July 25, 2001

OPINION NO. 2001-031

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-2636

Dear Prosecutor Baxter:

You have requested an opinion concerning the authority of a soil and water conservation district to make purchases through the use of a credit card. You also ask, in the event that a soil and water conservation district may use a credit card, whether there are any limitations or restrictions on the use of such card.

Let us begin with a brief examination of the nature and operation of soil and water conservation districts. Pursuant to R.C. 1515.03, "[e]ach county shall have a soil and water conservation district coextensive with the geographic area of the county, and each district shall constitute a political subdivision of this state." The work of a soil and water conservation district includes, among other things, developing plans for "the conservation of soil resources, for the control and prevention of soil erosion, and for works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district." R.C. 1515.08(B).

Each soil and water conservation district is administered by a board of supervisors, consisting of five members selected in accordance with R.C. 1515.05. R.C. 1515.07. From among its five members, each board of supervisors appoints a fiscal agent for the district. *Id*. Pursuant to R.C. 1515.09, a board of supervisors may employ and fix the compensation of necessary employees and may acquire necessary materials, equipment, supplies, and offices. *See generally* R.C. 1515.08 (describing various powers of board of supervisors).

The General Assembly has provided for the funding of a soil and water conservation district, in part, as follows:

> *The board of county commissioners* of each county in which there is a soil and water conservation district *may levy a tax* within the ten-mill limitation and *may appropriate money from the proceeds of such levy or from the general fund of the county*, which money shall be held in a special fund for the credit of the district, to be expended for the purposes prescribed in [R.C. 1515.09], for construction and maintenance of improvements by the district, and for other expenses incurred in carrying out the program of the district *upon the written order of the fiscal agent* for the district *after authorization by a majority of the supervisors* of the district.

R.C. 1515.10 (emphasis added). *See generally* R.C. 5705.05(E) (including among the purposes for which a county may impose its general levy for current expenses, the "support of soil and water conservation districts"). Additional funds may be provided to the district by the Department of Natural Resources or from municipal or township appropriations, and credited by the county auditor to the special fund created under R.C. 1515.10. R.C. 1515.14.

With this general background in mind, let us now turn to your first question whether a board of supervisors of a soil and water conservation district may use a credit card to make purchases for the district. We begin by noting that a board of supervisors of a soil and water conservation district is a creature of statute. 1995 Op. Att'y Gen. No. 95-038. As such, it possesses only those powers conferred by statute, either expressly or by necessary implication. *Id*. *See Schultz v. Erie County Metro. Park Dist*., 26 Ohio Misc. 68, 269 N.E.2d 72 (C.P. Erie County 1971).

Although the General Assembly has expressly authorized particular political subdivisions to make certain purchases through use of a credit card, R.C. Chapter 1515 contains no similar provision for soil and water conservation districts. *Cf*., *e.g.*, R.C. 301.27 (authorizing counties[1] to use credit cards for the purchase of "work-related food, transportation, gasoline and oil, minor motor vehicle maintenance, emergency motor vehicle repair, telephone, lodging, and internet service provider expenses " under a comprehensively regulated scheme, imposing personal liability upon individuals for unauthorized use of such cards, and establishing a criminal penalty for improper usage of such cards);[2] R.C. 505.64 (use of credit cards by township personnel for

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[1] A soil and water conservation district established pursuant to R.C. 1515.03 is a political subdivision apart from the county in which it is located, and does not, therefore, constitute an entity of county government for purposes of R.C. 301.27.

[2] *See generally State v. Krutz*, 28 Ohio St. 3d 36, 502 N.E.2d 210 (1986) (finding that charges could be brought against county hospital official under R.C. 2921.41 for allegedly making unauthorized charges on a credit card issued to him by the county hospital's board of trustees).

"work-related expenses," imposing personal liability for improper use of card, creating duty to report possible loss or theft of credit card, and making improper use of card a violation of R.C. 2913.21);[3] R.C. 1545.072 (authorizing board of park commissioners to authorize park district personnel to use district credit card to pay for "expenses related to park district business," making misuse of credit card a violation of R.C. 2913.21, imposing personal liability for unlawful use of card, and creating duty to report possible loss or theft of card).[4] We must determine, therefore, whether such authority exists by necessary implication from other provisions within R.C. Chapter 1515.

The authority of a soil and water conservation district board of supervisors to acquire materials, equipment, and supplies is set forth in R.C. 1515.09, which states in pertinent part:

> The supervisors may *purchase* such materials, equipment, and supplies, may lease such equipment, and may rent, purchase, or construct, and maintain, such offices, and *provide for* such equipment and supplies therefor, as they consider necessary and may *pay for the same* from the *special fund established* for the district *pursuant to [R.C. 1515.10]*. (Emphasis added.)

