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# COUNTY ADVISORY BULLETIN

**CAB**

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**Bulletin 1999-04**

**April 1999**

## **House Bill 515 of 122<sup>nd</sup> General Assembly Expands Allowable Uses of Credit Cards By Counties; Authorizes County-wide Credit Card Acceptance Policy**

**Effective Date:** March 30, 1999.

**Revised Code Sections Affected:** 301.27(amended), 301.28 (enacted).

**Lead Sponsor:** Householder (R-Glenford).

**House Co-sponsors:** Garcia (R-Toledo), Jones (D-Shaker Heights), Lucas (D-Mineral Ridge), Mottley (R-West Carrollton), Schuler (R-Cincinnati), Terwilliger (R-Maineville), Tiberi (R-Columbus), Vesper (R-New Richmond), O'Brien (R-Cincinnati), Jolivet (R-Hamilton), Opfer (D-Oak Harbor), Carey (R-Wellston), Corbin (R-Dayton), Olman (R-Maumee), Evans (R-Newark), Verich (D-Warren), and Salerno (R-Columbus).

**Senate Co-sponsor:** Hottinger (R-Newark).

### **INTRODUCTION**

House Bill 515 (HB 515) of the 122<sup>nd</sup> General Assembly expands the allowable uses of county credit cards. It also allows boards of county commissioners to develop a policy on the acceptance of credit cards so that citizens can use them to make payments to most county offices. This legislation was sponsored by Representative Larry Householder (R-Glenford) and received input from many county elected officials associations and representatives of the credit card/financial institutions industry.

Both provisions of HB 515 are designed to provide boards of county commissioners with more options in how the county disburses and receives funds. These provisions are permissive and are at the option of the board of county commissioners to utilize.

### **AVAILABLE USES OF COUNTY CREDIT CARDS – BEFORE HB 515**

Before HB 515, county-held credit cards, issued with the approval of the board of county commissioners, could only be used for certain work-related expenditures, such as:

- Food;

- Lodging;
- Telephone;
- Gas and oil for county owned or leased vehicles;
- Minor motor vehicle maintenance for county owned or leased vehicles; and
- Emergency motor vehicle repair for county owned or leased vehicles.

The law did not provide for “work related travel” or, specifically, airline or train tickets. However, the Ohio Revised Code (ORC), before the passage of HB 694 in 1994, did include these uses. Those references were inadvertently removed.

### **ALLOWABLE USES OF COUNTY CREDIT CARDS – AFTER HB 515**

HB 515 retains the existing allowable uses listed above and includes two new uses:

- Work related travel; and
- Internet service provider expenses.

By re-inserting “work related travel” into Ohio law, county employees will be able to pay for airline tickets and other related expenses with credit cards.

Internet service provider expenses were included because many providers require consumers to provide a credit card number for regular billing purposes. This will enable county offices to receive service that is common in the business community and in many residential homes.

For further information about county credit card issuance and expenditures, please refer to County Advisory Bulletin (CAB) 94-9 issued in September 1994.

### **AUTHORITY TO ACCEPT CREDIT CARDS AND OTHER TRANSACTION DEVICES AS A MEANS OF PAYMENT IN COUNTY OFFICES - BEFORE HB 515**

Before HB 515, Ohio law explicitly allowed only county clerks of courts to accept credit cards as a method of payment. Such authority was provided in 1997 in HB 39. This statute allowed citizens to use credit cards to pay for certificate of title fees and use taxes (ORC 4505.06).

Other county offices may have begun accepting credit cards before HB 515 and HB 39. Such offices may have inferred authority to accept credit cards from broad powers granted in managing office affairs. Yet, with the passage of HB 39, which contained “specific” statutory language authorizing credit cards, a legal argument could be made that all other county offices did not have statutory authority to accept credit cards. This

development became problematic within the county, and the need for legislation became ever more apparent.

Another reason changes were sought via HB 515 was to provide greater consistency among county offices in the acceptance of credit cards and to reduce potential costs to the county. HB 515 does not require any county office to accept credit cards. The legislation authorizes a board of county commissioners to develop a countywide acceptance policy that applies to most offices, if an office chooses to accept credit cards.

Before most county elected officials may accept credit card payments, the board of county commissioners must adopt a policy allowing the use of credit cards. This policy should provide some contiguity in service among the various county offices and departments. In addition, by aggregating the card transactions of most county offices, the county could qualify for reduced processing costs from credit card companies/financial institutions.

Furthermore, counties should have the ability to require those individuals who choose to make payments with a credit card, rather than check or cash, to pass along some of the transaction processing costs to the card holder. If these costs are not borne by the user, they will be borne by the county, and in the end the general taxpayer. The county should determine when such transaction costs are recovered and when card transactions are allowed.

