



COUNTY ADVISORY BULLETIN

CAB

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37 West Broad Street, Suite 650 • Columbus, Ohio 43215-4195
Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

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RECENT LAW CHANGES PROCEDURES GOVERNING COUNTY CREDIT CARDS

INTRODUCTION

Ohio Revised Code Section 301.27, enacted in 1980, authorizes and regulates the use of county credit cards. The primary purpose of the statute when enacted was to authorize the use of bank cards such as Visa and Master Card for work related travel, food, and lodging expenses. Prior to this time it was not uncommon for counties to use credit cards issued by major oil companies and telephone credit cards. While it appears that it was not the intent of the original statute to apply to gasoline and telephone credit cards, over time this statute has been interpreted to apply to all county credit cards.

The law on county credit cards will change effective November 11, 1994. The change is the result of a provision included in H. B. 694. This legislation was sponsored by Representative Helen Rankin (D-Cincinnati), and included a variety of changes relating to county boards of mental retardation and developmental disabilities. Representative Rankin's bill was used as a vehicle to make the change, but the real credit for the change belongs to Representative Robert Schuler (R-Sycamore Township).

Representative Schuler had earlier introduced H. B. 691 which dealt exclusively with changes to the law relating to county credit cards. H. B. 691 had passed the House and was awaiting Senate action. The provisions of H. B. 691 were then included into H. B. 694 as a way to assure enactment during the current session of the General Assembly. Representative Schuler introduced the proposal at the request of CCAO and the Hamilton County Commissioners who had a variety of concerns with the law on the use of county credit cards.

This CAB will discuss the changes in the law relating to the issuance and use of county held credit cards. It will also make some practical suggestions on how the law can be effectively implemented by counties. It is suggested that all counties that presently use any type of credit card carefully review the full text of the law and this CAB to assure

compliance with the new provisions of the law. This CAB should be inserted after the CCAO INFORMATION TAB of the *COUNTY COMMISSIONERS HANDBOOK* for future reference.

THE OLD LAW

The old county credit card law that was enacted in 1980 had not been changed since its original enactment. This original law included procedures requiring county commissioners to approve the issuance of all county credit cards; provided that the debt incurred by the use of a credit card had to be paid from appropriated funds; limited the use of county credit cards solely for work-related travel, food, and lodging expenses; required that before a card could be used that a monthly request specifying an estimated dollar amount for the use of the card had to be submitted to the commissioners for approval before the first day of the month; provided for the recovery of any amount charged that was in excess of the amount approved monthly by the commissioners; specified procedures and liability in the event of loss or theft of a county credit card; and, established criminal penalties for charging more to a credit card than the commissioners authorized. In addition, the statute specified that ORC Section 301.27 did not limit the liability of any county official or employee who was issued a county credit card if it was used for an "improper and unauthorized use". This provision of the statute made it clear that the general law relating to the misuse of credit cards (ORC 2913.21) would also apply to county credit cards.

ISSUANCE OF CREDIT CARDS

Before any county credit card may be issued, it must be approved by the county commissioners. Approval for the issuance of a county credit card is initiated by application from a county appointing authority. The application is a request for either an officer or employee of the appointing authority to use a credit card held by the appointing authority. In addition, the request must state whether the card is to be issued in the name of the office of the appointing authority or whether it is also to include the name of a specified officer or employee.

Thus, under the new law, all county credit cards must include the name of the office to which it is issued, and may additionally include the name of a specific person on the card. In the case of credit cards issued only to the office, the request must include specific names of employees or officials who may use the credit card.

For example, a gasoline credit card issued in the name of the county sheriff's office that does not include the name of a particular employee, should only be used by employees that the sheriff specifically names in the application or request. It may also be possible to apply in a generic sense, for example, so that all deputies that drive cruisers could be given the authority to use the card. The safest approach, however, to assure full compliance with the law is to list the specific names of individuals authorized to use specific cards.

Another example would be a bank card issued in the name of the Board of County Commissioners where the application could authorize each county commissioner and the county administrator to use the card. In this instance, however, the clerk should not use the card unless specific authorization was granted.

