



Dave Yost • Auditor of State

Bulletin 2016-003

Auditor of State Bulletin

DATE ISSUED: June 22, 2016

TO: All AOS Financial Audit Staff
All Public Offices, Agencies, Boards, and Commissions
Colleges and Universities
Independent Public Accountants

FROM: Dave Yost, Auditor of State

SUBJECT: Credit Card Cash Withdrawals

Summary

This is an advisory relating to public offices¹ and public officials² subject to the general laws of Ohio, including the provisions of Ohio Revised Code Section (R.C.) 301.27, R.C. 505.28, R.C. 505.29, R.C. 505.64, R.C.1515.093, R.C. 3313.291, R.C. 701.05, and R.C. 302.01, and subject to Section (2)(b) 12 U.S.C. 4007, thereby requiring the establishment of a uniform procedure throughout the state. It is intended to clarify that there is no authority under Ohio law to use a credit card, debit card, procurement card, payment card or fleet card (hereinafter, credit card) to withdraw cash from a financial transaction device or automated teller machine (hereinafter, ATM), or to obtain cash (back) in a credit card transaction. Accordingly, the Auditor of State will report such use as not for a proper public purpose. Each such transaction will constitute a violation of R. C. 2913.21, misuse of a credit card, and further result in a non-compliance citation and/or finding for recovery, including joint and several liability, against the person or persons responsible for such misuse.³

Discussion

When a legislative authority authorizes issuance of a credit card⁴, any use is intended to facilitate the efficient acquisition of goods or services. Where a legislative authority has authorized credit card usage, it must provide a governing framework of policies and procedures. It falls upon a public official to exercise proper authority over the issuance and use of a credit card in fulfilling

¹ R. C. 117.01(D)

² R. C. 2921.01

³ R. C. 117.28

⁴ The credit cards referenced here fall under the Electronic Funds Transfer Act, 15 U.S.C. § 1601, et seq.

his or her fiduciary duties. An example of a governing framework is found in Ohio Administrative Code (OAC) Section 117-2-01, which states:

117-2-01 Internal controls.

(A) All public officials are responsible for the design and operation of a system of internal control that is adequate to provide reasonable assurance regarding the achievement of objectives for their respective public offices in certain categories.

(B) "Internal control" means a process affected (sic) by those charged with governance, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- (1) Reliability of financial reporting;
- (2) Effectiveness and efficiency of operations;
- (3) Compliance with applicable laws and regulations; and
- (4) Safeguarding of assets against unauthorized acquisition, use or disposition.

If cash is withdrawn from an ATM, or obtained in a cash back credit card transaction using a credit card issued by a public entity, there will be a presumption of non-compliance with OAC 117-2-01(A) and (B) and R. C. 2913.21, misuse of a credit card. Any such determination will result, at a minimum, in a non-compliance citation by the auditor. There are instances where credit card use is authorized, but cash withdrawals or cash back transactions are not.

Township Government

It is firmly established under Ohio law that boards of township trustees have only the powers and privileges granted by the General Assembly and those that exist by necessary implication.⁵ A board of township trustees, or designee, may use a credit card to purchase supplies, materials, machinery, tools, parts, or equipment pursuant to R. C. 505.64, enacted in 1996.

R. C. Section 505.64(A) states:

The board of township trustees of any township may authorize an officer, employee, or appointee of the township to use a *credit card* held by the board of township trustees *to pay for work-related expenses*. The debt incurred as a result of the use of a credit card pursuant to this section shall be paid from moneys appropriated by the board of township trustees for such expenses.

While payment of work related expenses is a stated proper use, there is no language authorizing the use of a credit card to withdraw cash from an ATM to pay for work related expenses or obtain cash back in a credit card transaction; nor may such use be implied from the statute.

⁵ *In re Petition for Incorporation of the Village of Holiday City*, 70 Ohio St. 3d 365, 369, 639 N.E.2d 42 (1994); *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875); 2003 Op. Att’y Gen. No. 2003-034, at 2-283; 1951 Op. Att’y Gen. No. 802, p. 558 (syllabus, paragraph 2).