## **HB 515 ESTABLISHES COUNTY-WIDE ACCEPTANCE POLICY**

Just as the board of county commissioners must authorize the use of a county-held credit card and approve expenditures from a card that has been issued, HB 515 authorizes a board of county commissioners to establish an acceptance policy that allows the use of credit cards and other “financial transaction devices” by citizens to make payments owed to certain county offices. HB 515 uses the term “financial transaction devices” which includes the following:

- Credit cards;
- Debit cards;
- Charge cards;
- Prepaid or stored value cards.

These “financial transaction devices” can be used to pay for “fees, costs, taxes, assessments, fines, penalties, payments, or any other expense a person owes to a county office under the authority of a county elected official.” For the purposes of this CAB, when the term “credit card “ is uses, it refers to all types of “financial transaction devices.”

A “county elected official includes the county auditor, county treasurer, county engineer, county recorder, prosecuting attorney, county sheriff, county coroner, and the clerk of court of common pleas, the clerk of a county-operated municipal court, and the clerk of a county court.” Although the legislation does not specifically mention county commissioners in this list of county elected officials, the list is inclusive, and not limiting, in nature. Therefore, the legal argument can be made that commissioners are considered county elected officials for purposes of Section 301.28 of the ORC.

Certain county offices may not be subject to the commissioners’ acceptance policy. Those offices’ practices are “grandfathered” under HB 515. This is explained later in this CAB.

## **RESOLUTION AUTHORIZING ACCEPTANCE OF FINANCIAL TRANSACTION DEVICES**

A board of county commissioners may adopt a resolution authorizing the acceptance of payments by financial transaction devices for county expenses. The resolution must include the following:

- A specification of those county elected officials who are authorized to accept payments by financial transaction devices;
- A list of county expenses that may be paid for through the use of a financial transaction device;
- Specific identification of financial transaction devices – credit cards, debit cards, charge cards, and/or prepaid or stored value cards -- that the board authorizes as acceptable means of payment for county expenses. Uniform acceptance of financial transaction devices for different types of county expenses is not required.
- The amount, if any, to be charged as a surcharge or convenience fee to persons using a financial transaction device. Uniform application of surcharges or convenience fees among different types of county expenses is not required. (Surcharges and convenience fees are explained later in this CAB.)
- A specific provision requiring the payment of a penalty if a payment made by a financial transaction device is returned or dishonored for any reason. (Penalty payments are explained later in this CAB.)
- A provision appointing an administrative agent and guidelines for such agent to act. (The role of the administrative agent is explained later in this CAB.)

What HB 515 really authorizes is for the county commissioners to review the various payment transactions to see if the use of credit card payments makes business sense. For instance, it may make sense to allow credit cards to be used for the payment of

traffic tickets, fines, and court costs without charging the user a surcharge or convenience fee because of the generally high nonpayment rate.

On the other hand, payment of real property taxes by credit card without charging the user of the card a surcharge or convenience fee probably does not make business sense because a 2-4 percent fee processing charge by the credit card company would create a deficit that would have to be made up by the county general fund.

While those fees established by the county could be adjusted to reflect the cost of the processing retained by the credit card company, this is not possible in the cases of taxes or other fees collected by the county when the fees are established pursuant to state statute.

Before adopting a resolution, the board of county commissioners should discuss the possible adoption of a county acceptance policy with the county treasurer as well as the other county officeholders. Since the county treasurer will serve as the administrative agent for the county acceptance policy, unless the treasurer declines, the treasurer should be involved with discussions at the front end of the process.

Also before adopting a resolution, commissioners should identify which offices will be grandfathered and therefore not subject to their resolution (this will be explained later in this CAB); which offices may be accepting credit cards already although those offices will be subject to the commissioners' resolution; and which offices should be authorized to accept cards for specific types of payments. Understanding current practices within county offices is essential to developing an effective acceptance policy.

It is important to remember that the commissioners' resolution cannot **require** a county office to accept cards. But the resolution can enable certain offices to legally take cards. Without the commissioners' resolution, county offices can not accept credit card transactions, unless those offices are grandfathered under HB 515 or have specific authority to do so, such as the clerk of courts. Therefore, the commissioners should be inclusive during their early discussions about a county credit card acceptance policy.

Also, informal discussions may occur with card companies/financial institutions to gain a better understanding of the types of cards that can be accepted and the potential costs associated with each. Again, the county treasurer should be a part of those discussions, because of the treasurer's probable responsibilities as the administrative agent for the county.

