

MEMORANDUM OF LAW

DATE: November 20, 1991
TO: Bruce A. Herring, Deputy City Manager
FROM: City Attorney
SUBJECT: City Acceptance of Credit Cards for Payment of City Fees,
Billings and Purchases

You recently sent a memorandum requesting that we provide a written opinion as to the legality of the acceptance by the City of credit cards as payment for certain billings and purchases. You also requested particular attention be paid to whether the City's payment of bank fees associated with credit card acceptance would be construed as a gift of public funds. Your memorandum was accompanied by a "Management Academy XVII Report on Use of Credit Cards for City Services."

We will respond first to the legality of credit card acceptance by the City, and second, to the public funds question.

1. Legality of Credit Card Acceptance by the City

California Government Code section 6159 provides in pertinent part that:

...

(b) Subject to the provisions of subdivision (c), a court, city, or other public agency may authorize the acceptance of a credit card for payment . . . of any towage or storage costs for a vehicle which has been removed from a highway, or from public or private property, as a result of parking violations, or for payment for services rendered by any city,

(c) . . . A city desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of its city council

After approval is obtained, a contract may be executed with one or more credit card issuers or draft purchasers.

The contract shall provide for:

(1) The respective rights and duties of the court, city, county, city and county, or other public agency and card issuer or draft purchaser regarding the presentment, acceptability and payment of credit card drafts.

(2) The establishment of a reasonable means by which to facilitate payment settlements.

(3) The payment to the card issuer or draft purchaser of a reasonable fee or discount.

(4) Such other matters appropriately included in contracts with respect to the purchase of credit card drafts as may be agreed upon by the parties to the contract.

(d) The honoring of a credit card pursuant to subdivision (b) hereof constitutes payment of the amount owing to the court, city, county, city and county, or other public agency as of the date the credit card is honored provided the credit card draft is paid following its due presentment to a card issuer or draft purchaser.

(e) If any credit card draft is not paid following due presentment to a card issuer or draft purchaser or is charged back to the court, city, county, city and county, or other public agency for any reason, any record of payment made by the court, city, or other public agency honoring the credit card shall be void. Any receipt issued in acknowledgment of payment shall also be void. The obligation of the cardholder shall continue as an outstanding obligation as though no payment had been attempted.

(f) Fees or discounts provided for under paragraph (3) of subdivision (c) shall be deducted or accounted for prior to any statutory or other distribution of funds received from the card issuer or draft purchaser.

With Council approval, and compliance with the statutory contract requirements, the City may legally accept credit cards for payment of certain billings and purchases.

2. Utilization of Public Funds

(a) Would payment of bank fees be considered a gift of public funds?

San Diego Charter section 93 states in pertinent part that: "the credit of the City shall not be given or loaned to or in aid of any individual, association, or corporation; except that suitable provision may be made for the aid and support of the poor." The purpose of this section is to prevent gifts or loans of public money. In response to questions regarding prohibitions against gifts or loans of public monies, California courts have found that an expenditure of public funds, if done for a public purpose, will not violate those prohibitions.

San Bernardino County Flood Control District v. Grabowski, 205 Cal.App.3d 885, 903 (1988), citing Schettler v. County of Santa Clara, 74 Cal.App.3d 990, 1002-06 (1977). When a proposed application of public money is questioned as a possible gift of public funds, "the primary and fundamental subject of inquiry is as to whether the money is to be used for a public or a private purpose. If it is for a public purpose within the jurisdiction of the appropriating board or body, it is not, generally

speaking, to be regarded as a gift." County of Sonoma v. State Board of Equalization, 195 Cal.App.3d 982, 993 (1987), quoting City of Oakland v. Garrison, 194 Cal. 298, 302 (1924).

Determination of what constitutes a "public purpose" falls primarily within the discretion of the affected legislative agency, which need only show that it had a reasonable basis for its action. San Bernardino County Flood Control District, 205 Cal.App.3d at 903; County of Sonoma, 195 Cal.App.3d at 993. "The concept of public purpose has been liberally construed by the courts, and the Legislature's determination will be upheld unless it is totally arbitrary. Citations." Atlantic Richfield Co. v. County of Los Angeles, 129 Cal.App.3d 287, 298 (1982).

Use of City funds to pay card fees will not be considered a gift of public funds if the Council shows it has a reasonable basis for considering the payment of such fees as a public purpose. The potential benefits to both the customer and the City listed in your Management Academy Report provide that reasonable basis; namely, reduced administrative costs, increase in revenues and increased customer satisfaction.

(b) Extension of City credit

In addition, as you have noted, Mr. Fitzpatrick previously opined that, since the City would be receiving total payment due at the time of the credit charge authorization, the City would not be giving or lending its credit in violation of section 93.

(c) Private benefit

The fact that citizens may benefit from the City's payment of credit card fees does not per se make such acceptance of credit cards illegal. If a public purpose is served by the expenditure of public funds, provisions against gifts of public funds are not violated even though private persons receive incidental benefits. San Bernardino County Flood Control District, 205 Cal.App.3d at 903; County of Sonoma, 195 Cal.App.3d at 993.

CONCLUSION

The City may legally authorize use of credit cards for payment of billings and purchases if so authorized by the City Council. Payment of fees will not be considered a gift of public funds if a reasonable basis is articulated. Increased revenue, lower costs, and increased customer (citizen) satisfaction are valid public purposes. Further, receipt of total payment at the time of the credit charge authorization negates any implication of giving or lending credit by the City. The concept you have proposed satisfies applicable legal requirements.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

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