

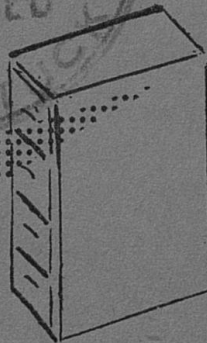
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Commonwealth of Kentucky EDUCATIONAL BULLETIN

MANUAL

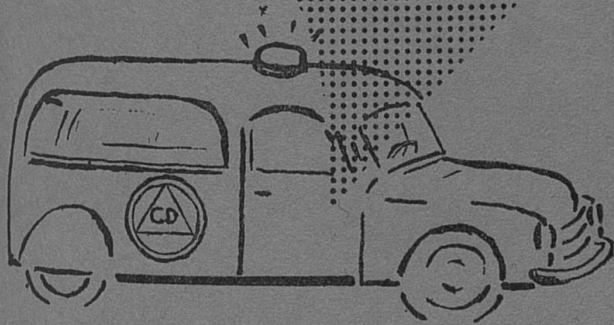


Health



Education

FEDERAL SURPLUS
PROPERTY
UTILIZATION



Civil Defense

Published by

DEPARTMENT OF EDUCATION

ROBERT R. MARTIN

Superintendent of Public Instruction

ISSUED MONTHLY

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FOREWORD

This bulletin presents laws, regulations and procedures which constitute the basis whereby the Division of Property Utilization may attain fair and equitable distribution of surplus property.

This Bulletin has been prepared for the purpose of making available information for putting into operation these procedures by educational and health institutions and civil defense organizations in the Commonwealth of Kentucky.

An attempt has been made to summarize the federal and state laws and regulations with which one participating in the program should be familiar. The essential parts of these laws and regulations will be found in Chapter I.

The other chapters give, more or less in detail, a description of the types of institutions and organizations which may become eligible to receive surplus property. They outline the procedures to be followed in establishing eligibility, list the terms and conditions on which property may be acquired, and give the disposal procedures for any property that can no longer be used for the purpose for which it was acquired.

This Bulletin was prepared by Gordie Young, former Assistant Superintendent of Public Instruction, in cooperation with J. B. Williams, Director of the Division of Property Utilization, T. O. Thompson, Assistant Director, Sara H. Bodkin, Administrative Assistant, and other staff members. Mr. Young has been closely associated with the surplus property program in Kentucky since its beginning and is eminently qualified for this authorship.

I call attention of administrative officials as well as authorized representatives of all donee institutions or organizations to the importance of becoming well acquainted with the facts and procedures outlined. Such knowledge will help to eliminate misunderstandings and save confusion in property utilization.

I recommend this Manual for study and as a reference for all parties who are interested in the proper procedures in the procurement, use and disposal of surplus property in Kentucky.

ROBERT R. MARTIN

Superintendent of Public Instruction

INTRODUCTION

The purpose of this Manual is to explain the why of surplus property and to outline procedures to be followed in acquiring this property, in Kentucky, by educational and health institutions and civil defense organizations.

The information contained in this Manual and the procedures outlined are based upon Federal and State Laws and Federal and State Regulations. The essential parts of these laws and regulations will be found in Chapter I.

An attempt has been made to anticipate some questions and to answer a majority of the inquiries made of this Division by administrators and authorized representatives of educational and health institutions and civil defense organizations.

If answers to your questions or solutions to your problems are not found in this Manual, we want you to feel free to contact us on such matters concerning the Surplus Property Program. As you well realize, all possible questions and details cannot be covered in a Manual of this type. For that reason, we want your inquiries, and also your suggestions for improving our services to you.

Attention is called to the Items C and D of Chapter III. These cover the operation of the Division and visits to the warehouse. We hope that this information will be of assistance to those who would like to visit the Division office and the warehouse.

Your attention is called to the detailed statements of certifications, terms, covenants and agreements which must be followed by all donees as a consideration for the receipt and use of surplus property. These detailed statements will be found in Chapter VI. These must be observed and followed in order to comply with the Federal and State Laws as stated in Chapter I.

The first step in acquiring surplus property is that of establishing eligibility. Only approved or accredited applicants may be considered for approval in establishing eligibility as required by Federal and State Laws.

After approved or accredited status has been established, other facts are required to be filed with the Division which must be considered in determining eligibility.

The next step after establishing approved or accredited status, is that of appointing an authorized representative. All approved or accredited applicant school systems, educational institutions, health institutions, and civil defense organizations must appoint such a representative. This representative must have authority to select property and sign papers binding the applicant-donee to the terms, covenants and conditions required by law and regulations. Forms for this purpose will be furnished by the Division.

Attention is called to Chapter IV for detailed procedures to be followed by all applicants of donee, educational and health institutions and civil defense organizations.

When completed applications have been received with the necessary supporting data and with copies of certain required attached information, a determination of eligibility will be made by the Division, and the applicant will be notified of the determination.

Sample forms will be found in Chapter X for use in appointing an authorized representative showing approved or accredited status and for filing the required information by which eligibility may be determined.

J. B. WILLIAMS, DIRECTOR
Division of Property Utilization

ACKNOWLEDGMENTS

To the following persons we wish to express our appreciation for their help and assistance.

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Dr. H. L. McPheeters....Kentucky Department of Mental Health
Dr. M. J. ClarkeDepartment of Welfare
Gen. J. S. LindseyKentucky Civil Defense
Col. Leon ReedKentucky Civil Defense
Mr. Ted Gilbert.....Kentucky Department of Education
Mr. Walter W. Rosehi.....Kentucky Department of Education

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 Pleas Turner, Supt., Owsley Co. Schools, Booneville, Ky.
 Harold Murphy, Supt., Casey Co. Schools, Liberty, Ky.
 William T. Harris, Supt., Gallatin County Schools, Warsaw, Ky.

We wish to recognize and express our deepest appreciation and gratitude on behalf of recipient institutions to these persons in both State and Federal governments who have so unselfishly rendered invaluable services in assisting the Division in its many functions. These groups are as follows:

1. Members of Congress, especially Committees on inter-governmental operations.
2. Members of the Department of Defense and Federal Independent Agencies.
3. Property disposal officers of Federal installations especially those in Kentucky.
4. General Services Administration.
5. Central and Regional Offices of the Department of Health, Education and Welfare.
6. State Directors and members of the National Association of State Agencies for Surplus Property.
7. Kentucky State Executive Officers and staff.
8. Staff members and employees of the Kentucky Division of Property Utilization.

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CHAPTER I
STATE BOARD OF EDUCATION
REGULATIONS AND LAWS AFFECTING SURPLUS PROPERTY

A. REGULATIONS:

27.020. **Organization and Authority.**

(4) **Division authorized to acquire Federal personal property.**

The Division of Property Utilization is hereby authorized to acquire, warehouse, distribute, transfer, retransfer, recapture, revert and dispose of Federal personal property and to assist in the acquisition, conveyance, reconveyance, recapture, revision and disposal of Federal real and related personal property from time to time under such rules and regulations as may be hereafter adopted for this purpose on the recommendation of the Superintendent of Public Instruction. Such regulations shall be in conformity with the Federal Property and Administrative Service Act of 1949, (63 Stat. 377, as amended).

(5) **Charge transferees fees.**

The Division of Property Utilization is hereby authorized to charge transferees, recipients and entities such fees as may be required in connection with Federal property acquired, warehoused, distributed, transferred, conveyed or reconveyed and may require them to pay such charges or fees, if any, on property recaptured, reverted or disposed of by such Division when action pertains to the property on which title is restricted by the United States of America, rules, regulations or orders of the State Board of Education and in accordance with such rules and regulations as may be approved by this Board for this purpose upon the recommendation of the Superintendent of Public Instruction.

(6) **Enter into contracts, agreements and undertakings.**

The Division of Property Utilization is hereby authorized to make such certifications, take such action, to make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the State Department of Education, require such reports and make such investigations as may be required by law or regulation by the United States of America in connection with acquiring, conveying, recon-

veying, recapturing, reverting and disposing of Federal real and related personal property prior to such property being or after such property has been quitclaimed or otherwise conveyed to transferees and such Division may take similar actions for the purpose of acquiring, warehousing, distributing, transferring, retransferring, recapturing, reverting, and disposing of Federal personal property prior to such property being or after such property is in possession of recipients in accordance with such rules and regulations as may be adopted by the Board of Education on the recommendation of the Superintendent of Public Instruction.

(7) **Authorized to receive, approve or disapprove and process.**

The Division of Property Utilization is hereby authorized to receive, approve or disapprove and process applications for eligible entities or agencies which need and can utilize Federal personal and real and related personal property, make recommendations regarding such need and suitability for the use of such property in accordance with such rules and regulations as may be hereafter approved by this Board on the recommendation of the Superintendent of Public Instruction.

(8) **Make investigations.**

The Division of Property Utilization is hereby authorized, following conveyance of any property, to conduct such surveys, make such investigations and such inspections as may be necessary to determine if transferees are utilizing such property in conformance with the reservations and restrictions contained in any Federal or State document or Federal instrument of conveyance and shall make reports and recommendations to the Federal government for the purpose of reconveying such property for use of eligible applicants or for the purpose of recapturing such property for the United States of America in accordance with such rules and regulations as the Board may adopt on the recommendation of the Superintendent of Public Instruction.

(9) **Enter into contracts.**

The Division of Property Utilization is hereby authorized, on approval of the Superintendent of Public Instruction, to enter into contracts, compact and cooperative agreements for and on behalf of the part of the Department of Education

with several states or the Federal government, singularly or severally, in order to provide, with or without reimbursement, for the utilization by an exchange between them, singularly or severally, of property, facilities, personnel and services of each by the other, and, for the purpose, to enter into contracts and cooperative agreements with eligible public or private state and local authorities, institutions, organizations or activities under such rules and regulations as may be adopted by the Department for this purpose upon the recommendation of the Superintendent of Public Instruction.

(10) **Accounting system.**

The Division of Property Utilization shall use such an acceptable accounting system, approved by the Superintendent of Public Instruction, as will show estimated amount of property and possession at all times, where it is located, distribution and such other items as may be required by his approval.

(11) **Prepare such rules and regulations.**

The Division of Property Utilization shall prepare such rules and regulations as will be recommended by the Superintendent of Public Instruction for approval of this Board governing terms of payment of fees, conditions of deliveries and such other regulations governing procedures and operation of the Division as may be necessary to conform to the policies and regulations adopted by this Board for the use and government of the activities of the Division of Property Utilization.

27.030. **Certification of Eligibles.**

(1) The Division of Property Utilization shall obtain, and retain in the office files, copies of tax-exemption certification (Section 101(6) of the 1939 Internal Revenue Code, or Section 501(c)(3) of the 1954 Internal Revenue Code) from all private and non-profit health and educational institutions.

(2) **Director determination of eligibility.**

The Director of the Division of Property Utilization shall with the guidance of the Department of Health, Education and Welfare make the final determination of eligibility based upon the recommendation of the State Department of Health, the State Department of Education, the State Civil Defense Director or other recognized accrediting board or association on a regional, state or national level.

27.040. **Obligations of Donees Regarding Use and Disposal of Surplus Personal Property for Health & Education.**

(1) **Use of property.**

Such property shall be used only for the education, public health purpose for which acquired, including research for any such purpose, and for no other purpose.

(2) **Use for the purpose for which acquired.**

Such property shall be placed in the use for the purpose for which acquired no later than twelve months after acquisition thereof. In the event such property is not placed in use within twelve months of receipt, the donee, within 30 days after the expiration of the twelve-month period, shall notify the Division of Property Utilization in writing. Title and right to the possession of such property not so placed in use within the above-mentioned period shall, at the option of the Division, revert to the United States of America, and upon demand the donee shall release such property to such person as the Division shall direct.

(3) **Period of restriction.**

There shall be a period of restriction which will expire after such property has been used for the purpose for which acquired. The length of time varies with the types of property and disposal or retransfer may be made only upon recommendation and approval of the Division Director.

(4) **During the period of restriction.**

During the period of restriction the donee shall not sell, trade, lease, lend, bail, encumber, or otherwise dispose of such property or remove it for use outside the State without prior written approval of the Division of Property Utilization. Any sale, trade, lease, loan, bailment, encumbrance, or other disposal of the property, when such action is authorized by the Division, shall be for the benefit and account of the United States of America and the net proceeds thereof shall be received and held in trust for the United States of America and shall be paid promptly to the Department of Health, Education, and Welfare.

(5) **In the event such property is sold.**

In the event such property is sold, traded, leased, loaned, bailed, encumbered, or otherwise disposed of during the period of restriction without prior approval of the Division of Prop-

erty Utilization, the donee, at the option of the Division, shall be liable to the United States of America for the proceeds of the disposal as determined by the Division.

(6) **During the period of restriction.**

If, during the period of restriction, property is no longer suitable, usable or further needed by the donee for the purpose for which acquired, the donee shall promptly notify the Division and shall, as directed, either retransfer the property to the Division or other donee as may be designated, or sell the property at public sale. Such public sale shall be for the benefit and account of the United States of America and the net proceeds thereof shall be received and held in trust for the United States of America and shall be paid promptly to the Department of Health, Education, and Welfare.

(7) **Option of the Director of the Division.**

At the option of the Director of the Division, the donee may abrogate the terms and conditions in sub paragraphs (1) through (6) of the paragraph by payment of an amount as determined by the Division in agreement with the Department of H.E.W. except property having an acquisition cost of \$2500.00 or more, which in such cases the Dept. of H.E.W. designates the terms and conditions.

27.050. Obligations of Donees Regarding Use and Disposal of Surplus Personal Property Donated for Civil Defense Purposes.

(1) **Certification as to eligibility.**

Certification as to eligibility of local civil defense units shall be recommended by the State Division of Civil Defense and approved by the Director of the Division of Property Utilization. Assignment of property to local civil defense units must have prior approval by the State Civil Defense Director.

(2) **Restriction is governed by regulations.**

The period of restriction is governed by regulations contained in Memorandum Agreement between the Department of Health, Education and Welfare and the Federal Civil Defense Administration. The State Division of Civil Defense is authorized under this memorandum to control compliance with disposal regulations on property having an acquisition cost of less than \$2,500. Property having an acquisition cost of \$2,500 or more is under the control of the Federal Civil Defense Administration.

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27.120 Authority for Acquisition of Surplus Property not Covered by Public Law 152, as Amended.

(1) The Division of Property Utilization is hereby authorized to acquire, warehouse, distribute, transfer, retransfer, recapture, revert and dispose of surplus property not covered by Public Law 152, as amended, both personal, real and related personal property, by the same procedures and on the basis of applicable law and regulations as that used for Federal surplus property.

(2) State Board of Education Regulations, Sections 27.010 to and including 27.110 used for procedures in acquiring, use and disposal of Federal surplus property shall govern the procedures for surplus property not covered by Public Law 152, as amended, with the exception that there shall be no restriction as to the time of use or as to the ownership after the property has been transferred, if all conditions for transfer have been met and all charges and fees have been paid. When fees and charges have not been paid as is required for Federal surplus property, the same procedure shall be applicable in the collection of the fees or recapture of the property as if it were Federal surplus property.

(3) When the Division must pay a small part of the original acquisition cost for surplus property, not covered by Public Law 152, as amended, there is hereby granted authority to add this cost to the applicable charge used in making charges or collecting fees for Federal surplus property.

B. SCHOOL LAWS AFFECTING SURPLUS PROPERTY:

KRS 160.290. General Powers and Duties of Boards of Education.

(1) Each board shall have control and management of all school funds and all public school property of its district and may use such funds and property to promote public education in such ways as it deems necessary and proper.

KRS 156.100. Board May Accept Federal Aid or Gift, Donation or Devise.

The State Board of Education is authorized in its discretion to accept the provisions of any act of Congress appropriating and apportioning funds to the state for use in connection with any phase of the state's system of education. It shall prescribe such regulations as it finds necessary to provide for the proper apportionment and disbursement of these funds in accordance with the state and federal laws. Said State

Board of Education may accept and provide for the administration of any gift, donation or devise to the schools under its supervision or control.

KRS 156.020. Divisions of Department.

The Superintendent of Public Instruction shall recommend for approval by the State Board of Education the establishment of such divisions of the State Department of Education as he deems necessary for the successful administration and supervision of the common schools and other educational agencies placed under the management and control of the board.

KRS 156.140. Control and Appointment of Heads and Employees.

The Superintendent of Public Instruction shall have general supervision of all the assistants, agents, and employees in the department.

KRS 158.080. Private Schools; Courses; Term.

Private and parochial schools shall be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the state. The term of the school shall not be for a shorter period in each year than the term of the public school provided in the district in which the child attending the school resides.

KRS 159.030. Exemptions From Compulsory Attendance.

(1) The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age:

- (a)
- (b) Who is enrolled and in regular attendance in a private or parochial regular day school approved by the State Board of Education.

KRS 162.010. Title to School Property.

The title to all property owned by a school district is vested in the Commonwealth for the benefit of the district board of education. In the acquisition of land for school purposes, whether by purchase or condemnation, or otherwise, the title obtained shall be in fee simple, except that title to land received from the federal government or any agency thereof

can be received in other than fee simple with the approval of the Attorney General of the Commonwealth. Any reversionary interest in any land held by boards of education on June 14, 1934, shall not deprive such boards of the ownership of the buildings or other improvements thereon.

KRS 162.060. Plans for School Buildings to be Approved.

The Superintendent of Public Instruction shall be furnished a copy of all plans and specifications for new public school buildings contemplated by boards of education and for all additions to or alterations of old buildings. He shall examine or cause to be examined all such plans and specifications and shall approve or disapprove them in accordance with the rules and regulations of the State Board of Education. No board of education may award a contract for the erection of a new building or contract for an addition to or alteration of an old building until the plan has been approved by the Superintendent of Public Instruction.