As a general rule, it is preferable to issue credit cards in the name of a specific individual rather than a general card being issued to the office where a variety of persons could use the card. In this way, maximum control is being exerted over who is responsible for the expenditures incurred on a county credit card. In some cases, however, cards issued to the office may be unavoidable. One example would be where a gasoline card is assigned to a particular county vehicle and used by a variety of drivers. The important point is that no person should use a card unless specifically authorized to do so by the county commissioners. It is also suggested that the issuance of all credit cards and the approval of those who may use them be done only by resolution of the commissioners.

Finally, for credit cards that were being used before the new law took effect, it is suggested that counties review their original issuance documents and resolutions to be sure that the new requirements of the law are being met. It is really quite simple. For each county credit card, there should be a resolution that authorizes the issuance of the card and specifies who may use the card.

TYPES OF CARDS COVERED AND PERMISSIBLE USES

The new law makes it clear that all county credit cards are covered by the statute. In the past there was some confusion as to whether gasoline and telephone credit cards were covered by the law. Under the revised law it is clear that these cards are covered by the statute. Counties should now assume that all credit cards fall under the statutory requirements.

A county credit card can only be used for certain specified and authorized purposes. The purposes for which a county credit card may be used are limited to the following types of work-related expenditures:

1. Food.
2. Lodging.
3. Telephone.
4. Gas and oil for county owned or leased vehicles.
5. Minor motor vehicle maintenance for county owned or leased vehicles.
6. Emergency motor vehicle repair for county owned or leased vehicles.

It should be noted that these are the only purposes for which a county credit card may be used. Some have maintained that a county credit card may be used to purchase office supplies at a local office supply store or repair parts at a local hardware store. Such expenditures are clearly not legal and anyone who uses a card for such purposes is subject to criminal penalties.

Under the former law, county credit cards were limited to "work related travel, food, and lodging expenses." The new law does not include generic "travel" expenses. It thus appears that a county credit card may no longer be used, for example, to pay for airline flights. While this was probably not intended when the law was changed, it appears that this may be the result of the change. Counties may thus wish to establish a relationship with a travel agent and set up a billing mechanism for plane flights, or issue a blanket purchase order to such a travel agent or directly with an airline.

PAYMENTS FOR EXPENSES INCURRED BY CREDIT CARDS

Division D of ORC Section 301.27 provides that debt incurred as a result of the use of a county credit card is to be paid from monies that the county commissioners appropriate to an office for the eligible work-related expenditures.

APPROVAL OF CREDIT CARD EXPENDITURES

The new law establishes procedures that must be followed before anyone who has been authorized to use a county credit card may make charges to the card. There are two separate procedures established in the law. The first procedure requires that before expenditures can be made in any one month that a request must be submitted to the county commissioners before the first day of that month that includes an estimate of the amount of expenditures that will be made on the card during that month. This procedure and a modification of this procedure are explained in the next two sections of this CAB. Second, commissioners may adopt an alternate policy. The third and fourth sections of this CAB following this section will discuss this second procedure.

STATUTORY REQUIREMENT FOR AN ADVANCE MONTHLY REQUEST

ORC 301.27(E)(1) requires every person authorized to use a county credit card to submit, not later than the first day of every month, an estimate of work-related expenses that will be charged on the credit card. The commissioners may reduce the estimate and may approve any amount not in excess of the estimated amount. The commissioners may also disapprove the entire request. If the commissioners approve an amount, they must then certify this amount to the county auditor along with information so that the county auditor can determine to which appropriation line item the expenditures should be charged. When the county auditor certifies that funds are available from the appropriate line item appropriation, the commissioners then authorize the use of the credit card for up to the authorized amount.

AUTHORITY TO AUTHORIZE MULTI-MONTH REQUESTS

Under the procedure outlined above, a request must be submitted to the commissioners each month. Some counties have complained about the amount of paperwork that this procedure requires. In an effort to provide flexibility for counties, the law now allows county commissioners to submit an estimate for a period longer than one month. While this is an option, if the commissioners do not adopt a resolution that allows for estimates for a period longer than one month, then the one month requirement of law must be met.

