



Statement of Position Use of Gift Cards by Local Government Entities

Local government entities sometimes make inquiries of the Office of the State Auditor (OSA) regarding the use of gift cards in various contexts. These inquiries, as well as issues that have arisen in audits and investigations conducted by the OSA, have shed light on a number of legal and internal control issues surrounding local government use of gift cards. This Statement of Position presents general information to help local government officials and employees consider such issues as they arise. However, individual situations will warrant consideration of specific facts, and public entities are encouraged to consult with their own legal counsel as these situations arise.¹

This Statement of Position is organized to address three general categories of considerations regarding local government use of gift cards:

- 1) Using Gift Cards to Disburse or Expend Public Funds
- 2) Receiving Gift Cards as Donations
- 3) Internal Controls for Handling Gift Cards

Using Gift Cards to Disburse or Expend Public Funds

Whenever a question arises that involves the disbursement of public funds, a local government should consider two questions:

- (1) Does the proposed *method and manner* of disbursement being considered (in this case, gift cards) fall within the entity's legal authority?
- (2) Is there a *public purpose* and *authority* for the expenditure or disbursement of the public funds being considered?

Below we outline the general parameters regarding each question, and then we note a few specific types of scenarios involving the use of gift cards for public fund disbursements/expenditures.

- *Authorized Methods and Manner of Public Fund Disbursement/Expenditure*

Minnesota Statutes authorize cities, counties, school districts and towns to disburse public funds using specific, limited methods. Since gift cards are cash equivalents over which the public entity maintains control after purchase, the actual disbursement of the government entity's funds can be seen to occur not when the gift card is purchased but when the gift card is transferred to a third party. Minnesota law authorizes disbursement of public funds by the following methods:

¹ This Statement of Position is not legal advice and should not be relied upon in lieu of legal advice; it is subject to revision.

- Negotiable instruments including checks, warrants, orders (Minn. Stat. §§ 412.271, subd. 1, 384.13, 385.31, 367.18 and 123B.96)
- Imprest funds (Minn. Stat. §§ 412.271, subd. 5, 375.162, 366.01, Subd. 12, and 123B.11), and
- Electronic or wire funds transfer (Minn. Stat. §§ 471.38 and 471.381).²

We have not come across any statute that authorizes Minnesota local governments to disburse public funds using gift cards.

Further, for many public entities, public funds must be in the custody of the treasurer. For cities, counties, school districts and towns only the treasurer is authorized to receive, have custody of and disburse the entity's funds. Minnesota Statutes §§ 412.141 (Statutory cities), 385.05, 385.07, 384.13 (Counties), 367.16 (Towns), and 123B.14, 123B.96 (School districts). Other than the custodian of an imprest fund, we know of no other local government officer or employee authorized by statute to receive or "safely keep" or disburse public funds. For this reason, even if authority existed for a local government to use gift cards for payment, such gift cards would have to be in the custody of the city, county, school district or town treasurer until transferred by the treasurer to a third party.

- *Authorized Purposes for Disbursement of Public Funds*

The public purpose doctrine comes from the Minnesota State Constitution Article X, Section 1, which states in part:

"Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes, ..." (Emphasis added.)

The Courts and the Minnesota Attorney General have interpreted this language to require that all public expenditures have a public purpose. This requirement applies to public funds derived from sources other than taxation. See Op. Att'y Gen. 107-a-3 (Jan. 22, 1980). In the local government context, they have analyzed these questions using a two-part analysis. First, the expenditure must be for a public purpose. Second, there must be authority for the expenditure.

Regarding the first requirement that the expenditure be for a public purpose, the Minnesota Supreme Court has stated: "What is a 'public purpose' that will justify the expenditure of public money is not capable of a precise definition, but the courts generally construe it to mean such an activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government." *Visina v. Freeman*, 252 Minn. 177, (1958) at page 185-6.

As for the second requirement, authority for a local government to act may be specifically stated in a statute or implied as necessary to do something that is expressly authorized. See, e.g., *Mangold Midwest Co. v. Village of Richfield*, 143 N.W. 2d 813, 820 (1966).

When considering whether the use of gift cards meet the public purpose requirement, local governments should be aware that the Minnesota Attorney General has long held that "gifts" lack

² Note that the use of credit cards to make purchases is authorized by Minn. Stat. §§ 471.382, 123B.02, Subd. 23, and 375.171. However, presenting a credit card at the point of sale does not cause the disbursement of public funds. That occurs only after the claim is presented by the credit card company and approved by the government entity.

consideration and hence lack public purpose. Ops. Att’y Gen. 107-a-3 (Jan. 22, 1980), 270-D (Aug. 12, 1977), and 59a-22 (Dec. 4, 1934).

Various statutes authorize governing boards to make appropriations to third parties for specific purposes and sometimes to specific parties. The specification of purposes for which, or recipients to whom local governments are authorized to appropriate funds indicates that there is not general authority to give money to anyone for any worthwhile purpose; if that were the case, the numerous statutes authorizing appropriations would not be needed.

