



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
RICHARD J. HUGHES JUSTICE COMPLEX
25 MARKET STREET
CN 112
TRENTON, NJ 08625-0112

E-Mail: reynodan@law.dol.lps.state.nj.us

CHRISTINE TODD WHITMAN
Governor

PETER VERNIERO
Attorney General

JAYNEE LAVECCHIA
Assistant Attorney General
Director

(609) 292-9302

November 25, 1997

Beth Gates, Director
Division of Local Government Services
Department of Community Affairs
101 South Broad Street
P.O. Box 803
Trenton, New Jersey 08625

Re: 95-0163 - Whether local government units have the statutory authority to acquire and use bank and travel and entertainment credit cards for the purchase of goods and services

Dear Director Gates:

You have asked whether local government units may utilize bank and "travel and entertainment" credit cards for the purchase of goods and services. For the reasons which follow, you are advised that local government units may not use credit cards for such purchases.

In addressing your question, it is first appropriate to note that local government units are creatures of the State. As a consequence, they are necessarily subordinate to their creator and can only exercise such powers as have been granted to them by the Legislature. Camden v. Byrne, 82 N.J. 133, 157 (1987); Moyant v. Paramus, 30 N.J. 528, 535 (1959); For. of Pitman v. Skokowski, 193 N.J. Super. 215, 220 (App. Div. 1984). Moreover, in exercising such powers, local government units must do so in the specific manner prescribed by the Legislature in the statutes setting forth these powers. Magnolia Development Co. v. Coles, 10 N.J. 223, 227-228 (1952); Reid Development Corp. v. Parsippany-Troy Hills Tp., 10 N.J. 229, 238 (1952).

Local government units are required to comply with



various statutory requirements in making purchases of goods and services. These statutes include the Local Budget Law, N.J.S.A. 40A:4-1 et seq., the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Fiscal Affairs Law, N.J.S.A. 40A:5-1 et seq. These statutes are all intended to ensure that the expenditure of local government funds will be carefully controlled and monitored by the governing bodies.

In this regard, the Local Budget Law provides that no local officer, board, body or commission shall expend any money, incur any liability or enter into any contract that involves the expenditure of money for any purpose in excess of the amount appropriated by the governing body of the local government unit for that purpose. N.J.S.A. 40A:4-57. This requirement is clearly intended to serve to control the manner in which expenditures of local government units are made by ensuring that any expenditures made or incurred on behalf of such units will not exceed the amount of the appropriations made by the local units' governing bodies for the purposes of the expenditures.

The Local Public Contracts Law is also intended to control the manner in which local government funds are expended by setting forth various requirements pertaining to the manner in which local government units contract for the purchase of goods and services. The Law requires, as a general rule, that all purchases over a certain dollar amount be made only through competitive bidding. N.J.S.A. 40A:11-4. The Law does permit contracts below this dollar amount to be awarded without competitive bidding, N.J.S.A. 40A:11-3 and N.J.S.A. 40A:11-6.1, and also permits certain types of contracts, e.g., contracts for professional services, contracts for the purchase of perishable foods as a subsistence supply, to be awarded without competitive bidding. N.J.S.A. 40A:11-5. However, except for contracts for professional services, any contract below the bid threshold amount, but in excess of \$1000, must be awarded following the solicitation of quotations whenever practicable. N.J.S.A. 40A:11-6.1.

Moreover, the Local Public Contracts Law provides that any contract required to be awarded pursuant to competitive bidding must be awarded by the governing body of the local government unit. N.J.S.A. 40A:11-4. With regard to the award of contracts that do not require competitive bidding, the Law permits contracts to be awarded either by the governing body or by a contracting agent authorized by the governing body to award contracts on its behalf. N.J.S.A. 40A:11-2(3); N.J.S.A. 40A:11-4. From a review of the foregoing requirements of the Local Public Contracts Law, it is clear that they are intended to serve the same basic purpose as the requirements of N.J.S.A. 40A:4-57 of the Local Budget Law, i.e., to provide for control over the manner in which expenditures of local government units are made.