KRS 162.070. Contracts for Buildings, Improvements and Materials to be Let on Competitive Bidding; When Advertisement not Required.

The contracts for the erection of new school buildings and additions and repairs to old buildings, except repairs not exceeding one hundred fifty dollars, shall be made by the board of education to the lowest and best responsible bidder complying with the terms of the letting, after such advertisement for competitive bids as the board determines, but the board may reject any or all bids. All necessary specifications and drawings shall be prepared for all such work. The board shall advertise for bids on all supplies and equipment that it desires to purchase, except where the amount of the purchase does not exceed two hundred fifty dollars, and shall accept the bid of the lowest and best bidder, but the board may reject any and all bids. In independent school districts of cities of the first class and in county school districts of counties containing a city of the first class, no advertisement for bids for repairs shall be necessary unless the amount involved exceeds two thousand dollars, and no advertisement for bids for supplies and equipment shall be necessary unless the amount involved exceeds one thousand dollars.

KRS 162.075. Competitive Bidding Unnecessary on Purchases from Federal Government.

The provisions of KRS 162.070 shall not apply to purchases made by the boards of education within the Commonwealth of Kentucky from the United States of America, or any agency thereof.

C. STATE LAWS AFFECTING SURPLUS PROPERTY OTHER THAN SCHOOL LAWS:

KRS 434.060. (1) (e) False Personation.

Any person who fraudulently represents or personates another, and in such assumed character, deceitfully receives any money or valuable property of any description intended to be delivered to the person personated, with the intent of appropriating it to his own use shall be confined in the penitentiary for not less than one nor more than five years.

KRS 434.050. False Pretense.

Any person who, by any false pretense, statement or token, with intent to commit a fraud, obtains from another money, property or other thing which may be the subject of larceny shall be confined in the penitentiary for not less than one nor more than five years.

KRS 432.170. False Swearing.

If any person or any subject in which he can legally be sworn or on which he is required to be sworn, when sworn by a person authorized by law to administer an oath, shall willfully and knowingly swear, depose or give in evidence that which is false, he shall be confined in the penitentiary for not less than one nor more than five years.

KRS 432.180. Subornation of Perjury.

Any person who unlawfully and corruptly causes or procures another to commit the offense described in 432.170 (above) shall be guilty of subornation of perjury, and shall be confined in the penitentiary for not less than one nor more than five years.

KRS 433.240. Taking Property Unlawfully.

Any person who, unlawfully but without felonious intent, taken, carries away, defaces or damages any property or thing of value not his own shall be fined not less than ten dollars nor more than two thousand dollars.

KRS 433.290. Receiving Stolen Property.

Any person who receives any stolen property, the stealing of which is punishable as a crime, knowing it to be stolen shall be liable to the same punishment as a person stealing it. Any person who violates this section may be convicted, although the principal offender has not been convicted. The possession by any person of any stolen property shall be prima-facie evidence of his guilt under this section.

KRS 434.020. Embezzlement of Property.

(1) Any person who has the custody, control or distinct possession of property, or other movable thing of value belonging to or for the use of the state or any political subdivision of the state, and who is under any trust or duty to keep, return, deliver, cancel, destroy or specifically apply them or any part of them, and who, in violation of that trust or duty, willfully misapplies, misappropriates, conceals, uses, loans or otherwise wrongfully and fraudulently disposes of property, or other movable thing of value, or any part of them, for his own purpose or the use of another, with intent to deprive the owner or authority of them or any part of them, for the benefit of the wrongdoer, or of any other person, shall be confined in the penitentiary for not less than one nor more than ten years.

(2) Any person who without lawful authority receives any of the things mentioned in subsection (1) of this section and then willfully and fraudulently misapplies or misappropriates them, shall be confined in the penitentiary for not less than one nor more than ten years.

D. FEDERAL PROGRAM AUTHORITY :

1. Public Law 889, 80th Congress:

In the summer of 1948, the 80th Congress passed Public Law 889. This Law enlarged the scope of personal property which would be available to schools, colleges, and educational institutions from the Armed Services. This Law made available to Kentucky, property which was formerly denied the educational institutions of the State.

2. Public Law 152, 81st Congress, As Amended:

The Federal Property and Administrative Services Act of 1949, Public Law 152, 81st Congress (63 Stat. 377), as amended (40 USC 471 et seq.) constitutes the basis of all

activities being performed in the program now being administered by the Division of Property Utilization.

3. Public Law 152, 81st Congress:

On June 30, 1949, the 81st Congress enacted Public Law 152. This was considered the basic Law because it included what was considered then the essential provisions of Public Law 889, and the Surplus Property Act of 1944. It further provided that all Government Agencies and Departments may make donations to educational institutions through the State Agencies of Surplus Property. This Act included both real and personal property. This Act set up the General Services Administration as the one over-all storehouse keeper for the Federal Government, and the Property Utilization Program was transferred from the United States Office of Education in the Federal Security Agency to the Office of the Administrator in the same Agency. Since health and educational institutions were to be served, the program was transferred to the office of the Administrator in order to coordinate the two programs. The State Agency for Surplus Property has been serving both health and educational claimants by agreement worked out between the State Department of Health. This arrangement has worked well, since it gives the Agency a broader outlet which should, in time, reduce the per item cost of distribution.

4. Public Law 754, 81st Congress:

On September 5, 1950, the Congress enacted Public Law 754. It added health organizations as eligible to receive surplus property. Public Law 152, as amended, by this Act made not only non-profit schools, colleges, universities, and school systems eligible to receive Federal Surplus Property, but also hospitals, clinics, and health units, both public and non-profit. Property surplus to the needs of any Federal Agency may now be made available to the above named eligible institutions.

5. Public Law 61, 84th Congress:

On June 3, 1955, the Congress approved Public Law 61 which liberalized and clarified the Public Law 152. This Act made available categories of property not available before for donation to State Agencies.

6. Public Law 655, 84th Congress:

On July 3, 1956, the Congress approved Public Law 655.

This Act amended Public 152 to include Civil Defense Units as being eligible to receive Federal Surplus Property. By Executive Order of Governor A. B. Chandler, the Division of Property Utilization was designated to receive and transfer surplus property to civil defense units.

The following sections of the Act, as amended, are the most important applying to the donation of personal surplus property:

"Sec. 203. (a)

“(j)(1) Under such regulations as he may prescribe, the Administrator (of the General Services Administration) is authorized in his discretion to donate without cost (except for costs of care and handling) for use in any State for purposes of education, public health, or civil defense, or for research for any such purpose, any equipment, materials, books, or other supplies (including those capitalized in a working capital or similar fund) under the control of any executive agency which shall have been determined to be surplus property and which shall have been determined under paragraph (2), (3), or (4), of this subsection to be usable and necessary for any such purpose. In determining whether property is to be donated under this subsection, no distinction shall be made between property capitalized in a working capital fund established under Section 405 of the National Security Act of 1947, as amended, or any similar fund, and any other property. No such property shall be transferred for use within any State except to the State agency designated under State law for the purpose of distributing, in conformity with the provisions of this subsection, all property allocated under this subsection for use within such State.

(2) In the case of surplus property under the control of the Department of Defense the Secretary of Defense shall determine whether such property is usable and necessary for educational activities which are of special interest to the armed services, such as maritime Academies or military, naval, Air Force, or Coast Guard preparatory schools. If such Secretary shall determine that such property is usable and necessary for such purposes, he shall allocate it for transfer by the Administrator to the appropriate State agency for distribution to such educational activities. If he shall determine that such

property is not usable and necessary for such purposes, it may be disposed of in accordance with paragraph (3) or paragraph (4) of this subsection.

(3) Determination whether such surplus property (except surplus property allocated in conformity with paragraph (2) of this subsection) is usable and necessary for purposes of education or public health, or for research for any such purpose, in any State shall be made by the Secretary of Health, Education, and Welfare, who shall allocate such property on the basis of need and utilization for transfer by the Administrator to such State agency for distribution to (A) tax-supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, and universities, and (B) other non-profit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities which are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954. No such property shall be transferred to any State agency until the Secretary of Health, Education, and Welfare has received, from such State agency, a certification that such property is usable and needed for educational or public health purposes in the State, and until the Secretary has determined that such State agency has conformed to minimum standards of operation prescribed by the Secretary for the disposal of surplus property.

(4) Determination whether such surplus property (except surplus property allocated in conformity with paragraph (2) of this subsection) is usable and necessary for civil defense purposes, including research, in any State shall be made by the Federal Civil Defense Administrator, who shall allocate such property on the basis of need and utilization for transfer by the Administrator of General Services to such State agency for distribution to civil defense organizations of such State, or political subdivisions and instrumentalities thereof, which are established pursuant to State law. No such property shall be transferred until the Federal Civil Defense Administrator has received from the State agency a certification that such property is usable and needed for civil defense purposes in the State, and until the Federal Civil Defense Administrator has determined that such State agency has conformed to minimum standards of operation prescribed by the Federal Civil Defense Administrator for the disposal

of surplus property. The provisions of Sections 201(b), 401(c), 401(e), and 405 of the Federal Civil Defense Act of 1950, as amended, shall apply to the performance by the Federal Civil Defense Administrator of his responsibilities under this Section.

(5) The Secretary of Health, Education, and Welfare and the Federal Civil Defense Administrator may impose reasonable terms, conditions, reservations, and restrictions upon the use of any single item of personal property donated under paragraph (3) or paragraph (4), respectively, of this subsection which has an acquisition cost of \$2,500 or more.

(6) The term "State", as used in this subsection, includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

"(k)(1) Under such regulations as he may prescribe, the Administrator is authorized, in his discretion, to assign to the Secretary of Health, Education, and Welfare for disposal such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary of Health, Education, and Welfare as being needed for school, classroom, or other educational use, or for use in the protection of public health, including research."

"(A) Subject to the disapproval of the Administrator within thirty days after notice to him by the Secretary of Health, Education, and Welfare of a proposed transfer of property for school, classroom, or other educational use, the Secretary of Health, Education, and Welfare, through such officers or employees of the Department of Health, Education, and Welfare as he may designate, may sell or lease such real property, including buildings, fixtures, and equipment situated thereon, for educational purposes to the States and their political subdivisions and instrumentalities, and tax-supported educational institutions, and to other non-profit educational institutions which have been held exempt from taxation under Section 101(6) of the Internal Revenue Code."

"(B) Subject to the disapproval of the Administrator within thirty days after notice to him by the Secretary of Health, Education, and Welfare of a proposed transfer of property for public health use, the Secretary of Health, Education, and Welfare, through such officers or em-

employees of the Department of Health, Education, and Welfare as he may designate, may sell or lease such real property for public health purposes, including research, to the States and their political subdivisions and instrumentalities, and to tax-supported medical institutions, and to hospitals or other similar institutions not operated for profit which have been held exempt from taxation under Section 101(6) of the Internal Revenue Code."

"(C) In fixing the sale or lease value of property to be disposed of under subparagraph (A) and subparagraph (B) of this paragraph, the Secretary of Health, Education, and Welfare shall take into consideration any benefit which has accrued or may accrue to the United States from the use of such property by any such State, political subdivision, instrumentality, or institution.

"(D) "States" as used in this subsection includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States."

(2) Subject to the disapproval of the Administrator within thirty days after notice to him of any action to be taken under this subsection.

"(A) The Secretary of Health, Education, and Welfare, through such officers or employees of the Department of Health, Education, and Welfare as he may designate, in the case of property transferred pursuant to the Surplus Property Act of 1944, as amended, and pursuant to this Act, to States, political subdivisions, and instrumentalities thereof, and tax-supported and other non-profit educational institutions for school, classroom, or other educational use.

"(B) The Secretary of Health, Education, and Welfare, through such officer or employees of the Department of Health, Education, and Welfare as he may designate, in the case of property transferred pursuant to the Surplus Property Act of 1944, as amended, and pursuant to this Act, to States, political subdivisions and instrumentalities thereof, tax-supported medical institutions, and to hospitals and other similar institutions not operated for profit, for use in the protection of public health (including research)."

“(C) The Secretary of the Interior, in the case of property transferred pursuant to the Surplus Property Act of 1944, as amended, and pursuant to this Act, to States, political subdivisions, and instrumentalities thereof, and municipalities for use as a public park, public recreational area, or historic monument for the benefit of the public.

“(D) The Secretary of Defense, in the case of property transferred pursuant to the Surplus Property Act of 1944, as amended, to States, political subdivisions, and tax-supported instrumentalities thereof for use in the training and maintenance of civilian components of the armed forces; or

“(E) The Federal Civil Defense Administrator, in the case of property transferred pursuant to this Act to civil defense organizations of the States or political subdivisions thereof, or instrumentalities thereof which are established by or pursuant to State law, is authorized and directed;

(i) to determine and enforce compliance with the terms, conditions, reservations, and restrictions contained in any instrument by which such transfer was made;

(ii) to reform, correct, or amend any such instrument by the execution of a corrective, reformatory, or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and

(iii) to (I) grant releases from any of the terms, conditions, reservations, and restrictions contained in, and (II) convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by, any instrument by which such transfer was made, if he determines that the property so transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was so transferred: **Provided**, That any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he shall deem necessary to protect or advance the interests of the United States.”

“(1) Under such regulations as he may prescribe, the Administrator is authorized in his discretion to donate to the American National Red Cross, for charitable purposes, such property, which was processed, produced, or donated by the American National Red Cross, as shall have been determined to be surplus property.”

“(m) The Administrator is authorized to take possession of abandoned and other unclaimed property on premises owned or leased by the Government, to determine when title thereto vested in the United States, and to utilize, transfer or otherwise dispose of such property. Former owners of such property upon proper claim filed within three years from the date of vesting of title in the United States shall be paid the proceeds realized from the disposition of such property or, if the property is used or transferred, the fair value therefor as of the time title was vested in the United States as determined by the Administrator, less in either case the costs incident to the care and handling of such property as determined by the Administrator.”

“(n) For the purpose of carrying into effect the provisions of subsections (j) and (k), the Secretary of Health, Education, and Welfare, the Federal Civil Defense Administrator, and the head of any Federal agency designated by either such officer, are authorized to enter into cooperative agreements with the State surplus property distribution agencies designated in conformity with paragraph (1) of subsection (j). Such cooperative agreements may provide for utilization by such Federal agency, without payment or reimbursement, of the property, facilities, personnel, and services of the State agency in carrying out any such program, and for making available to such State agency, without payment or reimbursement, property, facilities, personnel, or services of such Federal agency in connection with such utilization.”

“(o) The Secretary of Health, Education, and Welfare shall submit, during each calendar quarter, a report to the Senate (or to the Secretary of the Senate if the Senate is not in session) and to the House of Representatives (or to the Clerk of such House if it is not in session) showing the acquisition cost of all personal property donated under subsection (j) and of all real property disposed of under subsection (k)

during the preceding calendar quarter to, or for distribution to, educational or public health institutions in each State, Territory, and possession. The first report under this subsection shall be made with respect to property donated or disposed of during the first calendar quarter which begins after the enactment of this subsection."

**PUBLIC LAW 61, 84th CONGRESS, APPROVED
JUNE 3, 1955**

Public Law 61, 84th Congress, which amends Public Law 152, 81st Congress, contains three subsections which are transitional and are not, therefore, appropriately a part of permanent legislation such as Public Law 152, as amended. The three subsections are quoted below:

"Section 2. (b) The amendment made by subsection (a) shall apply only with respect to property donated after the date of enactment of this Act." (Subsection (a) referred to herein is subsection (j)(4) of Public Law 152, as amended.)"

"Section 4. (a) In the case of personal property donated or sold at a discount for educational, public health or memorial purposes, including research, under any provision of law enacted prior to the enactment of the Federal Property and Administrative Services Act of 1949, no term, condition, reservation, or restriction imposed on the use of such property shall remain in effect after the date of the enactment of this Act. This subsection shall not be deemed to terminate any civil or criminal liability arising out of a violation of such a term, condition, reservation, or restriction which occurred prior to the enactment of this Act, if a judicial proceeding to enforce such liability is pending at the time of, or commenced within one year after, the enactment of this Act.

(b) No term, condition, reservation, or restriction imposed upon the use of any single item of property donated under Section 203(j) of the Federal Property and Administrative Services Act of 1949 prior to the enactment of this Act which has an acquisition cost of less than \$2,500 shall remain in effect after the expiration of the one-year period which begins on the date of the enactment of this Act. This subsection shall not be deemed to terminate any civil or criminal liability arising out of a vio-

lation of such a term, condition, reservation, or restriction if (1) such violation occurred prior to the expiration of such one-year period and (2) a judicial proceeding to enforce such liability is pending at the time of enactment of this Act or is commenced not later than one year after the expiration of such one-year period."

**PUBLIC LAW 655, 84th CONGRESS, APPROVED
JUNE 3, 1956**

Public Law, 655, 84th Congress, which amends Public Law 152, 81st Congress, also contains two subsections which are transitional and are not, therefore, appropriately a part of Public Law 152, as amended. The two subsections are quoted below.

"Section 5. (a) Except as provided by Subsection (b), the amendments made by this Act shall become effective on the first day of the first month beginning after the date of enactment of this Act." (The amendments referred to herein are subsection 203(j), subsections 203(k) (2) (E), and subsection 203(n).

