed for a period of 30 days shall be delivered for sale to the purchasing agent of the municipality or county in which the property was seized. If a peace officer of a municipality seizes the property, the peace officer shall deliver the property to the purchasing agent of the municipality. If any other peace officer seizes the property, the peace officer shall deliver the property to the purchasing agent of the county. If the county has no purchasing agent, then such property shall be sold by the sheriff of the county. (Emphasis added.)

Further provisions of article 18.17 relate to notice being given to the owner of the property, the publication of notice in the newspaper of the property and name of its owner if the owner's address is unknown, and a statement that if the property is not claimed within six months the property will be sold. In the event the property is not claimed by the owner, sale of same shall be preceded by notice published once a week for three weeks prior to the sale. Section (e) gives the "real owner" the right to file a claim for proceeds from the sale. If the claim is denied or not acted on within 90 days, the claimant may sue the county or municipality.

You state that your question has been prompted by the following scenario.

Art. 18.17(a) does not address the issue of worthless unsalable items. Art. 18.17(a) makes mention of property that '. . . has not been ordered destroyed or returned to the person entitled to possession of the same by a magistrate . . .'; however, the statute does not expand on the condition upon which a magistrate may order destruction or the return of such property. Consequently, several worthless items are delivered to the county purchasing agent who is required to store and auction these useless, waste items such as radio cases with no wiring, used, discarded clothes, etc. Arguably, the cost of storing and auctioning such items, quite apart from the futility of such action, far outweighs anticipated proceeds.

Courts are given express authority to order the destruction of certain items. Gambling paraphernalia and obscene devices may be ordered destroyed by a magistrate under article 18.18 of the Code of Criminal Procedure. Article 18.181 of the Code of Criminal Procedure relates to the destruction of explosives, weapons and chemical dispensing devices. Article 18.182 of the Code of Criminal Procedure authorizes a court under certain circumstances to order the destruction of a vicious animal. However, we are unable to find any express statutory authority for a magistrate to order the destruction of worthless items seized under article 18.17.

Article 2372z, V.T.C.S., as amended by the 70th Legislature (now contained in section 263.151, et seq., of the Local Government Code), relates to the sale or disposition

of surplus or salvage property owned by a county. In defining "surplus property" and "salvage property" the 1987 amendment by the 70th Legislature excluded "items routinely discarded as waste." By excluding "items routinely discarded as waste" from property that must be sold under the competitive bid procedure the Legislature evidenced an intent that a county should not be burdened with the cost entailed in the storage and sale of absolutely worthless items. Prior to the 1987 amendment, article 2372z had only excluded "waste paper" from the bidding process. The Bill Analysis to H.B. 646 that resulted in the amendment to article 2372z at the 70th Legislature contains the following observations:

This statute was originally enacted in the 67th session to provide an optional method for a county to dispose of personal property. The statute refers to personal property other than wastepaper. Some counties have questioned whether this statute requires that all trash which is not paper be forwarded to the county purchasing agent and auctioned to the highest bidder. This would result in an extremely high expense to the county and prove to be very difficult to administer.

. . . .

This bill would clarify the statute by deleting the reference to wastepaper and excluding items routinely discarded as waste from the definition of salvage or surplus property. (Emphasis added.)

While there is no specific grant of authority for magistrates to order the destruction of "items routinely discarded as waste" under article 18.17, the Legislature in granting a magistrate authority to order the destruction of property must be presumed to have intended a just and reasonable result. Section 311.021 of the Code Construction Act. In construing a statute, section 311.023 of the Code Construction Act provides that "whether or not the statute is considered ambiguous on its face, a court may consider . . . laws on the same or similar subjects." While we can find no authority for a purchasing agent to destroy items (acquired under article 18.17) he believes to be waste, we conclude that a magistrate may order items destroyed that are determined to be of such little value that they are "routinely discarded as waste." However, if there be any doubt as to whether an item falls within this category, a

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safer practice would be to follow the provisions of article 18.17 relative to notice and sale of the property.

In your second question you ask what disposition should be made of items the purchasing agent is unable to sell after he has followed the sale procedure of article 18.17. A report of items not sold should be made to the magistrate in order that reconsideration of whether they fall within the category of items "routinely discarded as waste" may be made. The fact that a purchaser was not found after the items were offered for sale in accordance with article 18.17 would appear to be some evidence tending to support such a finding by the magistrate.

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section



Rick Gilpin, Chairman
Opinion Committee

Prepared by: Tom G. Davis

APPROVED: OPINION COMMITTEE

SW/RG/TGD/bc

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