



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 2, 2001

Robert M. Bell, Esquire
Aiken County Attorney
P.O. Box 1890
2625 Jefferson Davis Highway
Langley, South Carolina 29834

RE: Informal Opinion

Dear Mr. Bell:

By your letter of December 18, 2000, you have requested an opinion of the Attorney General's Office on the use of a credit card by a county for small purchases. You inform us that the State of South Carolina, through the Materials and Management Office of the Budget and Control Board, has entered into a statewide contract with the Bank of America for a Visa Purchasing Card. Counties and various state agencies are also authorized to use the State Contract to enter into an agreement with Bank of America to provide their own cards. Specifically you ask if Aiken County can legally enact an ordinance to enter into such a contract for a county purchasing card.

Determining whether a local ordinance is valid is a two-step process. The first step is to determine whether the municipality has the power to adopt the ordinance. If no power exists, the ordinance is invalid. If the municipality has the power to enact the ordinance, the second step is to determine whether the ordinance is consistent with the Constitution and general law of the State. Bugsy's, Inc. v. City of Myrtle Beach, 340 S.C. 87, 530 S.E.2d 890, 893; Diamonds v. Greenville County, 325 S.C. 154, 480 S.E.2d 718 (1997). Furthermore, an ordinance is entitled to the same presumption of validity as a statute of the General Assembly, and must be proved unconstitutional beyond a reasonable doubt. Southern Bell Tel. and Tel. Co. v. City of Spartanburg, 285 S.C. 495, 331 S.E. 2d 333 (1985). Thus, at the outset, the ordinance is entitled to a presumption of validity unless expressly inconsistent with general or Constitutional law.

South Carolina law requires the governing bodies of the counties to "provide for a centralized purchasing system for procurement of goods and services required by the county government." S.C. CODE ANN. § 4-9-160. The South Carolina Consolidated Procurement Code, codified at S.C. Code Ann. §11-35-10 et seq., similarly requires all political subdivisions to adopt ordinances ensuring competitive procurement. S. C. CODE ANN. § 11-35-50. Presumably, the use of the purchasing card

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for small purchases allows the county to acquire nominal goods and services that do not need to be procured competitively. Thus, although the county procurement code may not contemplate the use of a credit card for larger purchases, the county appears to have the authority to enact the ordinance as part of its effort to centralize the county's purchasing procedures.

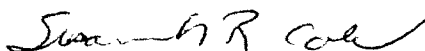
In accordance with the second part of the analysis, the ordinance must be consistent with State general or Constitutional law. The South Carolina Constitution states that "[t]he credit of neither the State nor any of its political subdivisions shall be pledged or loaned for the benefit of an individual, company, association, corporation, or any religious or other private education institution..." S.C. Const. Art. X, § 11. This prohibition, however, prevents the pledging of the political subdivision's credit to the inurement of a private entity. See, for example, Op. Atty. Gen. No. 93-44 (stating, "While the courts of this State have looked favorably at the use of public funds with respect to nonprofit (eleemosynary) corporations serving public purposes or providing public benefits, the courts have not gone so far as to subsidize for-profit corporations in this respect.") In the instant case, the county wants to use the purchasing card to make small purchases for the county, itself. In other words, the proper expenditure of public funds is not at issue, only the method of payment. I am aware of no prohibition, in either the State general law or Constitution, that forbids this manner of reimbursement for nominal amounts of goods or services. The ordinance does not appear to be inconsistent with any laws of this State.

Because the ordinance satisfies the two-step process for determining validity, it is the opinion of this Office that the county can legally enact an ordinance authorizing the use of the purchasing cards. It must be remembered, however, that the decision to enact local ordinances or policy directives is primarily for local officials through their attorney. This Office neither has the authority nor is in a position to interject itself into local questions of policy. We are not present at council meetings, nor are we privy to council debates. Thus, while we comment in the abstract on the legality of this type of ordinance, we do not attempt to advise the council on whether it should, in fact, enter into such an agreement.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General