(b) In the case of any State which on the date of enactment of this Act has not designated a single State agency for the purpose of distributing surplus property pursuant to subsection 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, transfers of such property may be made by the Administrator of General Services under such subsection, as amended by this Act, to the State agency heretofore designated in such State to distribute property in conformity with such subsection for purposes of education and public health to the extent that such agency is authorized under State law to receive and distribute any class of property transferred pursuant to such subsection, or in the absence of any such agency or in the absence of authority of such agency to receive and distribute any such class of property, to any State agency or official authorized under State law to receive and distribute such property, until ninety calendar days have passed after the close of the first regular session of the legislature of such State beginning after the date of enactment of this Act."
(See Appendix)

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Reconditioned chairs in Hospital Reception Room in Kentucky

CHAPTER II

ELIGIBLE INSTITUTIONS AND ORGANIZATIONS

The Federal Laws and Regulations specify the institutions and organizations which are eligible to receive surplus property.

Those listed as eligible are civil defense organizations, approved or accredited tax-supported medical institutions, hospitals, clinics, health centers, schools, school systems, colleges, universities or non-profit medical institutions, hospitals, clinics, health centers, schools, colleges or universities as defined below.

A. DEFINITIONS:

(1) **Accredited** means approval by a recognized accrediting board or association on a regional, state, or national level such as a State Board of Education, or Health, a regional or national accrediting association for universities, colleges, or secondary schools, the American Hospital Association, etc.

(2) **Approved** means recognition and approval by the State Department of Education, State Department of Health, or other appropriate authority. With respect to an educational institution, such approval must relate to academic or instructional standards. An educational institution may be considered as approved if its credits are accepted unconditionally by accredited or State approved institutions, or if it meets the academic or instructional standards prescribed for public schools in the State.

(3) **Civil defense organization** means the official agency designated, pursuant to State Law, to be responsible for the civil defense program in such state or local political subdivisions thereof, and organizations or instrumentalities designated, pursuant to State Law, as having the responsibility for a component part of a civil defense program.

(4) **Civil defense operational readiness** means that state of preparedness of civil defense organizations which will enable them to carry out their emergency functions.

(5) **Civil defense reserve stock** means material, equipment and supplies which will be placed in storage in accordance with Federal Civil Defense Administration criteria and will be for use only in an enemy-caused disaster.

(6) **Civil defense training** means a program of training designed to teach civil defense personnel civil defense responsibilities, duties, and emergency assignments, or to develop operational skills in the performance of such duties.

(7) **Clinic** means an approved facility organized and operated for the primary purpose of providing out-patient health services and includes the customary related facilities such as laboratories, treatment rooms, etc.

(8) **College** means an approved or accredited institution of higher learning offering organized study courses and credits leading to the baccalaureate or higher degrees.

(9) **Division** means Division of Property Utilization of the State Department of Education.

(10) **Donee** means an eligible applicant who is the recipient of donable property.

(11) **Educational institution** means an approved or accredited tax-supported or non-profit school system, school, college or university.

(12) **Eligible applicant** means a civil defense organization as defined in paragraph (3) above or an approved or accredited tax-supported medical institution, hospital, clinic, health center, school, school system, college, university or non-profit medical institution, hospital, clinic, health center, school, college or university.

(13) **Health center** means an approved facility utilized by a health unit for the provision of public health services, including related facilities such as laboratories and clinics.

(14) **Hospital** means an approved or accredited institution providing health services primarily for in-patient medical or surgical care of the sick or injured and includes related facilities such as laboratories, out-patient departments, training facilities, central service facilities, and staff offices which are an "integral part" of the hospital. The term "hospital" does not include institutions whose primary purpose is the furnishing of domiciliary care.

(15) **Medical institution** means an approved or accredited institution, facility, entity or organization which has for its primary function the provision of medical services, or the promotion of health through the conduct of research, investigations, experiments, training and demonstrations, relating to causes,

prevention, and methods of diagnosis and treatment of diseases or injuries; the term includes hospitals, clinics, research and health centers, laboratories, medical, dental, and nursing schools, and similar institutions, but does not include those primarily engaged in domiciliary care.

(16) **Need** means the lack or inadequacy of anything usable and necessary by eligible applicants in the conduct of educational, public health, or civil defense activities.

(17) **Non-profit institution** used in connection with a medical institution, hospital, clinic, health center, school, college or university, means one which is operated by one or more non-profit corporation or association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by the Internal Revenue Service to be tax-exempt under either the provisions of Section 101(6) of the 1939 Internal Revenue Code, or Section 501(c)(3) of the 1954 Internal Revenue Code.

(18) **Overage** means the excess occurring upon the receipt of a large number of specific items or a larger number of items than either, requested on the application or listed on the shipping document.

(19) **School** means an approved or accredited organizational entity devoted primarily to approved academic, vocational, or professional study and instruction, which operates primarily for educational purposes on a full-time basis for a minimum school year and employs a full-time staff of qualified instructors.

(20) **School system** means a group of approved or accredited tax-supported schools operated under one administrative organization.

(21) **Screening** means the act of reviewing and inspecting property which is surplus or which is expected to become surplus for the purpose of determining whether or not such property is usable and necessary for health, educational, or civil defense purposes.

(22) **Service charge** means the fee or charge made by the Division to the donee when distributing surplus property under Section 203(j) of the Act.

(23) **Shortage** means the deficiency occurring upon the receipts of a smaller number of a specific item or a smaller number of items than requested on the application or listed on the shipping document.

(24) **Tax-supported institution** used in connection with a medical institution, hospital, clinic, health center, school, school system, college or university means one which receives a major portion of its financial support from moneys derived from State or local government revenues.

(25) **University** means an approved or accredited institution for instruction and study in the higher branches of learning and which is empowered to confer degrees in special departments or colleges.

CHAPTER III

THE DIVISION AND ITS OPERATION

A. HISTORY OF THE DIVISION:

1. **Established**

On December 28, 1945, Governor Simeon Willis, by Executive Order, established a State agency for the distribution of surplus property in Kentucky. The duties of the agency, as stated in this Order, were to ascertain, determine and make provisions for the necessary expenses of the agency, its agents and employees and to cooperate with Federal agencies in the distribution to the educational agencies entitled thereto.

2. **Organization**

By June 30, 1946, the agency had been organized and designated as the Division of Surplus Property of the State Department of Education, and personnel had been employed for its operation. Institutions had been classified and surplus property distributed to the institutions in accordance with rules and regulations of Federal agencies.

3. **Appropriations for Operation**

The 1946 Session of the State Legislature made a deficiency appropriation of \$7,500 to cover expenses to June 30, 1946. It also made an appropriation of \$20,000 for recurring expenses of the Division for the school year 1946-1947 and \$20,000 for the school year 1947-1948. Governor Willis vetoed the appropriation for 1947-1948. He did, however, supplement from his Emergency Funds the expenses of the State Department of Education for the school year 1947-1948, which he vetoed. His veto was based upon the belief that surplus property would not be available in such quantities as to require the expenditure of the appropriation profitably.

The 1948 Session of the Legislature made an appropriation of \$20,000 for recurring expenses of the Division for the school year 1948-1949, and \$10,000 as a revolving fund. This fund was paid to the state at due time, but was replaced by an appropriation for Governor Earle Clements' Emergency Fund. This fund was made available for the first

half of the school year 1949-1950. Since that time, the total costs of administration, warehousing, transportation, etc., have been born by disposal of property to such donees as have become eligible to receive property.

4. Warehousing and Storage

Almost from the very beginning of the program of distributing surplus property, the problem of storage was paramount. During the year 1947, more or less inadequate space was found in Frankfort. As more and more property became available, the problem became more pressing. It soon seemed that storage space must be secured or considerable loss of desirable property would be experienced in increasing proportions.

In January, 1948, five district warehouse corporations were organized and put into operation within the State. These assisted the Division in warehousing and distributing property to schools throughout the State. The five warehouse districts were as follows: Eastern Kentucky — Ashland; North Central—Richmond; South Central—Somerset; Central — Louisville; Western — Eddyville. These warehouses were set up on a non-profit basis. Funds were advanced to the corporations by the participating institutions and school districts with which property was secured. The property received was distributed to participating schools at prices which would cover expenses. After one year, the source of property (WAA) War Assets Administration was no longer in existence. The warehouse corporations were dissolved and funds on hands were refunded on the basis of the amount of property secured through the corporation.

Following the abandonment of the district warehouses, the space being used in Frankfort was expanded. As the space in Frankfort became more inadequate, additional space for storage was secured in 1949 at the State Fairgrounds in Louisville.

This Louisville space was abandoned in the fall of 1953. At that time additional storage space was secured in Frankfort in a new, specially built, concrete block building. This was abandoned in 1957 when all storage space was concentrated on property known as the Kentucky River Mills location in Frankfort. At present, 1958, this is the location of the warehouse operated by the Division of Property Utili-

zation. This location is on North Wilkinson Street where it has easy access to the State Office Building on High Street. The Administrative office of the Division is on the fifth floor.

5. Sources of Property

During 1947 and 1948, the Bureau of Community Facilities, U.S. Department of Public Works for Veterans Education Programs supplied much needed surplus property to educational institutions in Kentucky and especially institutions of higher learning.

With War Assets Administration closing out its operation in personal property, the supply from Federal Works Administration practically ended January 1, 1949. Since that time, the State Educational Agency for Surplus Property has been the only agency through which surplus property has been acquired for educational institutions.

6. Expansion of Program and Change Name of Division

During the biennium ending June 30, 1951, the Division expanded its operations. This expansion consisted of more warehouse space, increased personnel and more adequate facilities for transporting property to storage space or delivery to donee.

In 1952, the name of the Division was changed from Division of Surplus Property to the Division of Property Utilization.

7. Biennium Ending June 30, 1953 (Effects of Korean War)

Beginning July 1, 1949, the Division created a small revolving fund for use in paying handling charges. During the biennium 1951-1953, the revolving fund which had been set up to pay the expenses of operation of the Division, in the absence of Legislative appropriation, was somewhat reduced. This was due to the effects of the Korean War. During this period of national and international confusion the flow of property to the Division was reduced. The quality of property available was less desirable. The revolving fund for the biennium had a loss of approximately \$4,400. During this period there was an increase in the cost of operation of services of the Division.

Because of this situation, extreme precautions and safeguards were taken in order to keep the Division in operation and a flow of property available to eligible entities.

It was necessary to increase handling costs of property

in order to protect the revolving fund reserve. It was deemed wise to set up at least the necessary funds to carry the administrative costs of the Division for at least one year.

During this biennium the Division set up and improved warehousing facilities, property accounting system, and other equally important services which, it was thought, would eventually result in lower handling costs. This, together with the improvement in the amount and quality of property, which was available, resulted in producing sufficient funds for continued operation of the Division.

It should be pointed out here that during the school year 1952-1953, the Division assisted the Federal Government reclaim property from institutions in the state, that was critically more needed in the defense program, than in education. This was done without cost to the Federal Government or the institutions cooperating in the program. The acquisition value of such property was more than one and one quarter of a million dollars.

As of July 1, 1954, the Federal Security Agency was changed to the Department of Health, Education, and Welfare.

8. **Biennium Ending June 30, 1955**

Public Law 61, approved by the Congress of 1955 liberalized the donation program by making available categories of property which had not been available for donation to State agencies. This Act included additional participants. Eligible to receive property by this Act were non-profit, tax-exempt schools, colleges, hospitals, clinics, and health centers.

After cessation of the Korean War, more property gradually became available from Federal installations. The quality of property received was better and greater utilization was made.

The new law providing for wider participation in use of property together with more and better property, as a result of war cessation, made it possible to increase the revolving and reserve fund of the Division and to guarantee its operation for at least one year. This seemed to be sufficient, at the time, to guarantee continued operation of the program. It should be stated here that since July 1, 1949,

the Division has been operating without any funds appropriated by the State Legislature. The revolving fund, to which reference is made, is derived from a nominal charge which is made by the Division, on property transferred to the participating health and educational entities or donees.

Prior to 1953, the Division operated several small warehouses. In 1953, a large new warehouse was secured in Frankfort. This centralization greatly increased the efficiency of operation. The volume of property handled and warehoused has been increased four-fold and the number of donees participating in the program has increased. New transportation facilities and the handling of equipment has made property available at Federal installations that previously could not have been transported economically. The following is a comparative analysis of operations:

Acquisition value of property received during 1951-1953 was \$1,206,752.02.

Acquisition value of property received during 1953-1955 was, \$4,443,126.77.

9. **Biennium Ending June 30, 1957**

Public Law 655, approved by the Congress July 3, 1956, added Civil Defense Organizations to eligible donees to receive Federal surplus property. By Executive Order of Governor A. B. Chandler, the Division of Property Utilization was designated as the State Agency to secure and distribute Federal surplus property to legally qualified Civil Defense Organizations. The Division began transferring property to Civil Defense about the first of the year, 1957.

Since the passage of this Act, the Division may now distribute Federal surplus property for health, educational, and civil defense purposes.

Property may be acquired for public health purposes, including research, by tax-supported or non-profit medical institutions, hospitals, clinics or health centers.

Property may be acquired for educational purposes, including research, by tax-supported and non-profit school systems, schools, colleges and universities. All non-profit institutions must be tax-exempt under Section 501(c)(3) of the 1954 Internal Revenue Code.

Property may be acquired for Civil Defense purposes by units of State or political subdivisions and instrumentalities of State which are established by State law.

Property distributed by the Division consists of all types and categories of personal and real property.

Personal property embraces such items as hand tools, instructional supplies, maintenance supplies, building supplies, furniture, motor vehicles, machine tools, communication and electronic equipment. Real property consists of land, land and buildings, and appurtenant improvements, or buildings for off-site removal.

All Government surplus real and personal property is offered on an "as is, where is" basis, without warranty of condition or title upon the basis of need and utilization.

The Division expanded its services rapidly during the biennium. The amount of new property transferred increased during the biennium. Reports furnished the Division by the Department of Health, Education, and Welfare indicated in the months immediately ahead, an increase of surplus property declarations on the Federal level.

During the school year 1955-1956, a total value of \$4,385,441.00 was transferred to health and educational institutions in Kentucky. This amount consisted of \$3,777,776.00 personal property and \$607,665.00 real property.

The General Services Administration estimated fair value of the personal property was \$2,833,330.00. Handling charges of \$259,061.00 were assessed by the Division to give a savings to institutions of \$2,574,268.00. Real property fair value was \$121,533.00. Handling charges assessed were \$1,816.00, which is about 1½% of fair value. During the year 1956-1957, \$4,411,301.00 in personal property and \$579,899.00 in real property was transferred.

In addition to the regular program the Division was called upon to assist civil defense units, schools and hospitals in the Flood Disaster in Eastern Kentucky in January, 1957. Also, assignment was made to the Division by the State and Federal Civil Defense Administrations to try to replace property lost in the flood by Small Businesses.

B. SOME FUNCTIONS OF THE DIVISION:

1. The principle function of the Division is to effect the DO-

NATION of Federal Government Surplus Property to eligible educational, public health, and Civil Defense Organizations.

2. For accuracy of information and proper procedures, all information concerning the donation program of Surplus Property should be obtained directly from the Division.
3. The Division can deal only with administrative or executive **heads** of eligible institutions.
4. **ELIGIBILITY** to acquire government surplus property through the Division is specific, limited, and sometimes may seem to be technical.
5. Representatives of eligible institutions must not visit Government owned agencies in an effort to obtain donable surplus property.
6. Donable surplus property obtained for any purpose other than bona fide use by the eligible institutions acquiring it, is obtained by **FRAUD** against the United States Government.
7. Donated Government Surplus Property does not have to be acquired for the use for which the items were manufactured. It may be converted to legitimate education, health, or Civil Defense **use** by an **eligible donee**. "Conversions" and "Cannibalizations" for use are encouraged.
8. It is not legal to sell, trade, give away, or otherwise dispose of or encumber donated surplus property until it has been used for the purpose for which acquired and for the period of time required.
9. **UNUSABLE** donated surplus property or excess surplus property must be reported to the Division for a re-transfer or other disposal authorization.
10. The Division of Surplus Property has nothing to do with the "Surplus Commodities Program", i.e. the distribution of surplus food.
11. The Division cannot answer inquiries concerning **SALES** of government surplus property.

C. **OFFICE AND WAREHOUSE:**

The Division of Property Utilization is one of the Divisions of the Department of Education. The Division is on the fifth floor of the State Office Building, High and Clinton Streets, Frankfort, Kentucky.

The central warehouse is located at the Kentucky River Mills, formerly known as the Old Hemp Factory, North Wilkin-

son Street, Frankfort, Kentucky. A district warehouse for the western part of the state is located on 333 West Center Street, Madisonville, Kentucky.

The office and the warehouse are open from 8:00 A.M. to 4:30 P.M., Monday through Friday, excluding holidays. (Central Standard or Daylight Saving Time, or as the State Government may designate). The lunch period from 12:00 noon to 1:00 P.M. will be observed by the employees located in the offices and warehouse. Legal holidays, and holidays declared by the Governor will be observed. When these days fall on Sunday, the following Monday is usually substituted for State offices to observe. The legal holidays are as follows:

New Year's Day	January 1
Robert E. Lee's Birthday	January 19
Abraham Lincoln's Birthday	February 12
George Washington's Birthday	February 22
Good Friday	Friday before Easter
Decoration Day	May 30
Confederate Decoration Day	June 3
Independence Day	July 4
Labor Day	First Monday in September
General Election Day—	

First Tuesday after first Monday in November	
Veterans Day (Armistice Day)	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

A certain day each week will be designated on which the warehouse will be closed to the public in order to clear up and re-organize the stock of property. Those days will be designated from time to time.

D. VISITS TO OFFICE AND WAREHOUSE:

Those institutions and organizations that have definitely established eligibility are encouraged to visit the office and warehouse at least for the following purposes:

1. Conference with the staff as to general needs.
2. Better understanding of procedures peculiar to eligibility; for acquiring and use of property.
3. Becoming acquainted with the great variety of items that are, or may be available.

Visitors should plan their visits so as to complete their business at the warehouse by 4:30 P.M.