Thus, R.C. 1515.09 authorizes a soil and water conservation district board of supervisors to pay for acquisitions for the district from the special fund created by R.C. 1515.10.

The question whether the authority to use a credit card in making purchases authorized by statute may be inferred from a subdivision's statutory authority to make such purchases was addressed by one of my predecessors. 1984 Op. Att'y Gen. No. 84-050 considered whether the authority of a board of township trustees to make purchases on behalf of the township included the authority to make such purchases by means of a credit card.[5] The opinion began by noting

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[3] *See generally State v. Bragg*, No. 98CA2444, 1999 Ohio App. LEXIS 2933 (Ct. App. Ross County June 11, 1999) (affirming conviction of township officer for theft in office under R.C. 2921.41(A) for making unauthorized purchases through use of township credit card).

[4] R.C. 126.21(B) authorizes the Director of Budget and Management to establish similar programs for state agencies, in part, as follows:

> [T]he director of budget and management may establish and administer one or more state *payment card programs* that permit or require state agencies to use a payment card to *purchase equipment, materials, supplies, or services* in accordance with guidelines issued by the director. The director may contract with one or more vendors to provide the payment cards and payment card services. *State agencies may only participate in state payment card programs that the director establishes pursuant to this section*. (Emphasis added.)

[5] At the time 1984 Op. Att'y Gen. No. 84-050 was issued, only counties were expressly authorized by statute to make purchases by means of a credit card. *See generally* 1979-1980

that a board of township trustees is a creature of statute and possesses authority to make various purchases on behalf of the township. In addition, the opinion found no statutorily prescribed method by which a township was required to make such purchases. 1984 Op. Att'y Gen. No. 84-050 concluded that, in the absence of a statutory method governing the making of township purchases, it was within the discretion of the board of trustees to determine the method, including the use of a credit card, by which such purchases were to be made.

As further explained in 1984 Op. Att'y Gen. No. 84-050, however, the authority of a township to use a credit card was subject to numerous restrictions. The opinion stated at 2-165: "While I cannot, for purposes of this opinion, anticipate all restrictions which the law may impose, certain restrictions are apparent." One such limitation was that the township trustees were required to ensure that all purchases were properly authorized by the board of trustees in accordance with R.C. 507.11. Additionally, the opinion cautioned that a township credit card could not be used in such a manner as to create a deferred payment plan for township purchases in violation of Ohio Const. art. XII, § 11 (prohibition against incurring or renewing bonded indebtedness). A much broader limitation mentioned in the opinion was that a township credit card could not be used in a manner contrary to any of the provisions in R.C. Chapter 5705 governing, among other things, the appropriation, encumbrance, and expenditure of funds by, among others, subdivisions, including townships.[6] Thus, 1984 Op. Att'y Gen. No. 84-050 concluded that, subject to numerous limitations, a township possessed the implied authority to make purchases for the township by means of a credit card.[7]

Ohio Laws, Part I, 2486 (Am. Sub. H.B. 280, eff. May 13, 1980) (enacting R.C. 301.27); 1981-1982 Ohio Laws, Part I, 523 (Am. Sub. S.B. 199, eff., in pertinent part, July 1, 1983) (amending R.C. 301.27). Later amendments to R.C. 301.27 have added much more detailed procedures for the use of county credit cards. *See, e.g.*, 1993-1994 Ohio Laws, Part IV, 6924 (Am. Sub. H.B. 694, eff. Nov. 11, 1994).

[6] *See generally* R.C. 5705.01 (defining, among other things, "[s]ubdivision" and "[t]axing unit" for purposes of R.C. Chapter 5705).

[7] 1984 Op. Att'y Gen. No. 84-050 concluded in the syllabus:

> 1. A board of township trustees may use a bank credit card to purchase supplies, materials, machinery, tools, parts, or equipment pursuant to R.C. 505.37, R.C. 5549.04, or R.C. 5549.21 so long as the board duly authorizes such expenditure pursuant to R.C. 507.11, the township clerk certifies the existence of sufficient unencumbered funds to pay for such expenditure where such certificate is required under R.C. 5705.41(D), *and the expenditure otherwise conforms with law*.
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> 2. A board of township trustees *may not use a bank credit card to defer all or part of the purchase price or create an installment payment plan f*or the

Soon after the issuance of 1984 Op. Att'y Gen. No. 84-050, the General Assembly expressly authorized townships to use credit cards "to pay for work-related expenses." 1985-1986 Ohio Laws, Part I, 1324 (H.B. 85, eff. March 6, 1986) (enacting R.C. 505.64 and amending R.C. 505.99). In enacting R.C. 505.64, the General Assembly went beyond merely authorizing townships to use credit cards for certain purposes, and also included safeguards against possible losses to the township through the misuse of such cards, *i.e.*, creating personal liability and criminal penalties for the misuse of such cards, and authorizing judicial action to recover the amount of unauthorized expenditures.

