

December 17, 2004

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Re: Legality of Public School Entity Use of Procurement Cards

Dear Gentlemen:

This letter is in response to your request that I provide a legal opinion on the legality of public school entities using procurement cards for the purchase of supplies, materials, equipment, and services. For the reasons that follow, it is our opinion that there are no legal impediments to the use of such cards. We recommend, however, that any school entity that uses such cards adopt appropriate policies to insure that the cards are not misused.

Procurement cards are a type of credit card. What distinguishes procurement cards from ordinary credit cards are the additional features geared to business that procurement cards offer. For example, some of the features associated with the EasyProcure procurement card are royalty payments based upon spending levels on the purchasing card and a web information tool for program administration, including, a fully hosted web based system, an on-line payment allocation and reconciliation capability, general ledger interface capabilities, and on-line post payment tracking and reporting.

The School Code contains ample authority for public school entities to utilize procurement cards. Initially, it must be noted that the use of procurement cards is really nothing more than a method of payment. It is a lawful method of payment that is

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common and generally accepted in commerce. It has a number of advantages over other forms or methods of payment.

Under law, governmental entities such as school districts have those powers that are expressly granted and those that are reasonably implied to carry out the functions of the entity. *Mulligan v. School District of Hanover Township*, 241 Pa. 204, 207, 88 A. 362, 362 (1913). With respect to procurement cards, common and commercially accepted methods of payment are certainly reasonably implied. Moreover, the express provisions of the School Code grant ample authority for a school entity's use of procurement cards. For example, Section 510 of the School Code allows School Boards to adopt such reasonable rules and regulations as the school board deems necessary and proper regarding the management of its school affairs. 24 P.S. §5-510. Authorizing the use of procurement cards subject to appropriate policy for the proper use of the procurement card is certainly an appropriate action pertaining to the management of a school district.

The Auditor General has addressed the issue of procurement cards. In a paper delivered at the PASBO conference in March, 2004, the Auditor General emphasized that a school district's use of a procurement card should be governed by an appropriate policy that ensures against improper use or abuse of the card. The Auditor General noted that it had audited only one local educational agency's procurement card operations and found that there were a number of areas of misuse of the card—including personal purchases being made with the cards. No school district using procurement cards or credit cards was cited by the Auditor General for using such cards.

Any school entity that authorizes the use of procurement cards or credit cards should adopt policies addressing such issues as: (i) restrictions or prohibitions of cash advances; (ii) monthly or aggregate limits; single transaction limits; (iii) cardholder report of account activity to management; (iv) the identity of job classifications that will receive the cards; (v) requirements for employee reconciliation of purchases to billing statements; (vi) statement/sales receipt storage; (vii) supervisor review and/or approval requirements; and (viii) cardholder misuse insurance and/or indemnity agreements.

If you have any questions or concerns, do not hesitate to contact me.

Very truly yours,
LEVIN LEGAL GROUP, P.C.

Michael I. Levin