



Underutilized or Vacant Properties Report Guidelines

Background

T.C.A § 49-13-136(c) requires each LEA in which one or more public charter schools operates to catalog “all underutilized or vacant properties owned or operated by the LEA and all underutilized or vacant properties within any educational facility owned or operated by the LEA” by October 1 of each year.

“Underutilized or vacant property” is defined in T.C.A § 49-13-104(14) as an entire property or portion thereof, with or without improvements, which is not used or is used irregularly or intermittently by the LEA for instructional or program purposes. Underutilized or vacant property does not include real property on which no building or permanent structure has been erected. The department of education has developed the following definitions as directed by statute:

Irregular Use: Property or any portion of property that could be used for instructional or program purposes, but is not used for instructional or program purposes on a regular basis. This includes spaces suitable for classroom use that are currently being used for storage of any kind.

Intermittent Use: Property or any portion of property that is not used at least once during any nine-month period for instructional or program purposes.

Guidelines

Each year, the facility manager for each LEA in which one or more charter schools operate shall conduct an assessment of the utilization of properties owned by the LEA. This assessment shall be used to determine which property or portion of properties shall be included in the LEA’s catalog of vacant or underutilized properties. The assessment and catalog shall include all properties or portion of properties not being used and those being used in an irregular or intermittent manner.

LEAs must submit this catalog, using the template provided by the department, to both the department at Charter.Schools@tn.gov and to the comptroller of the treasury at Jean.Suh@cot.tn.gov and OREAMail@cot.tn.gov. The department shall make an LEA’s list available to any charter school operating in the LEA or to any sponsor seeking to establish a public charter school in the LEA. This requirement will be met by posting the reports to the department’s website.

LEAs are required to make their underutilized or vacant properties available for use by charter schools for at least one year after the property has been listed. “Available for use” means offering the properties for sale or lease to charter schools within the LEA.¹ This requirement is not intended to hinder an LEA’s ability to plan for the use of underutilized or vacant properties owned or operated by the LEA, which is outlined in the LEA’s annual report to the department and the comptroller.

If a charter school wishes to avail itself of the use of a vacant or underutilized property listed by its LEA, the charter school should notify its LEA and negotiate the contractual terms and conditions, including the price, for the use. An LEA must establish a transparent and uniform method of calculating all terms and costs related to any lease, lease-purchase agreement, or other contract or agreement executed between the LEA and a charter school for the use of

¹ See Attorney General Opinion No. 16-37, September 15, 2016.

the LEA's educational facilities.

If the charter school and its LEA are unable to reach agreement on the terms, no contract will result. If the parties are able to reach agreement, all terms must be set forth in a written binding contract, which may take the form of a lease, lease-purchase or other contract or agreement. Any lease agreement executed between a charter school and an LEA shall not reflect any outstanding bonded debt on the underutilized or vacant property, except as agreed upon to reflect any necessary costs associated with the occupation or remodeling of the facility. The LEA shall retain and make available for audit, by the department of education, all records and any supporting documentation related to the execution of such a lease or agreement.