County Government

The same fiduciary responsibility and rule of statutory construction applies to county government. A board of commissioners is a creature of statute with only those powers and duties conferred by the General Assembly.⁶ A credit card or debit card, identified as a financial transaction device,⁷ may be authorized for use by a board of county commissioners, or the office of any other county appointing authority, to pay specified work-related expenses for food, transportation, gasoline, vehicle repair and maintenance, telephone costs, lodging and internet service.⁸ As with township law, there is no language authorizing the use of a financial transaction device to withdraw cash from an ATM or obtain cash back in a transaction.

Public School Districts and Community Schools

Ohio boards of education are purely creations of statute. Their authority to act is derived from and strictly limited to powers that are clearly and expressly granted to them by statute, or clearly therefrom implied by necessity. Their powers are strictly construed with any actions taken beyond the clear provisions of the law being void.⁹

R. C. 5705.412 governs the expenditure of money by school districts.¹⁰ The primary requirement of R. C. 5705.412 is that, with limited exceptions, each contract or order involving the expenditure of funds, or salary schedule increase, must be accompanied by a certificate of sufficient operating revenues.

R. C. 5705.412 states:

Any officer, employee, or other person who knowingly expends or authorizes the expenditure of any public funds or knowingly authorizes or executes any contract, order, or schedule contrary to this section, knowingly expends or authorizes the expenditure of any public funds on the void contract, order, or schedule, or knowingly issues a certificate under this section which contains any false statements is liable to the school district for the full amount paid from the district's funds on the contract, order, or schedule. The officer, employee, or other person is jointly and severally liable in person and upon any official bond that (s)he has given to the school.

⁶ *Geauga County Bd. of Comm'rs v. Munn Road Sand & Gravel*, 67 Ohio St. 3d 579, 582, 621 N.E.2d 696 (1993) (“[c]ounties . . . may exercise only those powers affirmatively granted by the General Assembly”); *State ex rel. Shriver v. Bd. of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) Ohio Const. Art. X, § 3 authorizes counties to adopt and amend charters. When a county adopts a charter, the county may vary the system established by general law for the organization and operation of county government. *Id.*

⁷ R. C. Section 301.28(A) (1) states: (1) "Financial transaction device" includes a *credit card, debit card, charge card*, or prepaid or stored value card, or automated clearinghouse network credit, debit, or e-check. R. C. Section 301.29(B) states : A *procurement card* held by a board of county commissioners or the office of any other county appointing authority *shall be used only to pay work-related expenses*. No late charges or finance charges shall be allowed as an allowable expense unless authorized by the board of county commissioners.

⁸ This is not intended to represent a complete list of authorized credit card purchases.

⁹ *Brownfield, Bowen, Bally & Sturtz v. Bd. of Edn.* (1978), 56 Ohio App.2d 10, 11, 10 O.O.3d 20, 21, 381 N.E.2d 207, 208; *CADO Business Sys. of Ohio v. Cleveland Bd. of Edn.* (1983), 8 Ohio App.3d 385, 8 OBR 499, 457 N.E.2d 939.

¹⁰ See generally *Empire Gas Corp. v. Westerville Bd. of Education*, 102 Ohio App. 3d 613, 619, 657 N.E.2d 790, 795 (Franklin County 1995), *discretionary appeal not allowed*, 73 Ohio St. 3d 1453, 654 N.E.2d 988 (1995).

An officer or employee of a public school district exceeds his or her authority, therefore, if a credit card is used improperly. There is no authority permitting public school district or community school officers or employees subject to R. C. Title 33 to use a credit card to withdraw cash from ATM devices. Such a transaction would result in personal liability.

School district officers and employees are afforded a means to access cash. A petty cash account may be established to access funds through use of a debit card. R. C. 3313.291 of the Revised Code states:

The board of education of a school district may adopt a resolution establishing a petty cash account from which a designated district official may draw moneys by check signed by that official or by debit card for purchases made within the district. The resolution establishing the account shall specify the maximum amount of money that may be placed in the account; designate the district officials who may draw moneys from the account, or require the treasurer of such board to designate such officials; and specify the requirements and procedures for replenishing the account. (emphasis provided)

While this statute permits access to the petty cash account, there is no authorization to fund the petty cash account with cash withdrawn from an ATM or to obtain cash from the account in a cash back transaction. A debit card may be used to pay for items charged to the petty cash account, but not for cash withdrawals.