For example, commissioners could adopt a resolution that allows estimates to be submitted for a three month period or for any number of months as long as the period does not go into a new fiscal year. Some counties may choose to allow those authorized to use a credit card to submit a request for the entire fiscal year. In any event, the other provisions noted in the previous section relating to approval of the request by the commissioners and certification by the county auditor must be met.

AUTHORITY TO EXEMPT CREDIT CARD EXPENDITURES FROM ADVANCE MONTHLY OR MULTI-MONTH REQUEST REQUIREMENT

Instead of following the pre-authorized procedure explained above, ORC 301.27(E)(2) permits county commissioners to adopt a resolution that authorizes an individual who has been granted the right to use a county credit card to use that card without submitting an estimate in advance. Before adopting such a resolution, the commissioners must notify the county auditor, and it is suggested that commissioners work with the county auditor in developing such a resolution. The law authorizes the following options for the county that wants to exempt credit card purchases from the advance estimate requirement:

1. The exemption could apply to any or all of the authorized purposes for which a county credit card may be used, or
2. The exemption could apply to the use of a specific credit card for any or all of the authorized purposes for which a county credit card may be used.

For example, the resolution could exempt from the advance estimate requirement gasoline and oil expenses, minor motor vehicle maintenance expenses, and emergency motor vehicle repair expenses from the requirement, but could continue to require an advance estimate for food and lodging expenses. Another option would be for the resolution to exempt all eligible expenses from the advance estimate requirement. Finally, the law would allow the county to exempt from the advance estimate requirement any specific credit card. As can be seen, the options are virtually unlimited, however, it is probably preferable to adopt a policy that is uniform as it relates to all individuals using county credit cards. If the county wants to exempt the use of credit cards from the advance estimate requirement, it will also be less confusing to employees if all eligible uses for the card are exempted from the requirement rather

than picking and choosing between different types of expenses and making exceptions for certain individuals or for certain kinds of credit cards.

When adopting such a resolution, it must clearly state:

1. Whether the exemption applies to a specific card, and the number of the card.
2. Whether the exemption applies to one or more (or all) of the authorized purposes.
3. Whether the exemptions apply to all individuals authorized to use a credit card or to only certain individuals.

While the law authorizes such an exemption from the advance estimate requirement, the amount of expenditures that may be incurred on a credit card is still limited to the amount appropriated and encumbered in a specific line item appropriation.

RECOMMENDATIONS ON IMPLEMENTING EXEMPTIONS FROM THE ADVANCE MONTHLY ESTIMATE REQUIREMENT

One of the major purposes of the new law was to allow ways to eliminate the requirement of law for an advance monthly estimate for the use of credit cards. Because the provisions of Division (E)(2) are so complex, it is suggested that the following two options should be considered by those counties that want to exempt credit cards from the monthly advance estimate requirement:

1. Possibly the easiest way to relieve the paperwork burden is to simply allow the estimate to be submitted semiannually or annually. This procedure is authorized in ORC 301.27(E)(1), and would still require the certification of the county auditor before the commissioners could approve the request.
2. A county that wishes to use the more complex provisions of Division (E)(2) should exempt all classes of expenses, all individuals authorized to use a credit card, and all specific credit cards from the advance estimate requirement. Then in order to meet the statutory requirement that the card be used for no more than the amount in a line item appropriation and be encumbered, the commissioners can require a blanket purchase order for a period of up to the full fiscal year. Under the provisions of ORC 5705.41, a blanket purchase order can now be issued for amounts in excess of \$5,000 and may be for a period of time longer than three months, provided they do not extend into a new fiscal year. These changes to the use of blanket purchase orders were included in H.B. 300 which became effective on July 1, 1994 and was described in detail in CAB 94-6, June 1994.

PENALTIES RELATING TO THE USE AND MISUSE OF COUNTY CREDIT CARDS

Under the former law if a person spent more on a credit card than they were authorized by the commissioners, criminal penalties resulted. If a person exceeded the amount

authorized by the commissioners by \$300 or less, the violation was a misdemeanor of the first degree. If the amount exceeded \$300, the violation was a felony of the fourth degree. It should be noted that these penalties were generally equivalent to penalties for stealing on a credit card or using it for an unauthorized purpose.