## **ADMINISTRATIVE AGENT - APPOINTMENT AND GUIDELINES**

The commissioners' resolution must designate the county treasurer as the administrative agent for the implementation of the county credit card policy and the solicitation of proposals, within guidelines established by the board of county commissioners in the resolution and as provided by the law. The treasurer will then make recommendations concerning those proposals to the board.

The county treasurer may decline this responsibility within 30 days after receiving a copy of the board's resolution by notifying the board in writing within that period. If the treasurer so notifies the board, the board shall perform the duties of the administrative agent.

If the county treasurer is the administrative agent and fails to administer the county financial transaction devices program in accordance with the guidelines in the board's resolution, the board shall notify the treasurer in writing of the board's findings, explain the failures, and give the treasurer six months to correct the failures. If the treasurer fails to make the appropriate corrections within that six-month period, the board may pass a resolution declaring the board to be the administrative agent. The board may later rescind that resolution at its discretion.

## **REQUEST FOR PROPOSALS**

HB 515 does not require counties to competitively bid for services involved in accepting card transactions. Instead, the law requires the board of county commissioners, with the assistance of the administrative agent, to request proposals. The process is similar to the process counties use for energy conservation performance contracts. However, there is a slight modification in the notification requirements to those companies whose proposals are not selected.

The administrative agent must request proposals from at least three financial institutions, issuers of financial transaction devices, or processors of financial transaction devices. Before sending any such request, the county shall advertise its intent to request proposals in a newspaper of general circulation in the county once a week for two consecutive weeks. The notice shall:

- Serve as a notice of intent to request proposals;
- Specify the purpose of the request;
- Indicate the date, which shall be at least 10 days after the second publication, on which the request for proposals will be mailed to financial institutions, issuers, or processors; and
- Require that any financial institution, issuer, or processor interested in receiving the request for proposals submit written notice of this interest to the county not later than noon of the day on which the request for proposals will be mailed.

## **SELECTION OF PROPOSAL(S)**

Upon receiving the proposals from financial institutions, issuers of financial transaction devices, or processors of financial transaction devices, the administrative agent must review them and make a recommendation to the board of county commissioners on which proposal(s) to accept.

The board of county commissioners must consider the agent's recommendation and review all proposals submitted. The board may choose to contract with any or all of the entities submitting proposals.

The board of commissioners must provide any party that submitted a proposal but with which the board does not enter into a contract, a notice that its proposal was rejected. The notice must include the reasons for the rejection, whose proposals were accepted, and include a copy of the terms and conditions of the successful proposal(s).

## **NOTICE TO COUNTY ELECTED OFFICIALS**

A board of county commissioners that adopts a resolution authorizing the acceptance of financial transaction devices must forward a copy of such resolution to the other county elected officials who are authorized to accept payments by such devices.

After receiving the resolution and before accepting payments by financial transaction devices, a county elected official must provide written notification to the board of county commissioners of the official's intent to implement the resolution within the official's office.

Each county office subject to the board's resolution may only use the financial institutions, issuers of financial transaction devices, and processors of financial transaction devices with which the board of county commissioners contracts, and each such office is subject to the terms of those contracts.

It is again important to emphasize that a resolution adopted that authorizes the acceptance of financial transaction devices cannot require any county office to use such devices. The resolution only provides which county offices can accept certain cards and the purpose for which credit cards can be used by the office, if an office chooses to accept cards. Without the resolution, county offices do not have the authority to accept cards, unless they are grandfathered under HB 515 or have specific authority to accept credit cards, such as clerks of courts.

## **GRANDFATHERING - COUNTY OFFICES ACCEPTING CREDIT CARDS THAT ARE NOT SUBJECT TO THE BOARD OF COUNTY COMMISSIONERS RESOLUTION**

There are two exceptions to the application of a resolution adopted by the board of county commissioners. The first exception is the clerks of courts. As mentioned earlier, the clerks had statutory authority to accept credit cards prior to HB 515. Such offices would have practical problems dismantling their office practices and contracts with service providers in order to comply with a policy adopted by the board of county commissioners, subsequent to HB 515. Therefore, clerks of courts who accept credit cards on or before July 1, 1999 and **notify the board of county commissioners of such use before April 29, 1999**, are exempt from the commissioner's policy.

The second exception is for those county offices that began accepting financial

transaction devices before January 1, 1998 and **notified the commissioners of this use before April 29, 1999.**

These offices may continue to accept cards without being subject to any resolution passed by the board of county commissioners or any other oversight by the board. Those offices may use surcharges or convenience fees in any manner the county elected official in charge of the office determines to be appropriate. In addition, the county elected official may appoint the county treasurer, with the treasurer's consent, to serve as the office's administrative agent for the purpose of accepting financial transaction devices.

