

**ARTICLE 54 Sale or Lease of Property**

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**ANNOTATIONS**

## **ARTICLE 54**

### **Sale or Lease of Property**

#### **3-54-1. Authority to sell or lease municipal utility facilities or real property; notice; referendum.**

A. A municipality may lease or sell and exchange any municipal utility facilities or real property having a value of twenty-five thousand dollars (\$25,000) or less by public or private sale or lease any municipal facility or real property of any value normally leased in the regular operations of such facility or real property, and such sale or lease shall not be subject to referendum.

B. A municipality may lease or sell and exchange any municipal utility facilities or real property having an appraised value in excess of twenty-five thousand dollars (\$25,000) by public or private sale or lease, subject to the referendum provisions set forth in this section. The value of municipal utility facilities or real property to be leased or sold and exchanged shall be determined by the appraised value of the municipal utility facilities or real property and not by the value of the lease. An appraisal shall be made by a qualified appraiser and submitted in writing to the governing body. If the sale price is less than the appraised value, the governing body shall cause a detailed written explanation of that difference to be prepared, and the written explanation shall be made available to any interested member of the public upon demand.

C. If a public sale is held, the bid of the highest responsible bidder shall be accepted unless the terms of the bid do not meet the published terms and conditions of the proposed sale, in which event the highest bid that does meet the published terms and conditions shall be accepted; provided, however, a municipality may reject all bids. Terms and conditions for a proposed public sale or lease shall be published at least twice, not less than seven days apart, with the last publication no less than fourteen days prior to the bid opening, and in accordance with the provisions of Subsection J of Section 3-1-2 NMSA 1978.

D. Any sale or lease of municipal utility facilities or real property entered into pursuant to Subsection B of this section shall be by ordinance of the municipality. Such an ordinance shall be effective forty-five days after its adoption, unless a referendum election is held pursuant to this section. The ordinance shall be published prior to adoption pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978 and Section 3-17-3 NMSA 1978 and shall be published after adoption at least once within one week after adoption pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978. Such publications shall concisely set forth at least:

- (1) the terms of the sale or lease;

- (2) the appraised value of the municipal utility facilities or real property;
- (3) the time and manner of payments on the lease or sale;
- (4) the amount of the lease or sale;
- (5) the identities of the purchasers or lessees; and
- (6) the purpose for the municipality making the lease or sale.

E. In order to call for a referendum election on a sale or lease ordinance, a petition shall be filed with the municipal clerk:

- (1) no later than thirty days after the adoption of the sale or lease ordinance;
- (2) containing the names, addresses and signatures of at least fifteen percent of the qualified electors of the municipality; and
- (3) containing the following heading on each page of the petition reprinted as follows:

"PETITION FOR A REFERENDUM

We, the undersigned registered voters of \_\_\_\_\_ (insert name of municipality) petition the governing body of \_\_\_\_\_ (insert name of municipality) to conduct a referendum election on ordinance number \_\_\_\_\_. Ordinance number \_\_\_\_\_ would cause a \_\_\_\_\_ (insert "sale" or "lease") of municipal \_\_\_\_\_ (insert "real property" or "utility facilities").

| Date | Name (printed) | Address | Signature". |
|------|----------------|---------|-------------|
|------|----------------|---------|-------------|

F. Section 3-1-5 NMSA 1978 shall apply to all petitions filed calling for a referendum election on a sale or lease ordinance.

G. If the municipal clerk certifies to the municipal governing body that the petition does contain the minimum number of valid names, addresses and signatures required to call a referendum election on the sale or lease ordinance, the municipal governing body shall adopt an election resolution within fourteen days after the date the clerk makes such certification, calling for a referendum election on the sale or lease ordinance. The election resolution shall be adopted and published pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978] and shall also concisely set forth:

- (1) the terms of the sale or lease;
- (2) the appraised value of the municipal utility facilities or real property;
- (3) the time and manner of payments on the lease or sale;
- (4) the amount of the lease or sale;
- (5) the identities of all purchasers or lessees; and
- (6) the purpose for the municipality making the lease or sale.