Authorized visitors to the warehouses should not be discouraged if they fail to find many of the more desirable items not available at the particular time they make a visit. It is

urged that a list of major needed items be left in the offices for further allocation information. The need for each should be definitely stated.

It is urged that administrative or executive **heads** of eligible organizations **not be accompanied** to the warehouse by patrons, or other persons who are not employees of the institution or organization. Rarely do such unauthorized visitors appreciate the restrictions of the legal acquisitions and use of donable surplus property. They frequently attempt to put pressure on an authorized representative to secure certain items for personal or other illegal use.

It is further urged that a qualified person be brought to assist in the selection of items for use by the institution or organization. For example if a musical instrument is wanted a musician who knows the use of the kind available, should make the selection.

E. A CODE OF ETHICS

We, the members of this National Association of State Agencies for Surplus Property, do ordain and declare that this Code of Ethics is a true expression of the desires, attitudes and objectives which govern the activities of all representatives of State Agencies for Surplus Property. We, the members of this association, further proclaim that we will give first consideration to the expressed purposes of this association's constitution and the beliefs, purposes and principles of this Code of Ethics.

BELIEFS

Excess Federal property, before being declared surplus, should be utilized to the fullest extent practicable in these United States of America by the Federal Government.

Once property has been declared surplus to the needs of the Federal Government, the highest and best secondary utilization is by public and private organizations of this nation that are dedicated to the education, training, health, civil protection and safety of our people. Only after these requirements have been satisfied, should surplus property be disposed of by other means.

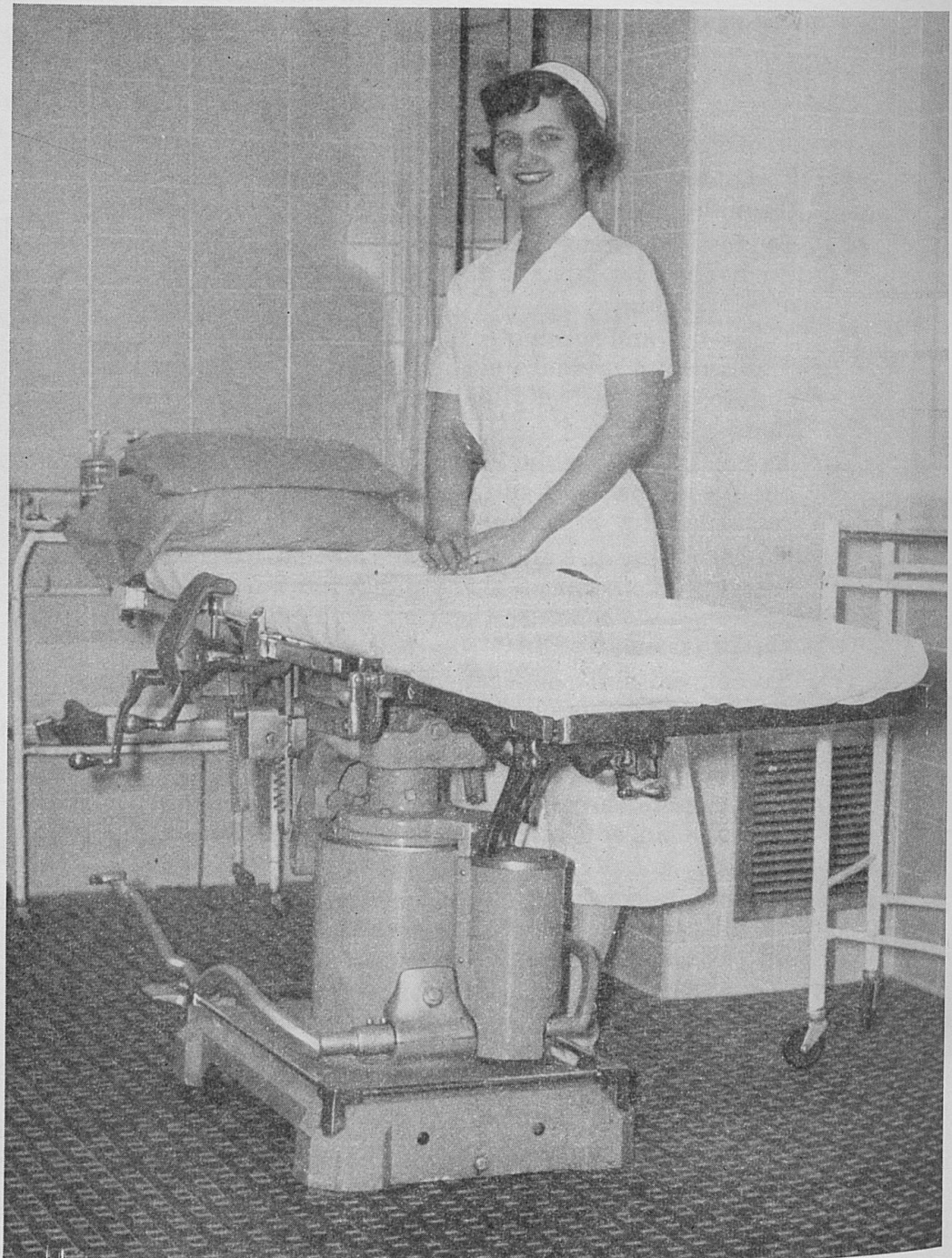
PURPOSES

We dedicate ourselves to the purpose of accomplishing the will of Congress through fair, honest and unbiased execution of the duties and responsibilities entrusted to us. Fully recognizing the responsibility that is ours, we accept the call to duty with a sense of humility, and with the firm resolve to give our best efforts at all times to those tasks that are inherent in the Surplus Property Utilization Program.

PRINCIPLES

Individually as members and collectively as an association, we subscribe unreservedly to the following principles to motivate and guide us in the proper conduct of the affairs of the Surplus Property Utilization Program:

- (1) To be guided by honor, honesty and integrity in order that we may merit the respect and confidence of our associates and the public whom we serve.
- (2) To hold as dishonest any personal gain or profit obtained through abuse of our public trust.
- (3) To decline personal gifts or gratuities which might influence strict impartiality that must prevail in all business relations.
- (4) To foster and promote fair, ethical and legal business practices; to measure each transaction on its own merit; and to grant all eligible organizations equal consideration.
- (5) To conduct all public relations and business affairs without prejudice; and to disavow all political, religious, or racial bigotry or bias.
- (6) To be willing to submit any major controversies to arbitration. To respect the policies of our immediate superiors, and to advise them on problems and progress of the program.
- (7) To counsel and cooperate with our membership; to subscribe to the association's objectives; to respect State boundaries in the screening of property; and to promote a spirit of unity among member States.
- (8) To promote the maximum utilization of surplus property through an educational program for all eligible organizations.
- (9) To maintain minimum service charges by the elimination of all unnecessary practices and procedures that do not directly benefit those we serve.
- (10) To accord prompt and courteous treatment to those transacting legitimate business missions.
- (11) To recognize and appreciate the total problem of surplus property disposal; and for this purpose to cooperate with Federal holding, custodial and disposal agencies.
- (12) To maintain professional attitudes at all levels of State Agency service.



Surplus Hospital Equipment in Use

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CHAPTER IV

KINDS OF PROPERTY AND ELIGIBLE ENTITIES

A. DEFINITION OF PROPERTY:

1. Personal Property

Included in this is all types and categories of property, except real property, naval vessels, certain firearms, narcotics, food, ammunition, and records of Federal Government. It embraces such items as hand tools, machine tools, furniture, motor vehicles, communication and electronic equipment, construction equipment, X-ray machines, aircraft, small boats, hardware, office machines and supplies, textiles, and many other types and categories of movable and usable property.

This type of property may be acquired for the following listed purposes:

a. Educational Purposes

This includes research in education as well as tax-supported school systems, colleges and universities, and non-profit schools, colleges or universities.

b. Public Health Purposes

This includes research in health as well as tax-supported and non-profit medical institutions, hospitals, clinics and health centers.

c. Civil Defense Organizations

This includes civil defense organizations of the state, political subdivisions of the state and instrumentalities, all of which are established pursuant to law.

2. Real Property

a. What it Includes

This type of property consists of land, land and buildings and appurtenant improvements, or buildings only, with or without accompanying and related personal property. It may be a portion or all of a surplus Government installation.

b. Real and Related Personal Property

This type of property may be acquired for school, classroom or other educational use, or for use in the protection of public health, including research, by States and their

political subdivisions and instrumentalities, by tax-supported institutions, and by non-profit institutions.

c. Restrictions

The law is not so restrictive as to who may require real and related personal property as it is to who may acquire personal property. For example, public libraries are considered to be educational in nature in this connection.

d. On-Site

On-Site real property refers to land, and to buildings such as houses, hospitals, barracks, or any of the other structures, which may be transferred with the land for use in place. Certain structures and improvements may be used as salvage in the conversion and adaptation of other structures.

e. Off-Site

Off-site real property refers to buildings and structures which are surplus, and must be removed and re-erected in the same or a modified form elsewhere.

3. **Tax-Exempted or Private, Non-Profit Institutions**

In order for private non-profit institutions to qualify to receive either **personal** or **real** property, they must show that they have been held exempt from taxation under Section 501(c)(3) of the 1954 Internal Revenue Code or Section 101(6) of the 1939 Internal Revenue Code.

4. **"As Is", "Where Is"**

Government surplus real and personal property is offered on an "as is", "where is" basis, without warranty of condition or title.

B. **ELIGIBLE ENTITIES:**

Eligibility to secure Federal surplus property is limited to the following listed nine types of approved institutions or organizations named in the Federal law and further defined in Federal regulations implementing the law.

- | | |
|-------------------------------|------------------------|
| 1. School System | 5. Medical Institution |
| 2. School | 6. Hospital |
| 3. College | 7. Clinic |
| 4. University | 8. Health Center |
| 9. Civil Defense Organization | |

C. **EDUCATIONAL INSTITUTIONS:**

1. **Public, Tax-Supported**

All public school districts, state colleges, state special

schools, and the universities are eligible to receive Federal surplus property.

2. **Private, Non-Profit**

All educational institutions that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1954 or Section 101(6) of the 1939 Internal Revenue Code, as shown by a copy of said tax status filed with the Division are entitled to make application for eligibility.

When a completed application has been received, with the necessary supporting data and a copy of tax-exemption certificate attached, a determination of eligibility will be made. The applicant will be informed of the determination by letter.

Each educational institution applicable to the grouping listed in (B.) above shall be either approved by the State Board of Education, the Superintendent of Public Instruction, or affiliated with some other recognized approving body.

D. **MEDICAL INSTITUTIONS:**

The Executive Secretary of the State Board of Health will be asked to certify, at least annually, a list of medical institutions, hospitals, clinics, and health centers that have been approved by the State Board of Health, and which comes within the definition for such medical institutions as defined by Federal Regulations. This list will be on forms to be furnished by the Director of the Division of Property Utilization. This list should contain only those institutions that are eligible to receive Federal surplus property under terms of Public Law 152, as amended, and as further defined by Federal Regulation and by KRS and State Board of Education Regulations implementing the law.

Each medical institution applicable to the listing in (B.) above, both tax-supported and private non-profit shall complete an application on forms to be furnished by the Director of the Division of Property Utilization of the State Department of Education. All private non-profit institutions applicable to this list shall file a copy of certification showing tax-exemption under Section 501(c)(3) of the Internal Revenue Code of 1954 or Section 101(6) of the Internal Revenue Code of 1939.

When a completed application has been received for an institution containing the necessary supporting data with a

copy of the tax-exemption certificate attached, a determination of eligibility will be made. The applicant will be informed of the determination by letter.

E. CIVIL DEFENSE ORGANIZATIONS:

KRS 39.402 establishes a Division of Civil Defense in the Department of Military Affairs.

KRS 39.403 provides that the Adjutant General shall be the Director thereof. An Executive Order issued by Governor A. B. Chandler, under authority of KRS 39.408(7) designates the Division of Property Utilization of the State Department of Education as the Agency authorized to acquire, warehouse and distribute Federal personal surplus property for civil defense purposes to eligible state and local organizations for civil defense, in accordance with the provisions of Public Law 655.

KRS 39.415 authorizes each county and city to establish a local organization for civil defense in accordance with State civil defense plan and program.

The State Director of Civil Defense should certify in writing at least annually a list of state, city and county civil defense organizations eligible to receive surplus property under authority of Public Law 655, and as further defined by Federal Regulations as well as by such KRS and State Board of Education Regulations as implement this law. This list of eligible organizations shall be made on forms to be furnished by the Director of the Division of Property Utilization.

When a completed application has been received by a civil defense organization containing the necessary supporting data, a determination of eligibility will be made. The applicant will be notified by letter of the determination.

F. INELIGIBLE ENTITIES:

1. **No Eligibility Available**

A few of the institutions and organizations that are **ineligible** to acquire, through the Division, donations of government surplus personal property are listed below:

These include welfare, eleemosynary (for purely domiciliary purposes, such as old people's homes), orphanages (without their own schools), nurseries, kindergartens (not part of public school system), catechetical schools, civic clubs, city, county and state governments, churches, Sunday schools, vacation Bible classes, 4-H clubs or simi-

lar types of clubs, summer camps or clubs or playgrounds not part of a school, purely religious organizations, veterans or veterans' organizations, Y.M.C.A., P.T.A., W.C.T.U., and many others.

2. **Eligible by Designation of Secretary of Defense**

Such organizations as have been designated by the Secretary of Defense as being educational activities of special interest to the armed service, may receive donations of **personal property** from military agencies. At present, they include Military, Naval, and Maritime Academies, Air Force or Coast Guard Preparatory Schools, Boy Scouts, the Boys' Clubs of America, the Girl Scouts, the Camp Fire Girls, and Civil Air Patrol units.

The Division of Property Utilization is not responsible for, nor in position to give, information about donations of government surplus property to these organizations.

CHAPTER V

ACQUIRING SURPLUS PROPERTY

A. PROCEDURES IN ACQUIRING SURPLUS PROPERTY:

The first step in acquiring surplus property consists of writing a letter to the Director of the Division of Property Utilization of the State Department of Education in Frankfort, Kentucky, or visiting the office of the Director. Forms will be furnished for supplying information needed.

1. Educational Institutions

a. Public, Tax-Supported Educational Institutions

All public school districts, State colleges, State Special Schools, and universities are eligible to receive Federal surplus property if they operate approved or accredited schools. They must each appoint an authorized representative to select property and sign documents.

b. Private, Non-Profit, Tax-Exempt Educational Institutions

(1) Show approval by a legally authorized, accrediting or approval agency.

(2) File application showing:

(a) Non-profit by attaching a certified copy of the Articles of Incorporation and the By-laws in effect.

(b) Tax-exemption by attaching a photostatic or notarized copy of a certificate of tax-exemption or a letter of determination from the Bureau of Internal Revenue.

(c) Essential functions and lists of courses of study carrying out these functions.

(d) Length of school term in months of 20 days and the number of legally qualified instructors.

(e) Name of accrediting or approval agency and the rating of this agency.

(f) Forms for this application will be furnished by the Division.

2. Medical Institutions

a. Show approval by the State Health Commissioner and/or the State Board of Health.

- b. File application, except State Hospitals, showing:
 - (1) Non-profit status by attaching a certified copy of the Articles of Incorporation and By-laws in effect.
 - (2) Tax-exemption by attaching a photostatic or a notarized copy of certificate of tax-exemption or letter of determination by the Bureau of Internal Revenue.
 - (3) List the essential functions of the organization.
 - (4) Give the name of the State approval agency.
 - c. Forms for this approval will be furnished by the Division.
- 3. Civil Defense Organization**
- a. Show approval by the State Director of Civil Defense.
 - b. File application and attach the following:
 - (1) A photostatic copy or a certified copy of the Order establishing the organization.
 - (2) List of the essential functions.
 - c. Property shall, whenever practical be marked with the Civil Defense insigna.
 - d. Forms for this approval will be furnished by the Division.
- 4. Appoint an Authorized Representative**
- Each school system, educational or health institution and organization must file with the Division a certified copy of a resolution of the Governing Board or Chief Administrative Officer of the institution or organization which duly authorized a specifically named representative who may select property and sign all documents required for receiving surplus property. Forms for this purpose will be furnished by the Division.

B. ITEMS OF GREAT DEMAND OR SPECIAL USE:

It is urged that authorized representatives submit an itemized list of needed property to the office of the Division where it will be determined if the requested items seem to be important, in regard to need and also in regard to the supply of the particular items available. If no items are available that are requested, or the number of items available in the warehouse is not sufficient to supply the approved need, this list will serve as a record for allocating property that may arise after the list has been submitted to the Division. Forms for this purpose will be furnished by the Division. These forms should be used in order to speed up allocation as property arrives. As soon as the form is received containing the requested supporting information, it will be placed in ready reference files. Unless

the form is used, it may be many days before any request can be put in position to be used in our allocation process.

The need for each item should be stated. A description of each item should be made. For example, if an item is an electric motor, the horsepower, voltage, cycles and R.P.M. should be stated. This statement is very important, not only because of Federal Government requirements, but also because it helps in determining the order of approval for distribution. The words, "Great Demand" are used here to designate categories of items for which the demand is relatively great. It includes power-driven machines and tools, office and business machines, vehicles of all types, motors, chain hoists, X-rays, furniture of all types, including beds and mattresses; more important, kitchen and cafeteria equipment such as ranges, refrigerators, dishwashers, food mixers and steel tables; visual aid equipment, musical instruments of all types, etc.

Any other item that may be large or specialized to the extent that it is not usually desired by eligible institutions of the State, may be treated in the same manner.

Requests which have been on file for one year will be automatically canceled unless renewed by the authorized representative and rejustified as to **need** and **use**. Past experience of the division shows that the need for such items is often met otherwise.

