



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 24, 2019

The Honorable Chris Taylor  
Tom Green County Attorney  
122 West Harris  
San Angelo, Texas 76903-5835

Opinion No. KP-0269

Re: Whether a county treasurer is authorized to use an online auction site to sell unclaimed property pursuant to chapter 76 of the Property Code (RQ-0282-KP)

Dear Mr. Taylor:

You ask whether a county treasurer can utilize an online auction site to sell unclaimed property pursuant to chapter 76.<sup>1</sup> Chapter 76 of the Property Code mandates the procedures that certain public entities, including counties, must follow to dispose of certain abandoned property valued at \$100 or less. *See* TEX. PROP. CODE §§ 76.001–.704. The chapter sets forth a three-step process for selling property that remains abandoned after the county provides public notice. *See id.* §§ 76.201, .401–.02. First, the county treasurer must post notice of the sale in a newspaper of general circulation “in the county where the sale is to be held.” *Id.* § 76.402. Then, the county treasurer must hold a “public sale” for the property and “shall conduct the sale in the [county’s] jurisdiction.” *Id.* § 76.401(a).<sup>2</sup> Lastly, the treasurer must determine whether to sell the property to the highest bidder at the public sale or “decline that bid and offer the property for public or private sale.” *Id.* § 76.401(b).

You ask whether chapter 76 permits the county treasurer to sell property through an online auction. Request Letter at 1. A public officer of a county possesses only those powers expressly granted by the Texas Constitution or Legislature or necessarily implied from express powers. *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 29 (Tex. 2003); Tex. Att’y Gen. Op. No. KP-0076 (2016) at 2. Chapter 76 mandates two potential means of selling property, each with different requirements. With respect to the initial public sale required by chapter 76, the statute does not expressly authorize the county treasurer to conduct an online sale. *Compare* TEX. PROP. CODE §§ 76.401–.02 (containing no reference to an online sale), *with* TEX. LOC. GOV’T CODE § 263.153(c) (providing specific notice procedures for county to sell certain salvage property through an online auction), *and* TEX. TAX CODE § 34.01(a-1) (providing that the “commissioners court of a county by official action may authorize the officer charged with selling property under this section to conduct a public auction using online bidding and sale” and “adopt rules governing

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<sup>1</sup>*See* Letter from Honorable Chris Taylor, Tom Green Cty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Apr. 2, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

<sup>2</sup>Chapter 76 does not require the treasurer to sell the property if the cost of the sale exceeds the property’s value or if the property belongs to a person with an address outside the State. TEX. PROP. CODE § 76.401(c), (d).

online auctions authorized under this subsection”). Rather, the statute mandates that the county treasurer notice, hold, and conduct this sale in the county’s jurisdiction. *See* TEX. PROP. CODE §§ 76.401(a) (providing that the treasurer “shall conduct the sale in the [county’s] jurisdiction”), 76.402 (providing that notice “shall” be published “in the county where the sale is to be held”). Given the statute’s mandatory language, the treasurer therefore must conduct the sale in the county and has no express nor implied authority to conduct the sale solely through an online auction that has no geographical location.<sup>3</sup> *See* TEX. GOV’T CODE § 311.016(2) (providing that, unless context requires otherwise, the word “shall” in a statute “imposes a duty”); *see also Moore v. Wells Fargo Constr.*, 903 N.E.2d 525, 533 (Ind. Ct. App. 2009) (“An internet auction has no physical location and is not a situs in the traditional sense.”).

Turning to the second sale permitted by chapter 76 upon the treasurer’s determination that the highest bid from the public sale is insufficient, the statute broadly authorizes the treasurer to conduct this transaction through either a “public or private sale.” TEX. PROP. CODE § 76.401(b). The Legislature’s sole requirement for this transaction is that it be a public or private sale, and the statute does not restrict the geographical location of this sale nor require notice. *See id.* Given that the Legislature granted the county treasurer express authority to conduct the sale through a public or private sale, the officer therefore has implied authority to conduct the transaction through an online auction, which depending on its terms, is a public or private sale. *See* Tex. Att’y Gen. Op. No. GA-0705 (Tex. 2009) at 3; *see also* Ala. Op. Att’y Gen. No. 2011-095 (Aug. 30, 2011) (discussing criteria for determining whether an online auction is a private or public sale).

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<sup>3</sup>A public sale that is properly noticed and held in the county but that allows online bidding simultaneous with in-person bidding is not inconsistent with chapter 76’s requirement that the sale be held in the county.

S U M M A R Y

Chapter 76 of the Property Code requires the county treasurer to sell abandoned property subject to its provisions at a public sale conducted in the county's jurisdiction. If the county treasurer determines the highest bid from the public sale is insufficient, then the property may be sold through a public or private sale, including an online auction.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON  
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