H. The referendum election on the sale or lease ordinance shall be held not later than ninety days after the election resolution is adopted. Such election shall be held at a special or regular local election and shall be conducted pursuant to the provisions of the Local Election Act. Any qualified elector of the municipality may vote in such a referendum election.

I. If a majority of the votes cast is to approve the sale or lease ordinance, the sale or lease ordinance shall be effective after the election results have been canvassed and certified. If a majority of the votes cast is to disapprove the sale or lease ordinance, the ordinance shall not be effective.

**History:** 1953 Comp., § 3-54-1, enacted by Laws 1983, ch. 115, § 1; 1985, ch. 208, § 119; 1999, ch. 134, § 1; 2018, ch. 79, § 69.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1983, ch. 115, § 1, repealed former 3-54-1 NMSA 1978, relating to authority to sell or lease municipal utility or real property used for municipal purposes, and enacted a new 3-54-1 NMSA 1978.

**Cross references.** — For lease of parking facilities, see 3-50-8 and 3-51-8 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, provided that the Local Election Act governs both the adoption and publishing of election resolutions calling for a referendum election on a sale or lease ordinance and referendum elections on a sale or lease ordinance; in Subsection G, after "pursuant to the provisions of the", deleted "Municipal Election Code governing special elections" and added "Local Election Act"; and in Subsection H, after "special or regular", deleted "municipal" and added "local", and after "shall be conducted", deleted "as a special election in the manner provided in the Municipal Election Code" and added "pursuant to the provisions of the Local Election Act".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 1999 amendment,** effective June 18, 1999, substituted "forty-five days" for "seventy days" in Subsection D; and, in Subsection E, substituted "shall" for "must" in the introductory language and "thirty days" for "sixty days" in Paragraph (1).

**"Terms" defined.** — The word "terms", as used in Paragraph (1) of Subsection D, refers to the amount, time and manner of payments. *City of Clovis v. Southwestern Pub. Serv. Co.*, 1945-NMSC-030, 49 N.M. 270, 161 P.2d 878.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 549 to 559.

Right to lease or convey park, square, or common, 18 A.L.R. 1259, 63 A.L.R. 484, 144 A.L.R. 486.

Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 A.L.R. 1052.

Mortgage or pledge of property or income therefrom, 71 A.L.R. 828.

Lease or sale of municipal plant, or contract therefor, as affecting right of municipality to compete, 118 A.L.R. 1030.

Implied or inherent power of municipal corporation to sell its real property, 141 A.L.R. 1447.

Constitutional prohibition of municipal corporation lending its credit or making donation as applicable to sale or leasing of its property, 161 A.L.R. 518.

Off-street public parking facilities, 8 A.L.R.2d 373.

Granting or taking of lease of property by municipality as within authorization of purchase or acquisition thereof, 11 A.L.R.2d 168.

Maintenance by municipal corporations of tourist or trailer camps, motor courts or motels, 22 A.L.R.2d 774.

Conveyance by municipality as carrying title to center of highway, 49 A.L.R.2d 982.

Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 A.L.R.2d 595.

Ordinance as to sale or other disposition of municipal property as within operation of initiative and referendum provisions, 72 A.L.R.3d 1030.

63 C.J.S. Municipal Corporations § 962.

### **3-54-2. Sale, exchange and gift of property.**

A. A municipality may sell personal property for cash at public or private sale without notice where it is shown to the governing body that such property does not exceed the value of two thousand five hundred dollars (\$2,500).

B. A municipality may sell personal property having a value of more than two thousand five hundred dollars (\$2,500) at public or private sale. If a private sale is held under this subsection, such sale shall be held only after notice is published at least twice, pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978, not less than seven days apart, with the last publication not less than fourteen days prior to the sale.