When the requested property is received in usable condition in the warehouse, notices will be sent on the supply available to the institutions or organizations having requests on file. The property will be held for the time limit stated on the notice. It should be accepted or rejected as soon as the notice has been received. If not, it will be re-allocated at the close of the time limit stated on the notice. This is necessary in order to get the property to those who need it and to clear the warehouse space for other property.

The right is reserved to automatically cancel the request if response to the notice is not received by the time limit of the notice.

C. **EQUITABLE DISTRIBUTION:**

The Division is responsible to Federal authority for an equitable distribution of available surplus property to eligible institutions and organizations within the State, in accordance with their need and utilization. Many factors tend to hinder

absolute equity in distribution. Certain policies have been adopted to counteract some of the most serious of them. These policies are as follows:

1. An interval of 30 days should elapse from the time of the last allocation of similar property before the institution or organizations will be eligible for another allocation, except in cases of emergency or an unusual or unforeseen situation arises which will be approved by the Director of the Division.
2. Limitation will be placed on items of surplus property which are short in supply or in great demand.
3. Need and use shall be shown for all property.
4. Items of surplus property which have a utilization that is peculiar to one institution or organization will be held by the Division for a justifiable request from that particular type of institution or organization.
5. Eligible institutions or organizations which have a need because of some recent disaster such as fire, flood or similar disaster, will be given priority in order to help in restoring normal operation. All regulations to contrary will be waived.
6. When property is requested by two or more representatives of subdivisions of an institution or an organization, the authorized representative shall consolidate their requests eliminating repetition of items or determine who gets items in less number than the total requested. The Division is not concerned with the distribution between legitimate subdivisions. The Division will determine if the request is reasonable in regard to need and also in regard to the supply of particular items. Adjustments will be made in the list requested, if deemed necessary.

D. SELECTING ITEMS NOT MAJOR OR SPECIAL:

An authorized representative of an institution or organization may go through the warehouse and select a reasonable quantity, based upon need and use, of each of the hundreds of items not classified as "major or special" and that have not been set aside for special use or allocated. These items, for which it is impractical to record requests or to set aside and hold, include a great number of items of hand tools, hardware, and supplies of all sorts. These items far exceed, in kind and total dollar-value, the items for which requests are recorded and which are reserved. Representatives of eligible donees are invited to visit the warehouse at frequent intervals (two weeks).

E. AUTHORIZED REPRESENTATIVE:

The authorized representative of an eligible institution or an organization may obtain surplus property by visiting the warehouse of the Division.

Such a representative should present a copy of the resolution of the Governing Board of the institution or organization appointing him to the Director of the Division. This representative will be issued an identification and credit card to be presented at the warehouse where this representative will be given an opportunity to view and select such property as may be of need and use to the school system, institution or organization which he represents.

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Surplus Equipment in High School and College

CHAPTER VI

TERMS, CONDITIONS AND AGREEMENTS ON THE TRANSFER OF PROPERTY

The representative of each donee should become acquainted with the "terms, conditions, and agreements" which are required to be made by the administrative or executive head of the institution or organization with the Division and/or the Federal Government. Even though these "terms, conditions and agreements" do not become effective until after the property is received by the institution or organization, an understanding of them may affect the types and quantity of property which can be used. These "terms, conditions and agreements" are as follows:

A. THESE TERMS AND CONDITIONS REQUIRE THE DONEE TO CERTIFY THAT:

1. It is a tax-supported or non-profit and tax-exempt (under Sec. 501(c)(3) of the 1954 Internal Revenue Code, or Sec. 101(6) of the 1939 Internal Revenue Code) school system, school, college, university, medical institution, hospital, clinic, or health center or a civil defense organization designated pursuant to State law within the meaning of the Federal Property and Administrative Services Act of 1949, as amended, and the regulations of the United States Department of Health, Education and Welfare (hereinafter called the Department.)
2. The property transferred is usable and necessary in the State for either educational, public health, or civil defense purpose including research for any such purpose, and is required for its own use to fill an existing need, and is not being acquired for any other use or purpose, for use outside the State, or for sale.
3. Funds are available to pay the costs of care and handling incident to donation, including packaging, preparation for shipping, loading, and transporting such property.

B. THE COVENANTS AND AGREEMENTS APPLICABLE TO THE DONEE AND DIVISION ARE THAT:

1. The property transferred is not in any sense being purchased or bought from either the Federal Government or the Division of Property Utilization (hereinafter called the Division). The handling charge fee on the property transferred is neces-

sary to support the operation of the Division which includes administrative expenses, expenses incurred in location and inspection of the property, trucking, operating warehouses, processing acquisition papers, maintaining records, and in making required reports to the Department. There is no other source of funds available to the Division.

2. All bedding transferred shall be sterilized as required by State law before re-use as bedding.
3. The donee will maintain records of all non-expendable items received. Such records will be kept separately and readily accessible for inspection by a duly authorized representative of the Division at all times.
4. The donee will file such utilization reports as the Division may require.
5. If the donee fails to abide by the terms and conditions or does not pay the service handling charges assessed by the Division, which are due the first of the month following receipt within a six months' period from the time of acquisition, the said Division shall have the right and authority, in addition to other available remedies, to withhold further transfers of Government surplus property from the donee until the infraction has been corrected to the satisfaction of the Division. The procedure, for same, shall be through the usual channels of authority.
6. Property will not be sold, transferred or otherwise encumbered without prior approval of the Division.
7. Property transferred, which has not been put into use within twelve (12) months after it has been acquired, will upon request, be returned or transferred, at the discretion and direction of the Division and at the expense of the donee.

C. TERMS AND CONDITIONS APPLICABLE TO ALL PROPERTY DONATED:

Property acquired by a donee, regardless of acquisition cost, shall be on an "as is", "where is" basis, without warranty of any kind.

D. TERMS AND CONDITIONS APPLICABLE TO ANY DONATED PROPERTY HAVING A SINGLE ACQUISITION COST OF \$2,500 OR MORE, REGARDLESS OF THE PURPOSE FOR WHICH ACQUIRED:

1. Such property shall be used only for the educational, public health, or civil defense purpose for which acquired, including research for any such purpose, and for no other purpose.
2. Donees shall make reports to the Division on the use, condition, and location of such property and on such other pertinent matters as may be required from time to time by the Division, the Department, or the Federal Civil Defense Administration, as appropriate.

E. TERMS AND CONDITIONS APPLICABLE TO PROPERTY, OTHER THAN AIRCRAFT, HAVING A SINGLE ITEM ACQUISITION COST OF \$2,500 OR MORE, DONATED FOR EDUCATIONAL OR PUBLIC HEALTH PURPOSES:

1. Such property shall be placed in use for the purpose for which acquired, no later than twelve (12) months after acquisition thereof. In the event such property is not placed in use within twelve months of receipt, the donee, within 30 days after the expiration of the twelve months' period, shall notify the Department in writing through the Division. Title and right to the possession of such property not so placed in use within the above mentioned period, shall at the option of the Department revert to the United States of America, and upon demand the donee shall release such property to such person as the Department or its designee shall direct.
2. There shall be a period of restriction which will expire after such property has been used for the purpose for which acquired for a period of four years, except that the period of restriction on motor vehicles donated subsequent to June 3, 1955, will expire after a period of two years of such use. See [B-6] for procedures following these respective periods of restriction.
3. During the period of restriction the donee shall not sell, trade, lease, lend, bail, encumber, or otherwise dispose of such property or remove it for use outside the State without prior written approval of the Department through the Division. Any sale, trade, lease, loan, bailment, encumbrance, or other disposal of the property, when such action is authorized by the Department, shall be for the benefit and account of the United States of America and the net proceeds thereof shall be received and held in trust for the United States of America and shall be paid promptly to the Department, except in those instances in which the Department

determines that the Government's administrative costs in connection with receipt thereof will exceed such net proceeds.

4. In the event such property is sold, traded, leased, loaned, bailed, encumbered, or otherwise disposed of during the period of restriction without prior control, the donee, at the option of the Department, through the Division, shall be liable to the United States of America for the proceeds of the disposal or for the fair market value of the property at the time of such disposal as determined by the Department.
5. If, during the period of restriction, property is no longer suitable, usable or further needed by the donee for the purpose for which acquired, the donee, shall promptly notify the Department through the Division, and shall, as directed by the Department or the Division, either retransfer the property to such Department or Division of the United States of America, or such other donee as may be designated, or sell the property at public sale. Such public sale shall be for the benefit and account of the United States of America and the net proceeds thereof shall be received and held in trust for the United States of America and shall be paid promptly to the Department, except in those instances in which the Department determines that the Government's administrative costs in connection with receipt thereof will exceed such net proceeds.
6. At the option of the Department, the donee may abrogate the terms and conditions set forth in Numbers 4 and 5 by payment of an amount as determined by the Department, through the Division.

F. TERMS AND CONDITIONS APPLICABLE TO PROPERTY, OTHER THAN AIRCRAFT, HAVING A SINGLE ACQUISITION COST OF \$2,500 OR MORE, DONATED FOR CIVIL DEFENSE PURPOSES:

1. With respect to property donated for **civil defense training purposes**, there shall be a period of restriction which will expire after such property has been used for such purpose for a period of four years, except that the period of restriction on motor vehicles will expire after a period of two years of such use. See [B-6] for procedures following these respective periods of restriction.

2. With respect to property donated for **operational readiness or reserve stock purposes**, there shall be a period of restriction which shall continue in full force and effect until released or otherwise terminated in writing by the Federal Civil Defense Administrator.
3. In the event any donated property is used during the period of restriction for any purpose other than that for which the property was acquired, without prior written authorization by the Federal Civil Defense Administrator, all right, title, and interest in and to the property, at the option of the Federal Civil Defense Administrator, shall revert to the United States of America.
4. During the period of restriction the donee shall not sell, trade, lease, lend, bail, encumber, or otherwise dispose of such property or remove it for use outside the State without prior written approval of the Federal Civil Defense Administrator. See [B-6] for procedures following these respective periods of restriction.
5. If, during the period of restriction property is no longer suitable, usable, or further needed for the purpose for which acquired, the donee shall promptly notify the Federal Civil Defense Administrator, through the Division and shall, as directed, by the Federal Civil Defense Administrator or Division, either retransfer the property to such Department or Agency of the United States of America or such other donee as may be designated, or sell the property at public sale.
6. In the event such property is sold, traded, leased, loaned, bailed, encumbered, or otherwise disposed of during the period of restriction without prior approval the donee at the option of the Federal Civil Defense Administrator, shall be liable to the United States of America for the proceeds of the disposal or for the fair market value of the property at the time of such disposal as determined by the Federal Civil Defense Administrator.
7. Property donated for purposes of **civil defense reserve stocks** shall be stored in accordance with criteria made and approved by the Federal Civil Defense Administrator, and maintained in good operating condition by the donee acquiring title to such property.

G. **AUTHORITY TO RECEIVE SURPLUS PROPERTY:**

1. **Public Bodies Other Than State Institutions or Organizations**

A certified copy of a resolution from the Governing Board of each public body will be required. This resolution shall designate the representative who is authorized by the Governing authority to receive and sign forms containing a list of the property which is received for the Board subject to the terms and conditions governing such transfers. Forms will be furnished by the Division.

2. **Private, Non-Profit Institutions**

The same requirements listed above for public bodies will be requested from private, non-profit institutions which have Governing Boards. Those institutions which do not have Governing Boards will be required to furnish a letter of authorization from the Chief Administrative Officer designating the person or persons authorized to receive and sign for surplus property, subject to the terms and conditions governing such transfers. In addition, the signatures of the person or persons so authorized will be required.

3. **State Schools, Hospitals, and Civil Defense Organizations**

The signature of the official or officials required by the Statutes of the State to bind the State to the terms and conditions on behalf of the institution and organization will be required. Where the State laws are not clear in this respect, the signature of the official or officials who, in the opinion of the Attorney General, are authorized to bind the State to the terms and conditions on behalf of the institution or organization, will be required.

4. **Approval of the Division Required**

Property which has been transferred shall not be sold, retransferred or otherwise encumbered without prior approval of the Division.

H. **RECEIVING SURPLUS PROPERTY:**

1. **Shipping Ticket and Invoice**

The representative who receives surplus property will be given a copy of a serially numbered "Invoice" as a shipping ticket which he must sign in acknowledgment of the receipt of property. There will follow by mail to the head of the institution or organization copies of an audited "Invoice", one of which is to be signed immediately by the ad-

ministrative or executive head or authorized representative and mailed to the Division office at Frankfort, Kentucky, if not signed at time of receiving the property at the warehouse.

2. Transfer Instrument

The "Invoice" is the Transfer Instrument. There is printed thereon, the certifications, covenants, and agreements which must be subscribed to and observed in the possession and use of the property. The title to the property is in the Federal Government, until a signed "Invoice" has been received by the Division.

3. Payment For The Property

An official check for the handling charge should be mailed to the Division office at Frankfort within 30 days from the receipt of the property. Checks should be made payable to the State Treasurer. Each check should show the "Invoice" number of property which is listed. In no case should any cause for delay in sending payment for the handling charges delay the signing and the mailing of the "Invoice" to the Division office at Frankfort, Kentucky, if the "Invoice" was not signed at the time of receiving the property.

I. SERVICE AND HANDLING CHARGES:

1. Need and Authority for Charge

Since the Division receives no funds from the State to pay expenses of operation, a handling charge must be made on all property distributed. The State Board of Education Regulation 27.020(5) provides for payment of handling and service charges. Section 27.070 authorizes a charge sufficient to pay actual expenses, current operation, for the purchase of necessary equipment plus an accumulated maintenance working capital reserve.

2. Determination of Service Charges

When surplus property is received, it is assigned a unit "fair value". "Fair value" is defined as commercial market value adjusted for educational, health, and civil defense usefulness. The fee charge will vary percentage wise of "fair value" from zero to twenty-five per cent. It rarely exceeds fifteen per cent. An effort will be made to hold it to an average of ten per cent of "fair value". It is anticipated that

this may eventually be reduced as the flow of desirable property continues. The amount of the fee is determined by the following listed factors:

- a. Warehousing Costs
- b. Handling Costs
- c. Accounting Costs
- d. Freight Costs
- e. Screening Costs
- f. Handling Charge at Federal Installation
- g. Intrinsic Value (Fair Value)
- h. Ability of District to Support Itself May Be Used in Specific Cases

3. Scale or Schedule of Charges

In determining service charges, the above listed factors are considered. Experience has shown that an over-all cost of ten per cent of "fair value" has been needed to pay the necessary expenses of operation of the Division. Items of low value and new condition will be assessed at a larger percentage of "fair value" than larger items of high value in used and poor condition. In no case will a charge be made for a single item of more than \$500, unless extraordinary costs for services are incurred. In making charges for an item, consideration may be given in certain cases to the cost of the item in the open market. The following scale will be used in determining charges which represent full cost to the recipient except special services as provided for herein:

- a. Up to 25% on items with "fair value" of \$100 or less.
- b. Up to 15% on items with "fair value" of \$100 or more.
- c. Up to a maximum of \$500 on any one item.

Additional charges will be made for any services in addition to those usually rendered by the Division. Extra charges will be made only under conditions requiring special services. Payment for service charges should be made only in form of a warrant, check, or other official instrument drawn by an authorized official or representative of the donee institution or organization. Service charges will not be refunded if the property is returned to the Division unimproved. No charge will be made for property returned to the Division within 30 days from its receipt.

By mutual agreement, property returned in good condition and which has been repaired and/or improved so as to increase its value, a credit allowance will be made.

Payment for service charges shall be due the first of the month following the rendering of services. The amount or

scale of charge will be determined at the time the service is rendered. If the donee is responsible for extra expenses incurred by the Division because of a delay in delivery or loading or unloading large equipment, there will be charged an additional fee up to one and one-half times the regular fee or a sufficient amount to cover the extra cost of handling.

J. THE WORDS "BUY", "PURCHASE" OR "SELL":

It is suggested that these words should not be used in connection with acquisition of donable surplus property. The words, "Acquire", "Procure", "Secure", or "Obtain", seem to accurately describe what takes place in the transfer of government surplus property.

K. SCREENING:

Screening of items of surplus property is the responsibility of the United States Department of Health, Education and Welfare. This is done by "accredited screeners or State representatives", who have been appointed by the Regional Property Coordinator and employed by the Division for Region III of which Kentucky is a part. This system has been developed over a period of years, and is considered by all parties involved as being the best plan to use under present laws.

Un-authorized individuals should refrain from attempting to screen or select property in Federal installations. Such action is discouraged and not advised since it usually creates confusion and disappointments. Application should be made to the Division which will provide for the services of a legally authorized screener for the benefit of the prospective donee.

L. UNUSABLE OR EXCESS DONATED SURPLUS PROPERTY:

It appears to be the intent of the Federal Law authorizing donations of surplus property that such property be put to continuous use, in order to render maximum service. Donees should therefore report to the Division any property that no longer is usable. Donees who have "in good faith", secured surplus property, can always get prompt relief from any situation which has caused inability to use such property. Authority to dispose of surplus property, on which the period of use has not expired, can be quickly obtained through the Division.

M. HOW SURPLUS PROPERTY BECOMES AVAILABLE FOR DONATION:

Property no longer needed by the owning or controlling Federal Government Agency is termed "excess". Such "excess" is available to be transferred to other Federal agencies through various controlling screening agencies. Such of this "excess" that cannot be transferred is declared "surplus" by the General Services Administration. It may then be offered to the Department for donation.

The Department will offer this surplus property to the various State agencies for re-transfer in proportion to population and on the basis of need and utilization to be distributed to eligible educational and health institutions and Civil Defense organizations. The Division will attempt to make fair and equitable distribution of the available surplus property for eligible institutions and organizations on the basis of **need** and **use**.