State Agencies

On Sept. 29, 1999, state agencies were authorized to use “payment cards,” but only under programs established and administered by the Director of Budget and Management. The State of Ohio Payment Card Program allows state agencies to use Visa cards to purchase small dollar goods and services. The intent of the program is to streamline the procurement and payment process and reduce overhead costs. Agencies should refer to <http://fin.help4u.obm.ohio.gov/> and the State of Ohio *OAKS FIN Process* when authorizing or making purchases using a payment card. The payment card may also be used to make purchases from selected Department of Administrative Services’ (DAS) term contracts and state term schedules up to \$2,500. Agencies should authorize payment for supplies and services only when delivered and received by the agency.¹¹

The DAS Office of Fleet Management (OFM) manages the fleet credit card for multiple agencies to pay for fuel transactions. US Bank Voyager Fleet System is the state's fleet credit card vendor. Significantly, however, there is no authority permitting state employees to use of Payment Cards or Fleet Cards to obtain cash from an ATM or in a cash back transaction.

Finally, R. C. 126.21 authorizes creation of petty cash accounts by the Director of Budget and Management. Access to the petty cash, however, is only by warrant. There is no authority for a state agency or card holder to withdraw cash from a petty cash fund using a state issued Payment Card or Fleet Card.

¹¹ DAS Directive No. GS-D-12(III)(E), Effective Date: 09-01-2008

Soil and Water Conservation District/Park Commission

R. C. 1515.093 authorizes credit card usage by a Soil and Water Conservation District. It states:

The supervisors of a soil and water conservation district may hold one or more credit cards on behalf of the district and may authorize any supervisor or employee of the district to use such a credit card to pay for expenses related to the purposes of the district.

Further, pursuant to R. C. 1545.072(A), a board of park commissioners may authorize an officer, employee, or appointee of the board to use a credit card held by the park district to pay for expenses related to park district business. However, consistent with the previous examples, there is no authority permitting the use of a credit card to withdraw cash from an ATM to pay expenses related to the purposes of the district or for park district business or to obtain cash back in a transaction.

Municipal Government

Article XVIII § 3 of the Ohio Constitution states:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

R.C. 701.05 provides:

Municipal corporations operating under a charter which provides for or authorizes a method of procedure in the passage and publication of legislation, the making of improvements, and the levying of assessments differing from the method prescribed by general law, may pass and publish such legislation, make such improvements, and levy such assessments under the general law or in accordance with the procedure provided for or authorized by its charter.

A municipality exercising the power of local self-government may establish an ordinance authorizing the use of a credit card for a particular purpose. However, because this is an issue of statewide importance thereby requiring the establishment of a uniform procedure throughout the state, the auditor will consider the withdrawal of cash using a credit card at an ATM or through a cash back transaction not for a proper public purpose.

Conclusion

In light of the aforementioned, it is evident the General Assembly may authorize use of a credit card by a public office for a particular purpose; generally to pay for supplies or expenses of the public entity. However, there is no express authority permitting officers or employees of a public entity to withdraw cash using a credit card at an ATM or through a cash back transaction.

Therefore, any such violation will be reported as follows:

- a. The public office is in noncompliance with OAC 117-2-01(B) requiring the operation of a system of internal controls adequate to safeguard public funds against their unauthorized acquisition, use or disposition and not for a proper public purpose, thereby resulting in a non-compliance citation or finding for recovery including joint and several liability against the person or persons responsible for such misuse.
- b. The person or persons responsible have violated R. C. 2913.21, for each ATM or cash back transaction.

If you have any questions regarding this Bulletin please contact the AOS Center for Audit Excellence at (800)-282-0370 or Legal Division at (800) 282-0370 or (614) 466-2929.



Dave Yost
Auditor of State