In both cases, notification to the board of county commissioners from these offices must explain how processing costs associated with financial transaction devices are being paid. The notice must indicate whether a surcharge or convenience fee is being passed on to consumers. This notification provision was included so that county commissioners will know whether certain county officials' budgets will be paying processing costs associated with accepting cards.

These fees average 2-5% of the total cost of the transaction. While this may be a few cents for certain court costs, the amount could be substantial on larger transaction and, therefore, have a direct impact on the county budget.

It is assumed that offices not meeting the grandfathering dates or providing the required notice to the commissioners will be subject to the commissioners' resolution. If the commissioners do not adopt a resolution, the clerks of courts retain their current legal authority to accept credit cards. A legal argument could be made that other county offices, since they do not have the specific statutory authority like the clerks, do not have the authority to accept cards without a resolution of the commissioners enabling such practice.

Nevertheless, commissioners need to be sensitive to the possibility there may be county offices currently accepting cards that will not be grandfathered under HB 515 and that will be subject to the commissioners' resolution. Current agreements may exist between those offices and card companies/financial institutions.

### **ESTABLISHMENT OF A SURCHARGE OR CONVENIENCE FEE ON TRANSACTIONS PAID BY A FINANCIAL TRANSACTION DEVICE**

A board of county commissioners may establish a surcharge or convenience fee that may be imposed upon a person using a financial transaction device. A surcharge is a fee passed onto the card user to pay for the processing charge a credit card company levies upon the county for processing the card transaction. Typically a charge ranges from 2-5% of the total amount of the transaction.

Certain card companies, such as Master Card and Visa, will not allow a surcharge to be passed onto to card users. However, Discover and American Express allow such surcharges. A convenience fee is a cost paid by the card user for a "service" or the

“convenience” of using his/her card in a transaction. For example, a convenience fee could be levied on card payments paid over the telephone or via the mail. Therefore, the card user pays for the convenience of making a payment without having to travel in person to a county office to make a payment by check or cash.

Both types of fees can be levied to help defer the cost the county will incur in accepting financial transaction devices. Yet, they must be authorized or otherwise permitted by the rules prescribed by an agreement governing the use and acceptance of credit cards with the card company.

If a surcharge or convenience fee is imposed, every county office accepting payment by a financial transaction device, **regardless of whether that office is subject to a resolution adopted by a board of county commissioners**, must notify each person making a payment by such a device about the surcharge or fee. Notice must be provided regardless of the medium used to make the payment and in a manner appropriate to that medium. Each notice must include the all of the following:

- A statement that there is a surcharge or convenience fee for using a financial transaction device;
- The total amount of the charge or fee expressed in dollars and cents for each transaction, or the rate of the charge or fee expressed as a percentage of the total amount of the transaction, whichever is applicable;
- A clear statement that the surcharge or convenience fee is nonrefundable.

Furthermore, the law provides that if a person “elects” to make a payment to the county by a financial transaction device and a surcharge or convenience fee is imposed, the payment of the surcharge or fee must be considered voluntary and the surcharge or fee is not refundable. Therefore, it is the card user’s choice to use such method of payment and pay the surcharge or convenience fee. In addition, the county is not responsible for refunding a surcharge or transaction fee.

## **LIABILITY - TRANSACTIONS DISHONORED**

Protections are provided to counties for credit card transactions which are dishonored for any reason. The law also provides that the card holder is liable to the county for payment of a penalty over and above the amount of the expense due.

The board of county commissioners can determine the amount of the penalty, which may be either a fee not exceeding \$20 or payment of the amount necessary to reimburse the county for banking charges, legal fees, or other expenses incurred by the county in collecting the returned or dishonored payment. This remedy is in addition to any other available civil or criminal remedies provided by law.

HB 515 also establishes that a county elected official or employee who accepts a card

payment in accordance with the law and any applicable local policies is immune from personal liability for the final collection of such payments.

## **CONCLUSION**

CCAO would like to thank the following individuals for their assistance in the passage of HB 515:

- Representative Larry Householder and his legislative aide, Dave Hoeffel.
- Fran Lesser and Tom Pappas, County Auditors Association.
- Kevin Futryk & Craig Zimmers, Clerks of Courts Association.
- Mike Morrison, Tim Clark, and Ray Kest, County Treasurers Association.
- Dan Massey, American Express.
- Tom Green, Discover.
- Jeff Quayle, Ohio Bankers Association.
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