It should be stated here that surplus property applied for by the Division is frequently withdrawn at the last moment for "further Federal Utilization". Under such circumstances, the Division is never certain it will acquire the property until it is loaded on a truck of the Division and it gets off of the Government reservation.



Surplus Trucks Transport Everything From Lunch Room Commodities to Music Instruments For Schools.





Emergency Power Supply
and Equipment Transporta-
tion, for Civil Defense.



CHAPTER VII

USE AND DISPOSAL OF SURPLUS PROPERTY

A. PROPERTY WITH A GOVERNMENT UNIT ACQUISITION COST OF LESS THAN \$2,500

1. Use of Property Requested

- a. Use is an important consideration in all transfers of surplus property. The various laws of the Congress, as well as all regulations for implementing these laws, emphasize the importance of utilization in the process of allocation of property to eligible agencies.

In order to encourage utilization and to avoid abuse of the surplus property program certain certifications, agreements and covenants are required to be made a part of the documents used to transfer surplus property to eligible entities. The terms of compliance must be entered into before property can be transferred to any institution or organization.

The State of Kentucky has several laws governing the acquisition and disposal of public property. These laws may be found in Chapter I. **Surplus property transferred to a tax-supported institution or organization is public property and is subject to control by these laws. The fact that surplus property is donated does not change its status in this regard.**

The violation of any State or Federal law or regulation made by authority of law, concerning the acquisition or disposal of surplus property by an eligible institution or organization, will be grounds for placing it on the inactive list. It may lead to criminal or civil action by the State or Federal Government.

- b. When surplus property is acquired, which has a unit acquisition cost to the United States of less than \$2,500, the recipient certifies that such property shall be used only for educational, public health, or civil defense purposes for which acquired, including research for any such purpose, and for no other purpose, and that it is required for its own use to fill an existing need, and is not being

acquired for any other use or purpose outside the State, or for sale or trade.

- c. Since surplus property must be put into use within one year from the time of receipt, except certain classes of property for civil defense, requests should not be made for larger quantities than a one year supply.

2. Disposal of Property No Longer Needed (Acq. Cost of Less Than \$2,500)

- a. If surplus property with an acquisition cost of less than \$2,500 has not been put into use within one year from the date it was acquired, it should be reported to the Division for disposal instructions. In making such reports, the following information is needed:

- (1) Name and description of the item that is no longer needed.
- (2) Identity of transfer document by which the item was received.
- (3) Present condition of the item.
- (4) Reason why the item is no longer needed.
- (5) Length of time the item was actually used by the donee.

- b. If surplus property of any category with an acquisition cost of less than \$2,500 is no longer needed, it should be reported to the Division. In making such report, the same information will be needed as outlined in [A.-2-a.] above.

- c. Civil Defense organizations are required to obtain disposal instructions from the State Director of Civil Defense in addition to meeting the above mentioned requirements outlined in [A.-2-a.] above.

B. PROPERTY, OTHER THAN AIRCRAFT, WITH A GOVERNMENT ACQUISITION COST OF \$2,500 OR MORE:

1. Use of Property Requested

- a. Such property may be used only for educational purposes, public health purposes or civil defense purposes for which acquired, including research for any such purpose, within twelve months after acquisition. It may be used for these purposes only.
- b. In the event this type of property is not placed in use within twelve months after it is acquired, a written no-

tice is required to the Division within 30 days after the expiration of the twelve months' period, unless originally acquired for civil defense purposes. The same information will be needed as outlined in [A.-2-a.] above.

2. Disposal of Property no Longer Needed (Acq. Cost of \$2,500 or More)

- a. This type of property may not be disposed of without the prior written approval of the Division.
- b. If surplus property with an acquisition cost of \$2,500 or more is no longer needed or has not been put into use within twelve months after it has been acquired, it should be reported to the Civil Defense Director. If this Director has no further use for the property, it should be reported to the Division. This report should contain the same information as outlined in "Disposal of Property No Longer Needed". [See A.-2-a.] above.
- c. Such property of \$2,500 or more per item donated to Civil Defense organizations may not be disposed of without prior consent of the Civil Defense Administration. The State Civil Defense Organizations will determine the need of this property by the Civil Defense Administration or the State Civil Defense Organization. If there is no further need by these, the State Civil Defense Organization will notify the Division. The Division will need the information requested in the heading, "Disposal of Property No Longer Needed", outlined in [A.-2-a.].

C. ACQUIRING AND DISPOSAL OF AIRCRAFT:

The transfer of aircraft by the Division will be made directly to the institution or organization upon justification of **need** and **use**. Restriction for **use** and disposal will be found on Health, Education, and Welfare Form 135.

D. SUMMARY OF RESTRICTIONS FOR THE USE OF SURPLUS PROPERTY:

1. Important Terms and Conditions

Important terms and conditions concerning the use of surplus property are as follows:

- a. Property should be acquired only for an **existing** need of the donee, institution or organization, and for no other

purpose. (Property acquired for "other purposes", is acquired by fraud).

- b. Once acquired, the property belongs to the eligible **institutions** or **organizations**, and not to an individual or a club or a unit of that organization, and should be accounted for in the same manner as property bought commercially by the institution or organization.
- c. Items having a government acquisition cost of less than the \$2,500 must be used according to the need outlined in the request. If there is no need for any item or items disposal will be authorized by the Division.
- d. Items costing \$2,500 or more must be **used** for four years unless earlier disposal is authorized by the Department of Health, Education, and Welfare (through the Division of Property Utilization).
- e. During the restriction period the property cannot be **leased, traded, sold, bailed, permanently loaned** or otherwise encumbered or disposed of without authorization by the Division.
- f. Use of Donated Items do not have to be confined to the use for which the item was manufactured. "Conversions" are encouraged if there is no further need by institutions for the use of property as it was originally designed. It is urgently recommended that when conversions result in items changing or losing their original identity, a notation to that effect with initials and date should be entered on the donee's copy of the acquisition document.

2. Use of Off-Site Real Estate

- a. **Reconstructed or Re-Used Buildings.**
Any buildings which are removed by a public school agency for the purpose of construction or use of the said building or buildings for public school purposes, should not be reconstructed or put into use for any public school purpose until the contemplated use, and plans for the same, have been approved by the Superintendent of Public Instruction, through the Director of the Division of Buildings and Grounds.
- b. **Approval of Plans for Reconstructed Buildings.**
Section 162.060, Kentucky Revised Statutes, provides that all plans for new buildings, additions to, or altera-

tions of old buildings shall be approved by the Superintendent of Public Instruction.

e. Contracts for School Building Construction.

Section 160.070, Kentucky Revised Statutes, provides that contracts for construction of buildings for school purposes should not be awarded until the plans for the same have been approved by the Superintendent of Public Instruction.

d. Plans Prepared by Licensed Engineer or Architect.

Section 332.360, Kentucky Revised Statutes, provides that the plans of buildings or change in buildings, must be prepared by a licensed engineer or architect and the Contract or the same executed under his direction, if the contemplated cost of the structure exceeds \$2,000.

E. CATEGORIES OF SURPLUS PROPERTY :

The Division has handled and made distribution of thousands of items following under the general headings listed below :

1. Office Supplies and Equipment
2. Cafeteria Equipment and Supplies
3. Shop Equipment and Supplies
4. Optical Equipment and Supplies
5. Barbering Equipment and Supplies
6. Fire-Fighting Equipment and Supplies
7. Photographic Equipment and Supplies
8. Laundry Equipment and Supplies
9. Dental Equipment and Supplies
10. Vehicles and Relating Rolling Stock
11. Electrical Equipment and Supplies
12. Maintenance Equipment and Supplies
 - (a) Plumbing supplies and equipment
 - (b) Building materials
13. Athletic Equipment and Supplies
14. Beds—Bedding—Clothing, and Related Items
15. Medical Equipment and Supplies
16. Many Other Supplies and Equipment
(Too Numerous to Mention)

The Division will continue to claim these items in the future so long as the need exists for them. You may never know about

some of the items under the named categories if you do not visit the warehouse or make requests for needed items within these categories.

It is important that the Division have a list of your needs. These requests help us in that it will enable the Division to make a more intelligent selection of property from lists that are made available for screening. It will help the request if a written statement is made for each item showing why it is needed or the use which will be made of it. Each item should be described.

Example: Electric Motor, $\frac{1}{4}$ horsepower, single phase, 110-220 volts, 60 cycles, and 1750 RPM.

There are many thousands of very good items which schools, hospitals and Civil Defense Organizations **use** and **need** in maintenance and setting up various programs.

Many institutions have practically equipped their facilities with surplus property for less than 15 per cent of the original cost. Some institutions reduce their maintenance cost by 50 per cent.

You are invited to offer suggestions and recommendations on improving our services. If you have discovered unique uses of surplus property, tell us so that we may tell others. This is your program and you **should** take advantage of the benefits offered.

CHAPTER VIII

REAL PROPERTY AND RELATED PERSONAL PROPERTY

A. APPLICATIONS FOR REAL PROPERTY :

1. This chapter lists the essential procedures and requirements for the acquiring and the use of real property and related personal property in Kentucky. Educational and health institutions which are eligible to acquire Federal surplus property and related personal property by donation are eligible to purchase Federal surplus land, buildings, and other real estate at Public Benefit Discount.

Civil Defense organizations are not eligible to purchase Federal surplus real property at a discount available to educational and health institutions.

Applications should be submitted in an original and four copies by the interested institution. Such applications may be in the form of a letter or on forms for that purpose. The applicant must establish the following listed factors :

- a. The eligibility of institution as a State or municipality, or as an instrumentality or as a political subdivision thereof, or as an educational or health non-profit organization, tax-exempt under Section 101(6) of the Internal Revenue Code of 1939 or Section 501(c)(3) of the Internal Revenue Code of 1954.
- b. A certified copy of a resolution of the governing board authorizing the applicant for and acquisition of the property and designating a specific official as its authorized representative. The resolution should also certify that the applicant is willing and authorized to pay the external administrative expenses incident to the transfer for cases involving on-site disposal, including charges made by the Division, and the applicant is willing, authorized and in a position to assume immediate care and maintenance of the property.
- c. An identification of the legal entity to receive the property.
- d. A statement that the application is being made for acquisition of the property under the provisions of Section 203(k)(1) of the Federal Property and Administrative

Services Act of 1949, (63 Stat. 377), as amended, and regulations and procedures promulgated thereunder.

- e. A statement covering the need for the property, its suitability for the proposed use, and the financial ability and plans of the applicant to obtain funds to acquire, maintain, and operate the property for its program.
- f. A complete statement as to the program of utilization, including salvage or conversion plans, a justification for the need for all of the acreage in any land requested, and for the need for each specific building and other improvements.
- g. An identification of the property by facility and location as well as a description of the property applied for (including related personal property) in as full detail as is practicable. The application should indicate easement reservations and new easements required for proper use of the facility covering both utility, road access and similar items. An applicant should make sure in analyzing property for its function that the proposed use of the property will not be impeded or prejudiced by outstanding easements, rights of use, or other encumbrances which would make health or education utilization impracticable.
- h. Other information as required by the Regional Property Coordinator which will permit the determination of allowance of percentages for specific criteria in the applicable public benefit allowance formula.

B. A DETAILED USE PROGRAM:

A detailed use program is not required for improvements to be removed from the site. A program utilization such as "classroom use" is sufficient where the transfer is to a public school entity. Recommendations for major on-site facilities should be more extensively documented to reflect well planned utilization, and may effectively be supported by recommendations and endorsements by the Division, public officials of State and local government, or sponsoring associations or organizations in the community.

C. NON-PROFIT INSTITUTIONS:

Non-profit institutions making application shall attach photostatic copies or certification of tax-exemption, or, if not

yet operating, a letter from the Internal Revenue Bureau stating that the institution will be tax-exempt if the program outlined is carried out.

D. REQUIREMENTS OF THE TRANSFEREE:

1. To continuously utilize the property in accordance with an approved plan.
2. Shall not be permitted to sell, lease, mortgage or otherwise dispose of the property except after authorization.
3. Shall file such reports covering utilization of the property as may be required.
4. Any restrictions made by the Federal Regulations shall extend for the following named periods:
 - (a) Twenty (20) years for permanent facilities acquired for use in place.
 - (b) Ten (10) years for temporary facilities acquired with land for use in place, except in those cases where the value of the land is out of proportion to the value of the temporary facilities, in which event the limitations shall extend for twenty (20) years.
 - (c) A minimum of five (5) years for facilities being acquired separately from land whether they are for use on-site or off-site. However, where the estimated economic life of the structure for the use for which they have been requested is greater than five years, limitations on the use of the structures shall be equal to their estimated economic life.

E. DEFERRED USE DISPOSAL, TERMS AND CONDITIONS:

1. Surplus property disposals for tax-supported educational or public health institutions for use as sites for school or public health facilities requires that these facilities be constructed thereon within a maximum period of eight years from the date of transfer.
2. Transfers shall be subject to all of the general terms and conditions set forth in (D) above and, in addition, the following special terms and conditions shall apply.
 - (a) Transferee shall be obligated to continuously use the property, including the proposed facilities constructed thereon, in conference with its approved plan, for a period of twenty (20) years from the date of transfer.

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- (b) The transferee shall be obligated to construct all proposed facilities and commence utilization of the conveyed property for educational or public health purposes in conference with the approved plan no later than eight years from the date of transfer.
- (c) Until such time as the facilities contemplated in the transferees approval plan have been constructed and placed in use in conference therewith the transferee shall pay to the United States within one year from date of transfer and annually thereafter on the anniversary date thereof an amount equal to five percent of the fair value of the property, together with interest at the prevailing rate as determined by the Department for the disposal of government real property upon the unpaid balance of the fair value of the property. At such time as the facilities last mentioned shall have been constructed and placed in use, which may be prior to but not later than the maximum time fixed by the Department and specified in the instrument of transfer, the transferee shall be entitled to a public benefit allowance, to be applied against the unpaid balance of the fair value computed upon the basis of the benefit which has accrued or may accrue to the United States from the use of such property for educational or health purposes. In the case of a transfer on less than 100 per cent public benefit allowance, the public benefit allowance shall be computed on and applied against the balance of the fair value remaining unpaid at the time of commencement of utilization in accordance with this section. The transferee shall, at such time, make full payment in cash or any balance of the fair value remaining after application of such public benefit allowance.

F. UTILIZATION:

1. Where property or any portion thereof is not being utilized for the purpose for which transferred, the transferee shall be required:
 - a. To re-transfer such property to other educational or health user.
 - b. To sell such property for the benefit and account of the United States.

- c. To return title to such property to the United States or,
- d. To abrogate the conditions and restrictions of the transfer, except that where property has never been placed in use for the purpose for which transferred, abrogation will not be permitted except under extenuating circumstances.

2. Where construction is contemplated, it must be started within eighteen (18) months after the date of the transfer of the property.

3. Where the transferee desires to place the property in temporary use for a purpose other than that for which the property was transferred, approval must be obtained. (A through F adapted from Federal Regulations)

G. APPROVAL FOR PUBLIC SCHOOL USE:

- 1. Before an application is made for the acquisition of any real property or related personal property, for public school use, the contemplated applicant should secure the approval of the Director of Buildings and Grounds of the State Department of Education.

State Board of Education Regulation 22.030 sets certain requirements concerning public school sites. These requirements involve factors concerning accessibility, size, proper drainage, suitable surroundings, water supply and sewage disposal.

Unless the site can be approved as meeting these, the property cannot be used for public school purposes by the donee. No application can be considered until such approval has been made.

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CHAPTER IX

SURPLUS PROPERTY NOT COVERED BY PUBLIC LAW 152, AS AMENDED

From time to time the Division will secure surplus property not covered by Public Law 152, as amended, which will be of use to educational and health institutions and may be useful to Civil Defense Organizations.

All State laws and regulations will apply to this property. Although the Federal laws will not apply specifically, the regulations for implementing the Federal laws, as well as State Board of Education Regulations, will be used as a basis for acquiring, use and disposal of surplus property not covered by Public Law 152, as amended. A possible exception to this will be that the time restriction applicable to Federal surplus property as to use by the donee will not apply. Ownership will go directly to the donee when the property is transferred by the Division.

The same institutions and organizations may become eligible for this property as for Federal surplus property. The same procedures will be followed in establishing eligibility and in acquiring this property. Use and need will be the basis of allocating this property. The same standards and regulations will be used in allocating it as are used for allocating Federal surplus property so far as they can be made to apply to the specific situations.

Time limits to claim this property will be placed upon applicants in the same manner as is being used for applicants who apply for Federal surplus property.

When such surplus property is available, it may be acquired by the same procedure as that used for Federal surplus property. In some instances, it may be necessary for the Division to pay a charge for certain items which will be a small part of the original acquisition cost. When this is required, it will be necessary to add this cost to the applicable charge made by the Division to donees. It will be done by the same procedure as that followed for Federal surplus property.

CHAPTER X

FORMS AND THEIR USE

In this chapter will be found sample copies of the forms to be used in putting into operation the procedures to be followed in conducting the affairs of the surplus property utilization program.

FORM KPU-95 Institutional Request for Surplus Property:

This form should be used by educational and health institutions in listing property which they desire to acquire. This form provides space to state the need for the property. This should be done by stating definitely how the property will be used. This procedure will help the Division to get the request in position so that it may be used immediately in the allocation process. If not used, it may be several days before the items requested will be made available for consideration in the process of allocation.

FORM KPU-100 Resolution:

All school systems, educational and health institutions as well as all civil defense organizations should file with the Division this resolution showing the person who has been designated as the legally authorized representative of the school system, educational institution or Civil Defense Organization as the case may require. This representative will have authority to select property and sign all documents required for securing property and for binding the Board of Education and/or Administrative officials to the observance of the covenants and agreements as to use and disposal of the property.