It seemed unreasonable to impose criminal penalties for simply exceeding the amount of the authorization. Another goal of the new legislation was to remove criminal penalties for simply spending more than was authorized by the commissioners. In place of these criminal penalties, the law makes the individual personally liable for such overspending by requiring the person to repay the county for any amount over what the person was authorized to spend on the credit card. The concept was to make the county treasury whole, but not to impose criminal sanctions for such acts. At the same time, care had to be taken to assure that anyone that used a county credit card for an unauthorized use or for personal benefit would continue to be criminally prosecuted.

If the county continues to require a monthly estimate or if it allows the estimate to be submitted for more than one month, the following procedures apply if a person exceeds the amount authorized by the county commissioners:

1. An appointing authority may request the commissioners to authorize the amount in excess of what the commissioners originally approved.
2. The commissioners review the request and may either approve or deny the request for an "after the fact expenditure" for all or any part of the excess amount.
3. Before the commissioners may approve such a request it must receive a certification from the county auditor that the money is in the treasury or in the process of collection to the credit of the appropriate line item and is free from previous encumbrances. This is essentially the certification of availability of funds requirement provided for in ORC 5705.41(D).
4. If the commissioners do not approve all or any part of a request from an appointing authority, then the county treasury must be reimbursed for any amount not approved by the commissioners as follows:
 - a. If the card is issued to a specific individual, then that person is liable in person and upon that person's official bond for the excess.
 - b. If the card is issued in the name of the office and not to a specific individual, then the appointing authority is liable in person and on his or her official bond for the excess even though the appointing authority did not personally use the card or make the transaction that caused the excess.
5. If the commissioners require the responsible person to repay the county treasury, they must give the person written notice of the fact and the amount.

6. The person has 30 days to make payment to the county treasury.

7. If payment is not received within 30 days, then the county prosecutor must recover the amount due by civil action.

In the event that the county has eliminated the requirement for a monthly or multi-month estimate, then the appointing authority may request the commissioners to approve a supplemental appropriation or a transfer to cover any amount charged that was in excess of the amount originally appropriated. This language should not generally apply because those counties that use this alternate procedure should not experience such a shortage if they meet the "encumbrance" requirement of ORC 301.27(E)(2). As was suggested in the previous section, the use of a blanket purchase order to meet this requirement appears to be the best approach. In any event, if this situation should arise and the commissioners do not approve a supplemental appropriation or a transfer, then the person issued a specific card is liable as described above. Likewise, if the card is issued in the name of the office and not in the name of an individual, then the appointing authority is liable to repay the treasury as described above. In addition, the same notice requirements and collection procedures apply to these alternative procedures.

Finally, any use of a county credit card other than those purposes specifically authorized by the statute is a violation of the law and is subject to the criminal penalties for misuse of credit cards as provided for in ORC 2913.21.

LOSS OR THEFT OF A COUNTY CREDIT CARD

If any person authorized to use a county credit card suspects the loss, theft, or unauthorized use that person must immediately notify the appointing authority or the county commissioners in writing. Under the former law, a person could be held liable for up to \$50 dollars in unauthorized debt that was incurred before notification was received. This provision of law providing for up to \$50 liability has been repealed in this new law.

SUMMARY

All counties that authorize expenditures with a county credit card should review the changes to ORC 301.27 carefully. CCAO has learned that a number of counties that had been routinely using credit cards were not in compliance with the requirement for monthly estimates prior to the enactment of H.B. 694. While the new procedures should provide flexibility for counties and may eliminate paperwork, the new law is much more difficult to understand than the former law. While the criminal penalties for spending more than was authorized have been eliminated, significant criminal penalties continue to exist for other unlawful use of a county credit card. In addition, with the enactment of the new law, it is probably wise for all counties to determine just exactly how many credit cards are in use in the various departments and be sure that all the requirements of ORC 301.27, as amended, are being met.

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