

## MEMORANDUM OF LAW

DATE: January 14, 1992  
TO: Ed Ryan, City Auditor and Comptroller  
FROM: City Attorney  
SUBJECT: Clarification of November 20, 1991 Memorandum of Law  
Regarding City Acceptance of Credit Cards

At a recent meeting, you expressed concern about the November 20, 1991 Memorandum of Law from this office regarding the City's acceptance of credit cards for payment of fees, billings and purchases. A second Memorandum of Law expressing our views on credit card acceptance was sent to the City Treasurer on December 4, 1991.

At that meeting, you said you had three main concerns. The first was that subsection (f) of California Government Code section 6159, as reproduced on page 2 of the November 20, 1991 Memorandum of Law, is unclear. We agree with your initial perception and will attempt to interpret it. What we believe the legislature is saying is that before a city uses money received from credit card issuers for a city purpose, the credit card fee must be deducted, i.e., the fee has priority.

Your second question concerned the language of the last paragraph of section (a) on page 3 of our Memorandum of Law. You asked if increased customer satisfaction alone would be a "reasonable" use of public funds so as to come within legal limitations. Our initial Memorandum of Law cited case law stating that a local agency has discretion as to what would constitute a public purpose, and that such determination would be upheld unless arbitrarily decided. One additional California Supreme Court case which dealt with unemployment compensation held that "an additional element of public benefit is present where . . . the statutory scheme is not purely a revenue measure but is enacted as part of a broad social program involving continuing contributions and benefits." *California Employment Stabilization Commission v. Payne*, 31 Cal.2d 210, 216 (1947).

"Reasonable" itself is defined as

Fair, proper, just, moderate, suitable under the circumstances. Fit and appropriate to the end in view. Having the faculty of reason; rational; governed by reason; under the influence of reason; agreeable to reason. Thinking, speaking, or acting according to the dictates of reason. Not immoderate or excessive, being synonymous with rational, honest, equitable, fair, suitable, moderate, tolerable.

Black's Law Dictionary, 1265 (6th Ed. 1990)

This is, of course, a policy decision, but it is our opinion that the

City may legally identify customer satisfaction as a reasonable public purpose to satisfy the expenditure of public funds resulting from acceptance of credit cards as payment for fees, billings and taxes.

At our meeting we also discussed your concern regarding possible fees for use of credit cards. The memorandum included in the packet we original received, and which is attached for your convenience, included a statement that Mastercard and VISA would be meeting in June 1991 to study their fee policies. May we suggest you contact those entities and ascertain the results of their June discussion, and also that you explore further possible affiliation with COMDATA.

Obviously, if the fees were paid by the customer, that would alleviate your major concerns. In the alternative, it is our opinion that there is justification for the expenditure of public funds as approved by the legislative body and found to be a public purpose. Of course, this assumes the funding satisfies the test of reasonableness outlined above.

Your third concern was about Mr. Fitzpatrick's explanation that the City would be receiving total payment so that the Charter section 93 prohibition against giving credit would not be violated. This statement is based upon the assumption that any City payment of fees is covered under the previous discussion, and full payment is meant as payment other than in installments.

Please let us know if this answers your concerns fully.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson  
Deputy City Attorney

MKJ:mb:160:(043.2)  
Attachments:3  
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