The representative chosen for each school system should be a person who is in a position to know of the needs of the different schools of the system. On visits to the warehouses of the Division, this person should be accompanied by a technical advisor or other person who is acquainted with the need and use of the property to be selected for the system or the individual school. This will also apply to large schools and health institutions.

Civil Defense Organizations shall secure the approval of the State Civil Defense Director of the items of all property selected.

FORM KPU-105. List of Approved Health Institutions:

Only an approved or accredited tax-supported medical institution, hospital, clinic or health center or non-profit medical institution,

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hospital, clinic, or health center is an eligible applicant. State Law provides that the State Board of Health and/or the State Commissioner of Health shall be the approval Agency. This form has been prepared to assist the State Commissioner of Health in submitting to the Division a list of the approved or accredited health institutions which have been approved for health services as defined by the form.

FORM KPU-110 List of Approved Civil Defense Organizations:

It is necessary that each civil defense organization be designated pursuant to State law. The State Civil Defense Director will certify that the property is usable and necessary and that the applicant organization is capable to receiving, caring for, and maintaining such property (VII A. CIVIL DEFENSE ADVISORY BULLETIN 202) Donable Property items shall be requested from the Division, by or through the State Civil Defense Director [See V-A-1 (a) CIVIL DEFENSE ADVISORY BULLETIN 202]. Priorities of need within the State, will be determined by the State. City, County, or other local Civil Defense Organizations shall work through their State Director. [See VI-A-1-2 CIVIL DEFENSE ADVISORY BULLETIN 202].

The State Civil Defense Director will be requested to file with the Division at least annually a list of approved Civil Defense Organizations eligible to receive donable surplus property for the purposes indicated.

FORM KPU-115 Application for Determining Eligibility of Educational Institutions:

All public school districts, state colleges, State special schools, and universities are eligible to receive Federal surplus property since they must operate approved or accredited schools.

Each non-profit, tax-exempt school should make application to the Division for the determination of its eligibility to acquire Federal surplus property. When this completed application has been received by the Division with the necessary supporting data, a determination of eligibility will be made. The applicant will be informed, by letter, of the determination.

FORM KPU-120 Application for Determining Eligibility of Health Institutions:

Each approved or accredited medical institution, hospital, clinic or health center should make application to the Division for

the determination of its eligibility to receive donable surplus property. These institutions are required to perform the services as outlined in the definitions for each. This application form has been prepared to assist institutions in giving information which is needed to determine eligibility.

When the completed application has been received by the Division, with the necessary supporting data, a determination of eligibility will be made. The applicant will be notified by letter of the determination.

FORM KPU-125 Application for Determining Eligibility of Civil Defense Organizations:

Each Civil Defense Organization which has been approved by the State Director of Civil Defense should furnish the Division certain needed information by filing the application Form KPU-125 with the Division through and with the approval of the State Civil Defense Director. This will assist the Division in serving the organizations.

FORM KPU-130 Civil Defense Requisition:

Each Civil Defense Organization should use this form to list the items of surplus property which are requested. Three copies should be filed as part of the request. In listing items do not fail to give the group number from which each item is taken. This will be found in Advisory Bulletin 202, Annex C. This publication is furnished by Federal Civil Defense Organization for your use. Note also that each item must be justified by giving how it will be used by written statement, in addition to indicated types of civil defense service shown by the Symbol A, B, or C, in the column following the description.

When the list has been completed, it should be submitted to the State Civil Defense Director before it is filed for consideration of the Division.

FORM KPU-140 List of Private, Non-Profit, Tax-Exempt Schools:

This form should be used in preparing a list of private, non-profit, tax-exempt schools. This list will be of assistance to the Division of Property Utilization in contacting the institutions so that they may file application for determination of their eligibility to receive surplus property under the Federal and State Laws and Regulations. It requests information which will be needed in determining what institutions should be contacted.

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Form KPU-115 will be sent to each. The information required by it is needed to determine eligibility in terms of State Law and Federal Regulations.

KRS 158.080 provides that private and parochial schools shall teach the English language "and shall offer instruction in the several branches of study required to be taught in the public schools of the State. The terms of the school shall not be for a shorter period in each school year than the term of the public school provided in the district in which the child attending school resides.

KRS 159.030 (1) provides that "The board of education of the district in which the child resides, shall exempt from the requirements of attending upon a regular public day school every child of compulsory school age." (b) "Who is enrolled and in regular attendance in a private or parochial regular day school approved by the State Board of Education."

Before the State Board of Education can approve a school, it will be necessary for the school to comply with these State laws.

The Federal regulations require that "school" means an **approved** or **accredited organizational** entity devoted primarily to approved, academic, vocational, or professional study and instruction, which operates for educational purposes on a full-time basis for a minimum school year as required by the State Department of Education and employs a full-time staff of legally qualified instructors.

FORM KPU-150A Warehouse Invoice:

This form contains the certifications, covenants, and agreements which the donee covenants and agrees to follow in consideration for the use of the property transferred and listed on the Invoice or any attachments thereto. This form shall be signed by the authorized representative of the Board or Governing authority of the institution or organization. This form may contain a list of certain items which are being transferred to the custody of the donee.

FORM KPU-150B Warehouse Invoice Attachment:

This form should be used for listing items to be attached to the Invoice Form KPU-150A. This form may be signed by a person receiving the property provided Form KPU-150A has been signed by the authorized representative.

DONEE RESOLUTION

KPU-100
7-15-58

WHEREAS, this is the governing Board of the ..., and
(Institution or Organization)

WHEREAS, it is a tax-supported or a non-profit and tax-exempt school
system, school, college, university, medical institution, hospital, clinic or
health center, or a Civil Defense organization designated pursuant to
State Law, and

WHEREAS, the property requested under authority of this Resolution, is
usable and necessary in the State for education, public health or Civil
Defense purposes for which acquired, including research for any such
purpose, and for no other purpose, and

WHEREAS, the property is required for use to fulfill an existing need
and is not being acquired for any other use or purpose for use outside of
the State or for sale, and

WHEREAS, funds are available to pay the costs of care and handling
incident to donation, including packaging, preparing for shipping and
transporting such property, and

WHEREAS, the terms, conditions, and instructions imposed by the Fed-
eral Government and the Division of Property Utilization will be ob-
served and fulfilled, and

WHEREAS, it is understood that the property acquired regardless of
acquisition cost shall be on an "as is", "where is" basis, without warranty
of any kind.

NOW THEREFORE, IT IS HEREBY RESOLVED:

(1) That ..., is hereby
(Title)
authorized as a representative of ... to sign any
(Institution or Organization)
documents required by the Division of Property Utilization for the selec-
tion and receipt of donable surplus property from the Federal Govern-
ment.

(2) That a certified copy of the Resolution be filed with the Division
of Property Utilization and the same shall remain in full force and effect
until revoked by written notice.

This Resolution was adopted this the ... day of ...
195..... The following is the signature of the person authorized herein.

Signed: ... Title: ... Date: ...
I, ..., Secretary or Clerk, of the governing Board
of the ... of ... County, Kentucky, do
(Institution or Organization)

hereby certify that the foregoing is a full, true, and correct copy of a
Resolution adopted by the Board at a ... meeting,
regular or called
thereof, held at its regular place of meeting at the time above-stated,
which Resolution is on file in the office of said Board.

Secretary or Clerk Address Date

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COMMONWEALTH OF KENTUCKY
DEPARTMENT OF EDUCATION
Division of Property Utilization
Frankfort, Kentucky

LIST OF HEALTH INSTITUTIONS

The health institutions listed herein provide approved health services, and the type of institution as well as the type of service rendered by each is indicated. They have been listed and classified in accordance with the Federal definitions cited herein of each type.

Definitions of Health Institutions

"Health Center" means approved facilities utilized by a health unit for the provisions including a related facility, such as laboratories and clinics.

"Medical Institution" means an approved or accredited institution, facility, entity or organization which has for its primary function, a provision of medical services, or the promotion of health through the conduct and research, investigations, experiments, training and demonstrations, relating to causes, prevention, and methods of diseases or injuries; the term includes hospitals, clinics, research and health centers, laboratories, medical, dental and nursing schools, and similar institutions, but does not include those primarily engaged in domiciliary care.

"Hospital" means an approved or an accredited institution providing health services for in-patient medical or surgical care of the sick or injured and includes related facilities such as laboratories, out-patient training facilities, central service facilities, and staff officers which are an integral part of the hospital. The term "hospital" does not include institutions whose primary problem is the furnishing of domiciliary care.

"Clinic" means an approved facility organized and operated for the primary purpose of providing out-patient health services and includes the customary related facilities such as laboratories, treatment rooms, etc.

I,, Commissioner of Health, of the Commonwealth of Kentucky, hereby certify that the institutions listed and the information concerning each is correct to the best of my knowledge.

Signed: Dated:

NOTE:
Neither the State Department of Health nor a county or city health unit or any combination thereof is eligible to receive surplus property except where the service is that of one or more of the institutions defined herein.

LIST OF HEALTH INSTITUTIONS

KPU-105
7-15-58

County and Town	Institution	Administrative Official and Address	Type of Ownership	Type of Health Institution				Approv. Ag'y		
				Type of Hosp.	Capacity of Hospital		Hlth. Center	Clinic	Health Commissioner	State Bd. of Health
					Beds	Bassin.				

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COMMONWEALTH OF KENTUCKY
DEPARTMENT OF EDUCATION
Division of Property Utilization
Frankfort, Kentucky
APPLICATION OF ELIGIBILITY

EDUCATION

(Non-Profit, Tax-Exempt Schools)

1. Name of Institution
2. Address County.....
3. Name of Administrator
4. Name of Controlling Board
5. Name of the organization which approves or accredits your educational program Give its present rating.....
6. Is your institution or organization (a) Public, tax-supported.....
(b) Private, tax-exempt.....
7. If it is private, tax-exempt, file with your application the following:
(These are essential in determining eligibility).
 - (a) Photostatic or notarized copy of your certificate of tax-exemption or a letter of determination from the Bureau of Internal Revenue.
 - (b) Certified copy of the Articles of Incorporation.
 - (c) Certified copy of By-laws in force.
8. What is your essential function? (Check one)
Education....., Health....., Recreation....., Penal.....,
Welfare....., Detention....., Other.....
9. Please check **one** of the following definitions which describes your operation:
 - () "School" means an approved or accredited organizational entity devoted primarily to approved, academic, vocational, or professional study and instruction, which operates for educational purposes on a full time basis for a minimum school year as required by the State Department of Education and employs a full-time staff of legally qualified instructors.
 - () "College" means an approved or accredited institution of higher learning offering organized study courses and credits leading to the baccalaureate or higher degrees.
 - () "University" means an approved or accredited institution for instruction and study in the higher branches of learning and which is empowered to confer degrees in special departments or college.
10. If you checked the definition of "School", please answer the following:
 - (a) Age limits and grade level of pupils. (Age limits means 6-21, 6-14, etc.)
Grade level (Grade level means 1-8, 9-12, etc.)
Age limit

11.

- (b) Length of school day. (Hours
- (c) Length of school year. (Months of 20 days each.....)
- (d) Number of full-time students.....
- (e) Number of full-time legally qualified instructors.....
- (f) Who pays the salaries of the teachers?.....
- (g) What courses of study are offered in your school?.....

- (h) If your institution is a college, list the following:
 - (a) Fields or branches of study offered
 - (b) Degrees Conferred

11. If you checked college or university, please answer the following:

- (a) Name of the organization which approves your institution
- (b) Give its present rating
- (c) List the colleges and departments, as well as the person or persons in each who are authorized to apply for donable property suitable to their needs:

College or Department	Applicant
.....
.....
.....
.....

- (d) Additional comments and description of your program and its operation.

I hereby certify that the information given above is true to the best of my knowledge and belief.

Institution Signed.....
 Title Date.....

12. Comments and Recommendations of the Interviewer:

- (a) Certified copy of the Articles of Incorporation attached.....
- (b) Certified copy of current By-laws attached.....
- (c) Photostatic or notarized copy of certificate of tax-exemption
- (d) Letter of determination from the Bureau of Internal Revenue

Comments:
 Signed: Title: Date:

13. Determination of Eligibility:

- (a) Approved:
 - (b) Disapproved:
 - (c) Reason for Disapproval:
- Signed: Title: Date:

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF EDUCATION
Division of Property Utilization
Frankfort, Kentucky

APPLICATION OF ELIGIBILITY

CIVIL DEFENSE

1. Name of Organization
2. Address
3. Name of Administrator
4. Address Phone.....
5. What is the essential function of your organization?.....
.....
6. Give the date that the State Civil Defense Director approved your organization:
..... Enclose a certified or photostatic copy of the approval instrument or get his signed approval of this application.
7. Check the following which applies to your organization:
 - () "Civil Defense Organization" means the official agency designated pursuant to State law, to be responsible for the civil defense program in such state or local political subdivisions thereof, and organizations or instrumentalities designated, pursuant to State law, as having the responsibility for a component part of the civil defense program. This term does not include a State agency.
 - () "Civil Defense Training" means a program of training designed to teach civil defense personnel civil defense responsibilities, duties, and emergency assignments, or to develop operational skills in the performance of such duties.
 - () "Civil Defense Operational Readiness" means that state of preparedness of civil defense organizations which will enable them to carry out their emergency functions.
 - () "Civil Defense Reserve Stock" means material, equipment and supplies which will be placed in storage in accordance with Federal Civil Defense Administration criteria and will be for use only in an enemy caused disaster.
8. Is your organization State or political subdivision thereof?.....
9. This organization has been approved to secure property for:
() Training () Operational Readiness () Reserve Stock
10. The trainees of our organization are composed of:
 - a. () Public employees
 - b. () Private citizens
 - c. () Both a. and b.
11. It is understood that:
 - a. The Division of Property Utilization is required to use the following criteria in the distribution of surplus property to eligible Civil Defense Organizations.

- (1) Areas in greatest need of the type of property under consideration.
 - (2) Civil defense training needs.
 - (3) The replacing of civil defense property damaged, destroyed or consumed as a result of major natural disaster.
 - (4) Location, conditions and transportability of property.
 - (5) Ability of civil defense organization to accept property.
 - (6) Availability of Civil Defense Organization of funds to handle, maintain or warehouse.
 - (7) The quantity of property of a given type which has already been received by the Civil Defense organization.
- b. The Civil Defense Organization shall state the need and use for all property to be acquired.
 - c. It will be necessary to secure the approval of the State Director of Civil Defense before filing requests for surplus property with the Division of Property Utilization. **Blanket requests cannot be honored.**
 - d. The personnel of our organization should be familiar with and understand the conditions on which surplus property is donated as provided in Title 32, Sub-Title C, Chapter 17, of the Federal Civil Defense Administration Regulations Part 1702.07, as well as, **use** and **disposal** of surplus property having an acquisition cost of \$2,500 or more for each item as provided for in 1702.07 (C), thereof.
 - (1) All Civil Defense entities which have property that is no longer needed should report this fact to the State Civil Defense Director. If the State Civil Defense Director has no further use for the property, it shall be reported to the Division, except property with a unit government acquisition cost of \$2,500 or more. This must be reported to the Federal Civil Defense Administrator.

12. Additional comments and description of your program and its operation.

13. I hereby certify that the information given and statements made herein are correct to the best of my knowledge.
 Name of the Organization:
 Signed by: Title: Date:
 Approved: Date:

14. Comments and Recommendations of the Interviewer:
 a. State organization () b. Political subdivision of the State ()
 c. Comments:
 Signed: Title: Date:

15. Determination of Eligibility:
 a. Approved:
 b. Disapproved:
 c. Reason for Disapproval:
 Signed: Title: Date:

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF EDUCATION
 Division of Property Utilization
 Frankfort, Kentucky

KPU-130
 7-15-58

REQUISITION No.

CIVIL DEFENSE

(A) Training (B) Readiness (C) Reserve Stock

Item No.	Description	Symbol A-B-C	*Group Number	**Civil Defense project and how to be used. Detailed information is required.

The undersigned, duly appointed Civil Defense Director and/or duly authorized representative does hereby request the above listed items of Federal surplus property to be used as indicated above. I certify that these items are allowable, by the classification indicated above, are usable and necessary for this Civil Defense Organization.

 Name of Civil Defense Organization

 Authorized Representative Date

I hereby certify that these items are usable and necessary for this Civil Defense Organization.

 State Civil Defense Director

Date:

File (3) copies

* See Annex C, Advisory Bulletin 202

** Appropriate statement may be:
 "Communicative Equipment for Control Center".

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KPU-140
7-15-58

**COMMONWEALTH OF KENTUCKY
DEPARTMENT OF EDUCATION**

**Division of Property Utilization
Frankfort, Kentucky**

EDUCATION

LIST OF PRIVATE, NON-PROFIT, TAX-EXEMPT SCHOOLS

The schools listed herein are non-profit and tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1954 or Section 101(6) of the Internal Revenue Code of 1939. They meet the requirements for schools, colleges, or universities defined in the Federal Regulations stated herein. The attached sheet gives correct facts concerning the type of service for each individual school listed.

Definitions of Educational Institutions

"School" means an approved or accredited organizational entity devoted primarily to approved, academic, vocational, or professional study and instruction, which operates for educational purposes on a full-time basis for a minimum school year as required by the State Department of Education and employs a full-time staff of legally qualified instructors.

"College" means an approved or accredited institution of higher learning offering organized study courses and credits leading to the baccalaureate or higher degrees.

"University" means an approved or accredited institution for instruction and study in the higher branches of learning and which is empowered to confer degrees in special departments or college.