Similar legislation was later enacted that expressly empowered boards of park commissioners of township park districts or park districts created under R.C. 1545.01 to use credit cards for certain purchases. 1989-1990 Ohio Laws, Part I, 456 (Sub. S.B. 60, eff. July 18, 1990). *See* R.C. 511.234 (township park district credit cards); R.C. 1545.072 (R.C. 1545.01 park district credit cards). In prescribing the conditions under which such park districts could exercise their power under these statutes, the General Assembly again imposed personal and criminal liability for the misuse of such cards and created a duty to report suspected loss or theft of such a card.[8]

The enactment of statutes expressly authorizing particular public entities to make purchases by means of a credit card and imposing requirements for, and limits upon, the use of such cards, as well as providing criminal and personal liability for the misuse of such cards, affords the General Assembly the opportunity to fully examine and consider any constitutional limitations or statutory provisions applicable to each such entity. *See generally, e.g.*, Ohio Const. art. XII, § 11 (prohibiting the state or any political subdivision from creating bonded indebtedness); R.C. 5705.41 (imposing numerous requirements upon the appropriation, certification, and expenditure of funds by subdivisions, taxing units, and district authorities, as those terms are defined in R.C. 5705.01). Whereas 1984 Op. Att'y Gen. No. 84-050 at 2-167 limited its conclusion that a township possessed the implied authority to make purchases by credit card "so long as the board duly authorizes such expenditure, the township clerk certifies the availability of unencumbered funds sufficient to pay for such expenditure where such certificate is required, and *the expenditure otherwise conforms with law*," (emphasis added), the General Assembly has now provided in express terms the manner in which each public entity that has statutory authority to make purchases by credit card may so proceed. *See, e.g.*, R.C. 301.27(E) (manner in which funds are appropriated for credit card payment); R.C. 301.27(F) (procedures if credit card is used for excessive amount).

> purchase of supplies, materials, machinery, tools, parts, or equipment purchased pursuant to R.C. 505.37, R.C. 5549.04, or R.C. 5549.21. (Emphasis added.)

[8] It was not until the General Assembly added division (B) to R.C. 126.21 in Am. Sub. H.B. 283, 123rd Gen. A. (1999) (eff., in pertinent part, Sept. 29, 1999), that state agencies were authorized to use "payment cards," and then only under programs established and administered by the Director of Budget and Management. *See* note four, *supra*.

Since the issuance of 1984 Op. Att'y Gen. No. 84-050, the General Assembly has authorized only certain types of public entities to make purchases by means of credit card. In each instance, such authorization was provided by separate statute applicable to a particular type of public entity. Moreover, each such statute provides an extensive framework governing the use and misuse of such cards. In light of these subsequent enactments by the General Assembly, we can no longer agree with the analysis of 1984 Op. Att'y Gen. No. 84-050 that a political subdivision's authority to make purchases necessarily implies the authority to use a credit card of that political subdivision to pay for those purchases.[9] Rather, we conclude that, absent express statutory authorization, a soil and water conservation district may not incur expenses for the district by means of credit cards. *See generally State v. Droste*, 83 Ohio St. 3d 36, 39, 697 N.E.2d 620, 622 (1998) ("[u]nder the general rule of statutory construction *expressio unius est exclusio alterius,* the expression of one or more items of a class implies that those not identified are to be excluded").

Because we have concluded in answer to your first question, that a soil and water conservation district may not make purchases by means of a credit card, we need not answer your second question.

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[9] We understand that some public bodies that do not have express authority to make purchases by means of a credit card currently do so. We acknowledge that the use of credit cards by public bodies may be a common practice that facilitates the efficient acquisition of goods or services. Nonetheless, we must also bear in mind the principle that, "[a]ll public property and public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund, and all persons, public or private, are charged by law with the knowledge of that fact. Said trust fund can be disbursed only by clear authority of law." *State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph one). In light of this principle, we believe that authority on the part of a public body to expend public moneys by means of credit cards should be affirmatively granted by the General Assembly.

Based upon the foregoing, it is my opinion, and you are hereby advised that, absent express statutory authorization, a board of supervisors of a soil and water conservation district may not make purchases for the district by means of a credit card.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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The Honorable Kevin J. Baxter
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SYLLABUS: 2001-031

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