For a list of examples of specific, statutorily authorized appropriations see OSA Statement of Position on Public Expenditures: Donations and Dues.

https://www.osa.state.mn.us/media/3dxbalsl/public-expenditures_donations-and-dues.pdf

- *Some Specific Scenarios Involving the Use of Gift Cards for Disbursements/Expenditures of Public Funds*
 - *Gift Cards as Compensation for Board or Commission Service.*

We have received questions regarding the permissibility of using gift cards to compensate individuals (employees, volunteers, etc.) for serving on boards or commissions of a local government. There are some statutes that provide for compensation to individuals serving on boards or commissions of government entities. For example, Minn. Stat. § 412.111 permits city councils to set compensation for advisory boards unless it is otherwise set by law. Other statutes specifically prohibit or limit compensation for service on a board or commission. Where there is a prohibition on compensation or a limitation, then using a gift card beyond the statutory prohibition or limitation would run the risk of being considered an unauthorized expenditure of public funds. In situations in which a statute does authorize compensation, the use of gift cards to provide that compensation still might raise concerns about an improper method or manner of making the expenditure. Compensation payments generally are properly handled through the government entity’s payroll or claim process, with tax withholding as appropriate, not with cash or gift cards handed to the individuals involved.

- *Gift Cards as a “Thank You” for Program Participation or Other Reason*

We have received questions about using gift cards to thank individuals for participating (and/or incentivize them to participate) in local government programs that ultimately are for the participant’s benefit. We are not aware of any statute that authorizes a public entity to make payments to citizens as a “thank you” for participating in programs created for their benefit. Such a use of public funds would be analogous to a school district giving cash or gifts to students that achieve good grades or participate in sports, or a city or county government giving cash or gifts to citizens that attend board meetings or exercise their right to vote in an election.

There are statutes that authorize “rewards” for apprehension and conviction of persons for certain criminal activity and statutes that authorize animal bounties, however, we have not found any statutes that generally authorize local government appropriations for the purpose rewarding individuals for certain behavior.

In the absence of explicit statutory authority supporting such payment, the use of gift cards in these types of scenarios for the purpose of thanking or rewarding individuals for participation or for particular conduct would run the risk of being deemed unauthorized payments of public funds. To the extent a

person has a claim or right to payment, then payment should be handled like any other claim, through the payroll or claim process provided for in Minn. Stat. §§ 471.38 and 412.271. To the extent the person receiving a gift certificate has no claim or right to payment, then payment to them as a “gift” raises issues related to the public purpose requirement of the State Constitution.

- *Gift Cards Authorized by Federal or State Grant Programs*

One scenario under which gift cards may be a permissible method of public fund expenditure or disbursement for a public purpose is in the context of certain federal and state grant programs. The actual permissibility, however, would depend on the specific parameters of the grant program and the use of the gift cards in accordance with those parameters. The use of the gift cards, even when expressly permitted by a grant program, for example, would have to follow all the requirements of the grant program and be itemized. If, in the absence of specific Minnesota law authorizing use of gift cards, a local government relied on a grant program for authority, it would need to be able to show that using a gift card was allowed by the grant program and that the gift card was used for an allowable cost of the grant program. In the absence of either, showing the use of gift cards could constitute misuse of public funds.

For an example of an audit finding on the use of gift cards allowed by grants, here is a link to an extract from an audit issued by the OSA for Year Ended December 31, 2004.

<https://www.osa.state.mn.us/media/votpwkms/use-of-gift-cards-att-1.pdf>

For information on allowable federal costs, see the most recent Compliance Supplement from the Executive Office of the President, Office of Management and Budget 2 CFR Part 200 at whitehouse.gov.

Receiving Donated Gift Cards

Certain local government units have reported receiving donations in the form of gift cards from individuals. In these situations, the local government must ensure that it complies with the statutory requirements for the acceptance of gifts. Once received by the local government, gift cards become public funds and, accordingly, may only be held and expended as authorized by law. This presents an interesting situation for local government units. Without obvious authority in Minnesota Law to use gift cards to disburse public funds, it is unclear how the local government unit could use the gift cards. For an example of an audit finding on the use of gift cards donated to a local government, here is a link to an extract from a Management and Compliance Report issued by the OSA for the Year Ended December 31, 2017.

<https://www.osa.state.mn.us/media/3o1nz3zd/use-of-gift-cards-att-2.pdf>

Internal Controls for Handling Gift Cards

To the extent a local government may have gift cards in its possession (e.g., for use pursuant to a state or federal grant program or it receives gift cards as a donation), we recommend that it establish a gift card policy. Gift cards should be kept in a secured location such as a locked metal box that is maintained in a locked desk, locked cabinet, or a locked safe to which access is limited. Gift cards must be in the custody of the treasurer for cities, counties, school districts, and towns. All gift cards obtained by the local government as part of the grant program should be inventoried on a tracking sheet. When a local government is authorized to disburse gift cards (as previously discussed in sections above), two

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individuals should be involved in the gift card disbursement, and both should initial the inventory sheet when gift cards are distributed. Upon distribution, the tracking sheet should include specific identification of who received the gift card, the reason the gift card was issued, and, as applicable, whether the user was notified that the value received was for payment of services rendered and should be considered income by the user. Reconciliations of the gift card inventory sheet should be conducted by someone other than the person approving disbursements of the gift cards. Finally, the governing body should regularly review the policy and the need for gift card use in executing its authority. These internal control recommendations are in addition to and not in lieu of any statutory or grant program requirements regarding the handling of the gift cards.