

OPINION NO. 89-024**Syllabus:**

The Director of the Ohio Department of Natural Resources (ODNR) and the chiefs of the Division of Geological Survey and the Division of Parks and Recreation are not authorized to enter into an agreement whereby ODNR or the two divisions would agree to pay a percentage of their sales volume as a fee to a bank in return for credit card services.

**To: Joseph J. Sommer, Director, Ohio Department of Natural Resources,
Columbus, Ohio**
By: Anthony J. Celebrezze, Jr., Attorney General, May 15, 1989

I have before me your request for my opinion concerning credit card arrangements by the Ohio Department of Natural Resources (ODNR). You indicate that two divisions of ODNR are interested in accepting credit card payments for

services these divisions render to the public. You ask whether ODNR has the authority to enter into an agreement in which it would agree to pay a percentage of its sales volume as a fee to the bank in return for credit card services.

The two divisions you refer to are the Division of Parks and Recreation and the Division of Geological Survey. Pursuant to R.C. 1541.03, the Division of Parks may establish fees for a variety of services it provides to the public. See R.C. 1541.03(D)(2) (admission to state parks and use of facilities therein); R.C. 1541.03(D)(3) (camps and camping fees); R.C. 1541.03(D)(4) (cabin rentals); R.C. 1541.03(D)(7) (annual fees for docks); R.C. 1541.03(D)(8) (fees for state beaches, swimming and inflatable devices). The Division of Geological Survey sells informational publications to the public. See R.C. 1501.01 (the Director of ODNR may publish and sell data, reports and information); R.C. 1505.01 (the Division of Geological Survey shall make, and have available for distribution, geological reports and maps). Both divisions wish to accept credit card payments for their services. In order to do so, the Director of ODNR or the chief of each division would enter into an agreement with a bank which would provide Visa or Mastercard services. Such an agreement would provide that ODNR submit its credit card receipts to the bank. The bank would then pay ODNR the amount of the receipts, less a certain percentage of the receipts as a fee to the bank.

ODNR and its officials are creatures of statute and thus only have those powers expressly conferred on them by statute or necessarily implied therefrom. See *Burger Brewing Co. v. Thomas*, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1973); *State ex rel. Funtash v. Industrial Commission*, 154 Ohio St. 497, 96 N.E.2d 593 (1951); *State ex rel. Williams v. Glander*, 148 Ohio St. 188, 74 N.E.2d 82 (1947). To enter into such an agreement, therefore, ODNR and its officials must have statutory authorization.¹ Several statutes expressly authorize ODNR and the two divisions in question to enter into certain contracts. See, e.g., R.C. 1501.011 (ODNR may enter into contracts concerning the construction, repair, or maintenance of projects, improvements or buildings); R.C. 1501.02 (the Director of ODNR may enter into contracts with other governmental agencies); R.C. 1505.02 (the chief of the Division of Geological Survey may enter into certain contracts with agencies or individuals); R.C. 1541.031 (the chief of the Division of Parks and Recreation shall have the power to contract with any telephone company for the establishment and maintenance of telephone service in any state park). See generally R.C. 1501.01 (the chief of any division shall not enter into any contract unless it is approved by the Director of ODNR). I am aware of no statute, however, that expressly authorizes the agreement in question.

I also find no statute that necessarily implies the authority to enter into such an agreement. No statute specifically authorizes ODNR to accept credit card payments. Compare R.C. 4503.102(H) (the Registrar of Motor Vehicles shall adopt rules to permit payment of motor vehicle registration taxes and fees by credit card). The statutes most directly involved are those that authorize ODNR and the two divisions to sell publications and set fees. R.C. 1541.03(D) authorizes the Division of Parks and Recreation to set fees for various services and R.C. 1501.01 authorizes the Director of ODNR to sell publications. I do not find, however, that such authorization necessarily implies the power to enter into a contract for credit card services that involves a service charge. Moreover, because ODNR would be paying a percentage of its receipts as a fee to the bank, the expenditure of public funds is involved. It is well established that where the expenditure of public funds is involved, the authority to expend must be clearly granted and any doubt must be resolved against the expenditure. See *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E. 571 (1916). A service charge, although deducted directly from

¹ I note that state park service facilities may be operated by private entities. See R.C. 1501.09 (ODNR may enter leases or contracts with private entities whereby these entities agree to operate state park service facilities); R.C. 1501.091 (concerning contracts for the operation of state park service facilities); R.C. 1501.10 (concerning the leasing of state park service facilities). These private entities, unlike ODNR, are not creatures of statute and thus do not need statutory authorization to enter into the type of agreement in question.

the gross receipts of ODNR, is still an expenditure of public funds. Any doubt, therefore, must be resolved against this expenditure. I conclude, in light of the foregoing, that ODNR and its officials lack the statutory authorization necessary to enter into the agreement in question.

Accordingly, it is my opinion and you are advised that the Director of ODNR and the chiefs of the Division of Geological Survey and the Division of Parks and Recreation are not authorized to enter into an agreement whereby ODNR or the two divisions would agree to pay a percentage of their sales volume as a fee to a bank in return for credit card services.