



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 147

June 24, 1993

Whether it is permissible for a state employee to use a state-issued credit card to pay for a hotel bill, even if the total bill exceeds the amount reimbursable by the state. (AOR-149)

In [Ethics Advisory Opinion No. 95](#) (1992), we advised:

A credit card issued to a public servant under a program where the card is issued at the direction and under the control of the State of Texas for state purposes may not be used for personal expenditures *or any other type of expenditure not reimbursable as a state business expense under state law.* (Emphasis added.)

Several requestors have asked that we reconsider this opinion, at least insofar as it limits the use of a state-issued credit card (a "state card") to state business expenses that are reimbursable. A recurring example offered by requestors occurs when a public servant traveling on state business must pay a hotel room rate that exceeds the maximum per diem for lodging under state law. The question raised is whether the public servant is prohibited from using a state card to pay any portion of the hotel bill that exceeds the reimbursable per diem rate.

In responding to this advisory opinion request, it may first be useful to restate the purpose and effect of an advisory opinion issued by the Ethics Commission. Our opinions do not make a specified action illegal. The effect of an advisory opinion is to provide those who reasonably rely on the opinion with a defense in a criminal prosecution or an action to impose a civil remedy.¹ Accordingly, we are cautious in expressing an opinion that shields a person from an allegation that a law we are authorized to interpret has been violated.

The key conclusion and advice in [Ethics Advisory Opinion No. 95](#) was that a state employee is prohibited from using a state card for a *personal* expense. We remain convinced that a public servant's use of a state card for any type of expense, however characterized, other than a state business expense is a misapplication of state property and may violate section 39.01 of the Penal Code. See [Ethics Advisory Opinion No. 95](#) at 3.

We agree, however, that the test stated in [Ethics Advisory Opinion No. 95](#) to distinguish a permissible state business use from an impermissible use should be modified. The advice in our earlier opinion was based on our understanding of the contract between the State and the company that issues charge or credit cards ("Card Company"). That contract establishes and governs the relationship between the State, the Card Company, and public employees who receive a state card. The recitation of the contract provided by the requestor in connection with [Ethics Advisory Opinion No. 95](#) included the following language:

The State agrees to instruct its Corporate Cardmembers that individual accounts established under this Agreement are to be used for official State business expenses *that are reimbursable in accordance with applicable State law.* (Emphasis added.)

This language was the source of the reimbursability standard stated in [Ethics Advisory Opinion No. 95](#) to distinguish a use of a state card that may be a misapplication of state property from a use that clearly is not. Upon receiving further information regarding the contract with the Card Company, it is apparent that, while the card must be used for a state business expense, reimbursability is not necessarily the deciding factor in determining whether an expense is permissible.

We are advised by the General Services Commission that the contract with the Card Company permits state employees to use a state card "for business expenses."² This information is consistent with rules adopted by the General Services Commission concerning use of a state card. Those rules provide:

(a) Charge accounts and cards are provided *for official business use*. Accounts may be established for individual state employees, the participating agency, or both.

....

(e) By accepting a charge card, the employee accepts the responsibility for paying all charges timely and agrees that the charge card is intended for *state business use*. Payment of charges on individual cards is the sole responsibility of the individual. The state shall not be responsible for the charges, regardless of the type of charge, nor shall the state be liable for nonpayment by the employee.

1 T.A.C. § 125.9 (emphasis added). Under article 601b, V.T.C.S., the General Services Commission has the authority and responsibility to regulate contracts with credit card companies that provide services to state agencies. V.T.C.S. art. 601b, § 14.01. In rules adopted to implement that statute, the General Services Commission has stated that a state card is to be used for official state business. The General Services Commission and the Comptroller of Public Accounts share the responsibility of establishing and enforcing regulations that govern use of state cards issued to a public servant.³

We defer to those state agencies that have both the authority and expertise to establish detailed, specific guidelines that may be needed to assist a public servant who must decide whether a specific expense is a permissible "official business use" or a "state business use." Our jurisdiction to issue advisory opinions extends only to specified statutes.⁴ In the example offered by the requestors—a public servant using a state card to pay a hotel room rate that exceeds the maximum per diem rate—we can advise that this use is not a misapplication of state property if authorized by rules, policies, and practices adopted by the General Services Commission and any other agencies authorized to regulate use of the state card. [Ethics Advisory Opinion No. 95](#) is overruled to the extent it conflicts with this opinion.

SUMMARY

A public servant's use of a state-issued credit card for any type of expense other than a state business expense is a misapplication of state property and may violate section 39.01 of the Penal Code. It is not a misapplication of state property to use a state-issued credit card for a state business expense in accordance with rules established by agencies authorized to control the card's use.

¹ Section 1.30(a) of article 6252-9d.1, V.T.C.S., provides: It is a defense to prosecution or to imposition of a civil penalty that the person reasonably relied on a written advisory opinion of the commission relating to the provision of the law the person is alleged to have violated or relating to a fact situation that is substantially similar to the fact situation in which the person is involved.

² Letter from Judith Porras, General Counsel for the General Services Commission, to Andrew Martin, General Counsel for the Texas Ethics Commission (March 23, 1993) (on file with the Ethics Commission).

³ Title 1, section 125.1(e), of the Texas Administrative Code provides: These rules are intended to be consistent with the Travel Allowance Guide published by the Comptroller of Public Accounts.

⁴ The Ethics Commission has authority to interpret six statutes: (1) chapter 305 of the Government Code (lobby); (2) chapter 302 of the Government Code (speaker's race); (3) title 15 of the Election Code (campaign finance); (4) article 6252-9b, V.T.C.S. (financial disclosure and standards of conduct); (5) chapter 36 of the Penal Code (bribery); and (6) chapter 39 of the Penal Code (abuse of office). [Ethics Advisory Opinion No. 95](#) concerned the application of chapter 39 of the Penal Code to the use of a state card.