I,, hereby certify that to the best of my knowl-

Name of Official

edge, the institutions listed herein comply with the definitions stated above and that the information given concerning each is correct.

.....
Signed

.....
Title

.....
Date

LIST OF PRIVATE, NON-PROFIT, TAX-EXEMPT SCHOOLS

KPU-140
7-15-58

EDUCATION

Name of School and School District Location	Administrator and Address	Kind of School						No. of Teachers	Term Lgth Mon.	Name of Approv. Agency	Enrollment
		Kin-gtn.	Ele.	H.S.	12 Grade El. & H.S.	Col-lege	Univ.				

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COMMONWEALTH OF KENTUCKY
DEPARTMENT OF EDUCATION

KPU-120
7-15-58

Division of Property Utilization
Frankfort, Kentucky

APPLICATION OF ELIGIBILITY
HEALTH

1. Name of Health Unit
2. Address County
3. Name of Administrator Phone:
4. Name of Controlling Board
5. What state department has licensed or approved your organization?
6. Date of License or Approval
7. Is your institution or organization (a)Public, tax-supported.....
(b)Private, tax-exempt
8. If your organization is private and tax-exempt, file with your application the following:
 - (a) Photostatic or notarized tax-exemption certificate or a letter of determination of the Bureau of Internal Revenue.
 - (b) Certified copy of Articles of Incorporation.
 - (c) Certified copy of By-laws in effect.
9. Please check the definition below which best defines the services of the organization:
 - () "Medical Institution" means an approved or accredited institution, facilities, entity, or organization which has for its primary function the provision of medical services, or the promotion of health through the conduct of research, investigations, experiments, training and demonstrations, relating to causes, prevention and methods of diagnosis and treatment of diseases or injuries; the term includes hospitals, clinics, research and health centers, laboratories, medical, dental and nursing schools, and similar institutions, but does not include those primarily engaged in domiciliary care.
 - () "Hospital" means an approved or accredited institution providing health services primarily for in-patient, medical or surgical care of the sick or injured and includes related facilities such as laboratories, out-patient departments, training facilities, central service facilities, and staff officers which are an "integral" part of the hospital. The term "hospital" does not include institutions whose primary purpose is the furnishing of domiciliary care.
 - () "Health Center" means an approved facility utilized by a health unit for the provision of public health services, including related facilities such as laboratories and clinics.

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() "Clinic" means an approved facility organized and operated for the primary purpose of providing out-patient health services and includes the customary related facilities such as laboratories, treatment rooms, etc.

NOTE: It may be necessary to have a more complete explanation. If you have available a printed description of medical policies, types of medical services, etc., please attach to the application.

10. Approved capacity

11. Are all persons admitted to your Agency primarily for medical care?

If the answer is "NO", explain why they are admitted.....

12. What is the essential function of your organization. (Check One)

- a. () To provide domiciliary care.
- b. () Provide nursing services.
- c. () Provide health services for in-patient medical or surgical care of the sick or injured.
- d. () Other. Specify:

13. Under what Kentucky Revised Statutes does your organization operate?

14. Additional comments and description of your program and operation

15. Are your patients limited to Class, Color or Creed?.....

16. Does the hospital accept charity cases?

I hereby certify that the information given herein is correct to the best of my knowledge.

Name of Organization:

Filed By: Title: Date:

17. Comments and Recommendations of the Interviewer:

- (a) Certified copy of Articles of Incorporation attached.....
- (b) Certified copy of current By-laws attached.....
- (c) Photostatic or notarized copy of certificate of tax-exemption
- (d) Letter of determination from Bureau of Internal Revenue.....

Comments:

Signed: Title: Date:

18. Determination of Eligibility:

- (a) Approved:
- (b) Disapproved:
- (c) Reasons for Disapproval:

Signed: Title: Date:

COURT OF APPEALS OF KENTUCKY

ROBERT R. MARTIN, SUPERINTENDENT OF PUBLIC INSTRUCTION, COMMONWEALTH OF KENTUCKYAppellant

V. APPEAL FROM FRANKLIN CIRCUIT COURT

HON. WILLIAM B. ARDERY, JUDGE
A.B. CHANDLER, GOVERNOR, ETC., ET AL.,Appellees

OPINION OF THE COURT BY COMMISSIONER CULLEN

REVERSING

Robert R. Martin, Superintendent of Public Instruction of Kentucky, brought action against the Governor, the Commissioner of Finance, and the State Treasurer, seeking a permanent injunction against the carrying out of an executive order of the Governor which ordered that the functions, personnel and funds of the Property Utilization Division of the Department of Education be transferred to the Department of Finance. Judgment was entered dismissing the complaint and Martin has appealed.

The Property Utilization Division, functioning as an organizational unit of the Department of Education, with a substantial personnel, has been carrying out in Kentucky the program of distributing federal surplus property under Title 40, Sec. 484, U.S.C.A. The history of this division and of the federal statute, is of some significance.

Under the original Surplus Property Act of 1944 (1944, c. 479, Public Law 457, 58 Stat. 765) provision was made for distribution of surplus property appropriate or suitable for education or health uses, to "any State or local government, or to any non-profit educational or charitable organization." In 1945, in order to enable Kentucky participation in the program, the then Governor, by executive order, created a "State Educational Agency for Surplus Property," composed of ten persons appointed by the Governor, which was directed to function "subject to the approval of the State Board of Education." It appears that the appointed members of the agency did not serve for any substantial period of time, no subsequent appointments were made, and the Department of Education, as such, assumed administration of the surplus property distribution program. In 1948, in the general appropriations act (1948, c.2), there was included in the appropriations to the Department of Education the following item:

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“(e) **Surplus property.** For ordinary recurring expenses of operation, of which \$10,000 shall be used as a revolving fund,

1948-49\$30,000.00”

In 1949 the federal act was amended (1949 c. 288, 63 Stat. 385, Title 40, sec. 484, U. S. C. A.) to provide, among other things, that distribution could be made by the federal administrator directly to tax-supported or nonprofit educational or health institutions, or “to State departments of education or health for distribution to such tax-supported and nonprofit * * * institutions * * *; except that in any State where another agency is designated by State law for such purpose such transfer shall be made to said agency for such distribution within the State.” In Kentucky, the Department of Education continued to administer the program, and to act as the sole state agency for distribution purposes. In 1954 and 1956 appropriations (in the form of revolving funds) were made by the legislature to the Department of Education for the surplus property program. Early in 1956, in an order of the Superintendent of Public Instruction reorganizing the Department of Education, a Division of Property Utilization was designated within the department, and this order was approved by the Commissioner of Finance and the Governor in accordance with KRS 12.030.

In July 1956 the federal act was again amended (1956, c. 513, 70 Stat. 493). Under this amendment it was provided (Title 40, sec. 484, subsec. (j) (1), U.S.C.A.) that:

“No such property shall be transferred for use within any State except to the State agency designated under State law for the purpose of distributing, in conformity with the provisions of this subsection, all property allocated under this subsection for use within such State.”

The 1956 amendment also authorized distribution of surplus property for civil defense purposes, in addition to the former purposes of education and health.

Following the 1956 amendment the State Department of Education, through its Division of Property Utilization, continued to administer the surplus property program in Kentucky. In 1958 a revolving fund appropriation was made to the Department of Education for the “Division of Property Utilization (Surplus Property).” Then, on September 2, 1958, the Governor issued the executive order now in question. That order reads as follows:

“Secretary of State
Commonwealth of Kentucky

By virtue of the authority vested in me as Governor of the Commonwealth of Kentucky by Chapter 12 of the Kentucky Revised Statutes, and for greater economy of operation and administrative convenience, I hereby authorize and order, effective as of this date, that all property, officers and employees held by or employed by the Department of Education for use in carrying out property utilization functions and all appropriation balances to the credit of the Department of Education expressly earmarked for use in carrying out property utilization be transferred to the Department of Finance for use in carrying out the purposes of said property utilization organization.

Executive Order number 383, dated December 28, 1945 is hereby superseded and revoked.”

The executive order of 1945, referred to in the last sentence of the 1958 order, is the one hereinbefore referred to, in which a “State Educational Agency for Surplus Property” was created.

It is the contention of the appellant that the Governor has no power to transfer a divisional unit from one state administrative department to another. The appellees maintain, first, that the Property Utilization Division, not having been created by statute, has no legal basis for existence; that the statutes confer upon the Department of Finance general powers concerning the disposition of surplus property, and that the Governor has power to create within the latter department a division to handle federal surplus property. Secondly, the appellees maintain that even if the division does lawfully exist in the Department of Education, the Governor has the power to transfer it under his statutory authority to resolve conflicts between departments. As a third proposition, the appellees assert that since the division was created initially by executive order, it can be transferred by executive order. We will discuss these arguments in inverse order.

Before entering upon the discussion of the various arguments, we think it is important to point out that although the questions have been presented in the terminology of transfer or creation of an administrative organizational unit, the real question is whether a **function** of government can be transferred from one department to another, or conferred upon a department, by executive order. We conceive of two reasons why the argument is not sustainable

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that since the surplus property division was created initially by executive order, it can be transferred by executive order. The first reason is that the function of handling the disposition of surplus federal property was not vested in a division of the Department of Education by the executive order of 1945, but rather in a special agency which was to function "subject to the approval of the State Board of Education." The distribution function appears to have come to be exercised by the Department of Education, and the surplus property division to have developed, simply as a result of the nonfunctioning and ultimate disappearance of the designated special agency. The second reason is that, even if it should be considered that the division was created by the executive order of 1945, the Governor has no inherent or implied authority to revoke or retract a completed executive act. *Royster v. Brock*, 258 Ky. 146, 79 S.W. 2d 707.

The argument that, assuming the surplus property division validly exists in the Department of Education, the Governor has authority to transfer it under KRS 12.100, is without merit. That statute is as follows:

In all cases where questions arise between agencies as to their respective functions, or where agencies issue conflicting orders or make conflicting rules, the Governor with the advice of the Governor's Cabinet shall determine the questions, and action shall be taken in accordance with such determination."

There is no conflict here as to "respective functions" of two agencies, nor are there conflicting orders or conflicting rules. The Department of Finance has general powers with respect to the disposition of surplus property of the **state**, KRS 42.060, but no suggestion of statutory power to act as a distribution agency for **federal** surplus property. The Department of Finance does not claim that it **has** the latter power, but rather that it **should** have it. Furthermore, the executive order of September 2, 1958, does not purport to have been, and clearly in fact was not, issued with the view of resolving a conflict.

The primary argument of the appellees is based on the premise that the surplus property division in the Department of Education was never created by law and has no valid existence. Even if we were to accept this premise, we could not reach the conclusion, contended for by the appellees, that the Governor therefore has the power to vest the distribution function in some other agency. The Governor

has only such powers as are vested in him by the Constitution and the statutes enacted pursuant thereto. *Royster v. Brock*, 258 Ky. 146, 79 S.W. 2d 707. Basically, his power is to execute the laws, not to create laws.

If the Department of Finance had statutory authority to perform the function of handling the distribution of federal surplus property, for health, education and civil defense purposes, the Governor clearly would have power to authorize that department to establish a subordinate division to administer the function. But the statute relied upon, KRS 42.060, does not give any such authority. The Department of Finance is not set up to perform functions of education, health or civil defense, but is strictly a financial administration agency.

While KRS 12.030 authorizes the Commissioner of Finance, with the approval of the Governor, to permit any department head to "create" subordinate units, we do not conceive this to mean that these officers can vest in a department a **function** of government that the department is not authorized by statute to perform.

In any event, we do not accept the premise that the surplus property division as an administrative unit of the Department of Education has no valid existence. As we view it, the legal status of the division depends upon whether the state has made a valid election to engage in the distribution of federal surplus property as a function of state government, and has validly designated the agency to handle this function.

It must be conceded that the legislature has not, by express, formal language, stated that Kentucky shall engage in the function of surplus property distribution, nor has it by such language authorized or directed the Department of Education to perform this function. However, the fact is that since 1945 the state has engaged in the performance of this function through the Department of Education, and the legislature repeatedly has made appropriations to the Department of Education for this function.

We think it is not unreasonable to say that when the legislature has appropriated funds for the performance of a particular function, this constitutes a valid legislative election that the state engage in the function. Likewise, when the appropriations have been made to a designated divisional unit of an administrative department, which has factual existence, this would seem to be a sufficient designation of the unit as the agency to perform the function. There is

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no problem about the sufficiency of the defining of the scope of the function, because that is fully taken care of by the federal act.

It is true that the scope of the surplus property program was expanded by the 1956 federal act, but the appropriation made by the 1958 Kentucky legislature, to the "Division of Property Utilization (Surplus Property)," must be considered as authorizing the functions provided for by the federal act as amended.

Since we are upholding the validity of the existence of the surplus property division as a unit of our state government, it will be obvious that we consider the division to be a "State agency designated under State law" within the meaning of the 1956 federal act.

It is our ultimate conclusion that the executive order of September 2, 1958, is invalid, and that the plaintiff below is entitled to the relief prayed for.

The judgment is reversed, with directions to enter judgment granting a permanent injunction as prayed for in the complaint as amended.

Judges Bird and Eblen concur in the result.

CONCURRING OPINION BY JUDGE BIRD

I agree with the ultimate conclusion reached in the majority opinion. I do not agree, however, with the manner in which the conclusion was reached. The original Surplus Property Act was passed by Congress in 1944. It was last amended in 1956 to provide as follows:

"No such property shall be transferred for use within any State except to the State agency **designated under State law** for the purpose of distributing, in conformity with the provisions of this subsection, all property allocated under this subsection for use within such State."

For the purpose of deciding this case, all events prior to 1956 are immaterial. Has the State complied with the terms of the 1956 amendment in making a designation either to an agency in the Department of Education or to any agency within Department of Finance or to any other agency? I think not. My imagination is not sufficiently elastic to stretch a legislative appropriation into a designation required under the amendment of 1956 and thus endow the Department of Education with the right to distribute federal surplus property. Nor can I read such designation into any other legislative act whereby the Department of Finance, or any other State agency, would be thus endowed.

My conclusion in this. The Commonwealth of Kentucky has not designated under the 1956 amendment. The government of the United States is presently permitting the Department of Education to perform the functions contemplated in the Federal Act without designation under State law as provided in the 1956 amendment. To do so is strictly the business of the Government of the United States and, until a designation is made under State law, no one, other than the Federal Government, has authority to alter this arrangement. Therefore the injunctive relief should be granted as provided in the majority opinion.

I am authorized to state that Judge Eblen joins in this opinion.

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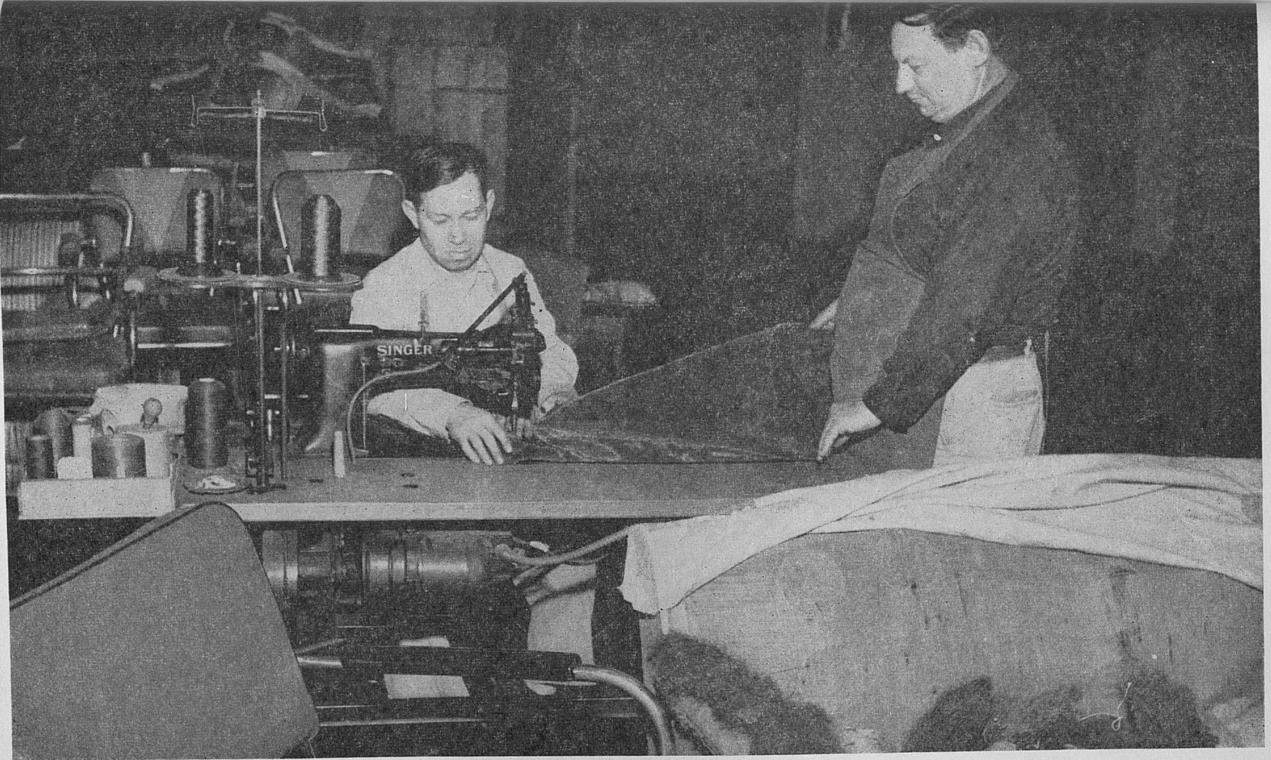
Frankfort, Kentucky

Paul E. Hunley

Department of Finance

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Surplus Cloth Used in Furniture Repair