C. If a public sale is held, the bid of the highest responsible bidder shall be accepted unless the terms of the bid do not meet the published terms and conditions of the municipality, in which event the highest bid which does meet the published terms and conditions shall be accepted; provided, however, a municipality may reject all bids. Terms and conditions for a proposed sale or lease shall be published at least twice, not less than seven days apart, with the last publication no less than fourteen days prior to the bid opening, and shall be published according to the provisions of Subsection J of Section 3-1-2 NMSA 1978.

D. A municipality may sell, at a private or public sale, exchange or donate real or personal property to the state, to any of its political subdivisions or to the federal government if such sale, exchange or gift is in the best interests of the public and is approved by the local government division of the department of finance and administration. The provisions of Section 6-6-11 NMSA 1978 shall not apply to such sale, exchange or a donation.

**History:** 1953 Comp., § 14-55-2, enacted by Laws 1967, ch. 126, § 1; 1981, ch. 52, § 2; 1983, ch. 115, § 2; 1989, ch. 380, § 2.

### **ANNOTATIONS**

**Cross references.** — For sale of public property by state agencies and local public bodies, see 13-6-1 NMSA 1978 et seq.

**The 1989 amendment**, effective June 16, 1989, in Subsection D substituted "local government division of the department of finance and administration" for "state board of finance" at the end of the first sentence.

**Presumption of property's value.** — Where city determined to rid itself of building and readily accepted bid of \$300 for performance of such service, and where there was published only one notice of contemplated removal, presumption was, absent evidence to the contrary, that property did not exceed value of \$500 (now \$2500), that city officials complied with Subsection A of this section, and statement attached to city's insurance policy appraising building at \$4000 did not overcome that presumption. *City of Carlsbad v. Northwestern Nat'l Ins. Co.*, 1970-NMSC-002, 81 N.M. 56, 463 P.2d 32.

**This section is general in nature** and authorizes the sale of municipal property generally which is not being used strictly in carrying out an essential governmental function. 1953 Op. Att'y Gen. No. 53-5707.

**Application of section.** — Prior to its 1983 amendment, this section only applied to the sale of municipal property not being used for essential governmental functions and did not apply to the situation in which it was necessary to raze an obsolete building in order to construct a new building on the site. This action could have been done under contract as part of the construction of the new building without complying with the requirements of this section. 1953 Op. Att'y Gen. No. 53-5823.

**Approval not required for sales under Subsections A, B or C.** — Since Subsection D expressly requires board of finance (now local government division) approval of sales of property to governmental entities, under the rule of *expressio unius est exclusio alterius* it would appear that board of finance approval (now local government division) is not required for sales of municipal property under Subsections A, B or C. 1978 Op. Att'y Gen. No. 78-21.

### 3-54-3. Supplemental method for disposing of municipal property.

Sections 3-54-1 and 3-54-2 NMSA 1978 are intended to afford another and additional method of disposing of municipal real and personal property and are not to be construed as repealing or qualifying any other statutory authorization granted a municipality to dispose of or exchange real or personal municipal property or as affecting in any way the sale, lease, exchange or other disposition of real or personal property pursuant to the Local Economic Development Act [Chapter 5, Article 10 NMSA 1978].

**History:** 1953 Comp., § 14-55-3, enacted by Laws 1965, ch. 300; 1993, ch. 297, § 15.

#### ANNOTATIONS

**The 1993 amendment**, effective upon certification by the secretary of state that Article 9, Section 14 of the constitution of New Mexico has been amended as proposed by a joint resolution of the forty-first legislature, first session (Laws 1993, H.J.R. No. 12), substituted "3-54-1 and 3-54-2 NMSA 1978" for "14-55-1 and 14-55-2 New Mexico Statutes Annotated, 1953 Compilation", inserted "of" following "dispose", and inserted the language beginning "or as affecting". The secretary of state certified the constitutional amendment on November 29, 1994.