Similarly, certain provisions of the Local Fiscal Affairs Law, N.J.S.A. 40A:5-1 et seq., are also intended to achieve this purpose. More specifically, N.J.S.A. 40A:5-16 prescribes certain specific requirements which must be observed by local government units in providing for the payment of their funds for the purchase of goods and services. In this regard, N.J.S.A. 40A:5-16 provides that the governing body of any local unit shall not pay out any of its moneys unless the person seeking payment shall first present "a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct." N.J.S.A. 40A:5-16 further provides that the bill or claim for payment must contain a certification from an officer or duly designated employee of the local unit having knowledge of the facts that the goods or services which are the subject of the bill have been provided to the local unit.

It is clear that the requirements of N.J.S.A. 40A:5-16 are also intended to ensure that the expenditure of local government funds is carefully controlled by ensuring that no such funds are paid out unless the governing body of the local unit has been furnished with a specific and detailed description of the goods or services for which payment is sought; a certification from the party seeking payment that the information set forth on the bill or claim for payment (regarding the specific goods or services described thereon and the amount for which payment is sought) is correct, and a certification from an appropriate representative of the local unit that the goods or services have, in fact, been provided to the local unit. These requirements not only provide a safeguard against inappropriate and unauthorized expenditures of local government funds, but also serve to ensure that an adequate public record exists with regard to the expenditure of such funds. O'Donnell v. Morris County Freeholder Board, 31 N.J. 434, 443 (1960).

It is within this statutory context that your inquiry must be addressed. Purchase transactions made through the use of bank and "travel and entertainment" credit cards actually involve three different contractual relationships: (1) the relationship between the issuer, e.g., the bank, and the holder of the credit card; (2) the relationship between the vendor and the purchaser of the goods or services being acquired through the use of the credit card, and (3) the relationship between the vendor of the goods or services and the bank which has issued the credit card. Under the statutory framework described above, it is clearly contemplated that the claim for payment required to be submitted to the governing body pursuant to N.J.S.A. 40A:5-16 will not only contain a specific and detailed description of the goods or services for which it seeks payment, but also a certification from the party seeking payment that the information set forth on the claim for

payment, both with regard to the description of the goods or services contained thereon and with regard to the amount of payment sought, is correct.

Statements prepared and forwarded by the issuers of credit cards to the holders of the cards seeking payment for transactions made with such cards do not comply with either of these requirements. This circumstance arises, in part, because the statements are not prepared by the provider of the goods or services for which payment is sought but rather by the issuer of the credit card used to purchase the goods or services. First, to the extent that the statements make reference to specific transactions undertaken with the cards, the statements generally only identify the vendors involved in the transactions, e.g., an office supply store, and do not describe with specificity or in detail either the particular goods or services, e.g., envelopes, copy paper, purchased or the quantity of such goods or services for which payment is sought. Second, the statements do not bear a certification as to whether the information set forth on the statement with regard to each transaction, i.e., the specific nature, quantity and price for such goods or services, is correct. Consequently, statements generated by the issuers of credit cards do not comply with the requirements established under N.J.S.A. 40A:5-16 for the payment of local government funds and, therefore, credit cards cannot be used for the purchase of goods or services by such local units.

In addition to the fact that the requirements of N.J.S.A. 40A:5-16 would preclude the use of credit cards as a means for local government units to purchase goods or services, other questions and concerns would also exist with regard to the use of credit cards for these purposes. Such questions and concerns would include the extent to which a local unit's governing body could decline to make payment for a transaction undertaken through use of a credit card where the governing body was not satisfied that the goods or services for which payment was sought had in fact been provided to the local unit. See 15 U.S.C.A. § 1666i(a). Likewise, questions of both a legal and a practical nature would exist relating to the manner in which and the extent to which officers and employees of a local unit would be authorized to use credit cards issued to the local unit. However, in light of the conclusion noted above that the provisions of N.J.S.A. 40A:5-16 would preclude the use of credit cards for the purpose of making purchases of goods or services for local government units, it is unnecessary to address these other questions and concerns.

In conclusion, for the reasons set forth above, you are advised that local government units may not utilize bank or "travel

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and entertainment" credit cards to purchase goods or services.

Sincerely yours,

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: *Daniel P. Reynolds*
Daniel P. Reynolds
Senior Deputy Attorney General