

OPINION NO. 70-036

Syllabus:

Ohio State Highway Patrol Officers can accept credit cards on the highway from violators within the jurisdictions of those courts which have entered into an agreement with the credit card servicing agency, which agreement provides for the payment to the court upon presentation of a completed sales draft and the only conditions of such agreement being that the bail amount involved not exceed the dollar limitations contained in the agreement, the sales draft be legible and that the sales draft be drawn on an unexpired credit card. Such agreements satisfy the substantive requirements for a common law "recognizance" upon acceptance by a given court. Officers of the State Highway Patrol may not accept credit cards, however, within jurisdictions of courts which have not entered into such agreements.

To: Robert M. Chiamonte, Supt. State Highway Patrol, Columbus, Ohio
By: Paul W. Brown, Attorney General, March 24, 1970

You have asked my opinion as to whether or not State Highway Patrol Officers can "accept credit cards on the highway from violators in lieu of returning them to the office of the Clerk of Courts for posting of cash bonds."

Initially, a legal distinction is necessary to the analysis of your question. Cash is a form of bail, as relevant to your question. Section 2937.22, Revised Code. A bond is in lieu of bail. Section 2937.281, Revised Code. The answer to your question lies in the definition of bail, as opposed to bond in lieu of bail.

Bail and the forms it may take are provided for in Section 2937.22, supra, as follows:

"Bail is security for the appearance of an accused to appear and answer to a specific criminal or quasi-criminal charge in any court or before any magistrate at a specific time or at any time to which a case may be continued, and not depart without leave. It may take any of the following forms:

"(A) The deposit of cash by the accused or by some other person for him;

"(B) The deposit by the accused or by some other person for him in form of bonds of the United States, this state, or any political subdivision thereof in a face amount equal to the sum set by the court or magistrate. In case of

bonds not negotiable by delivery such bonds shall be properly endorsed for transfer.

"(C) The written undertaking by one or more persons to forfeit the sum of money set by the court or magistrate, if the accused is in default for appearance, which shall be known as a recognizance.

"All bail shall be received by the clerk of the court, deputy clerk of court, or by the magistrate, or by a special referee appointed by the supreme court pursuant to section 2937.46 of the Revised Code, and, except in cases of recognizances, receipt shall be given therefor by him."

As can be seen, bail may take three forms. It may be in the form of cash, in the form of bonds of the United States, the state or any political subdivision thereof and it may be in the form of a recognizance. A recognizance has been amply defined by early decisions of the courts of this State. It is an obligation of record entered into before some court of record on or before a duly authorized magistrate conditioned for the performance of some particular act. State v. Crippen, 1 Ohio St. 399 (1852). It is a promise to pay money on condition broken. Kinney v. State, 14 C.C. 91, 7 C.D. 97 (1896). It must be in writing and be a matter of record. Sargeant v. State, 16 Ohio 267 (1847); State v. Crippen, supra. It is a contract of record and as such, cannot be contradicted. Monroe County v. Daily, 14 Ohio 92 (1846).

The bellwether case on the nature of recognizance seems to be that of State v. Crippen, supra. After holding that the recognizance must be in writing, the Court in the Crippen case, supra, went on to hold as follows, at page 401 of its opinion:

"* * * A recognizance differs from a bond in this, that while the latter, which is attested by the signature and seal of the obligor, creates a fresh or new obligation, the former is an acknowledgment on record of an already existing debt, with condition to be void on the performance of the thing stipulated, and attested by the record of the court alone, and not by the obligor's seal and signature. To be a recognizance, it is essential not only that the instrument be in writing, but also that it be a matter of record. If not actually entered upon the journals or record books, it must be upon the files of the court. It was settled in the case of Dillingham v. The United States, 2 Washington, C.C. Rep. 422, that it is essential to the validity of a recognizance, that the material parts of the obligation and the condition, should be set forth in the body of it."

The statutes themselves provide acceptable forms of recognizances. See Section 2937.44, Revised Code. These forms are not, however, required, but rather are suggested forms which may be sufficient. So long as the legal requirements of a recognizance are satisfied, I do not view Section 2937.44, supra, as a limiting statute. I think, rather, any writing which is a promise to pay money on condition broken, made a

matter of record or on the files of a given court, and which is acceptable to that court, is a valid recognizance. Indeed, in the words of the Monroe County case, supra, it is a contract of record between the court and a third person conditioned upon the performance of some particular act with a promise to pay money upon the condition being broken.

Members of my staff have worked in conjunction with representatives of one of the major bank credit card services. An agreement was developed which, if acceptable to a court, would constitute satisfaction of the common law definition of a recognizance. That agreement provides for the payment to the court upon presentation of a "sales draft" for an amount up to and including \$100 for the benefit of a credit card holder. The only limitations upon such payment to the court are that the sales draft would not exceed the \$100 limitation, the sales draft be legible and that the sales draft be drawn on an unexpired credit card (which is discernable from the face of the card).

As we understand the proposed procedure, the sales drafts would be supplied to the court (and to the State Highway Patrol). When a cardholder is charged with an offense which is subject to bail in an amount of \$100 or less, a sales draft would be completed showing the cardholder's name, the credit card number, and the offense with which charged. Upon the filing of this sales draft with the court and the subsequent presentation by the court of the sales draft to the bank credit card service, the obligation to pay is triggered and payment is then made to the account of the court of the amount of bail for the offense with which the cardholder was charged. It would be essential to designate the offense on the sales draft as it has been held that the offense charged must be specified in the recognizance although a very general description will suffice. Kinney v. State, supra.

This proposed arrangement would seem to satisfy the common law requirements of a recognizance. It would be in writing (the agreement between the bank credit card service and the court). That agreement would be placed upon the record or files of the court. It would constitute a pre-existing debt with condition to be void on the performance of the thing stipulated. The obligation to pay and the condition are set forth in the agreement (arrest of a cardholder).

The fact that the written agreement between the bank credit card service and the court would cover more than one individual does not, in my opinion, disqualify the writing as a valid form of a recognizance. The substantive requirements are satisfied and I see no reason why the operation of the recognizance cannot be triggered by the completion of a sales draft and the forwarding of same to a court which has entered into the agreement with a bank credit card service. It follows, therefore, that within the jurisdiction of any court which has entered into such an agreement, a State Highway Patrolman may complete a sales draft agreement from information contained upon the credit card of a person presenting such card who has been arrested for a violation of the laws of this State wherein the established bail for such offense does not exceed the limits set forth in the agreement referred to above. It is obvious, from the foregoing, that certain practical matters are involved. The bank credit card service (or

any other credit card service which can provide an agreement satisfactory to a given court) will have to keep the patrol informed as to those courts with which it has agreements and provide the patrol with the necessary "sales drafts" required for the service.

Therefore, it is my opinion and you are so advised that Ohio State Highway Patrol Officers can accept credit cards on the highway from violators within the jurisdictions of those courts which have entered into an agreement with the credit card servicing agency, which agreement provides for the payment to the court upon presentation of a completed sales draft and the only conditions of such agreement being that the bail amount involved not exceed the dollar limitations contained in the agreement, the sales draft be legible and that the sales draft be drawn on an unexpired credit card. Such agreements satisfy the substantive requirements for a common law "recognizance" upon acceptance by a given court. Officers of the State Highway Patrol may not accept credit cards, however, within jurisdictions of courts which have not entered into such agreements.