Legal Q & A

Public Officials & Employees: Municipal Credit Cards

By Roger Huebner, General Counsel, IML
Brian Day, Staff Attorney, IML
Jerry Zarley, Paralegal, IML

(June 2008)

The Illinois Supreme Court recently affirmed the conviction of the former mayor of Pekin, Illinois. He was convicted of three counts of official misconduct based upon his use of the city credit card to obtain cash advances for gambling purposes. While the specific fact pattern in this is unique, the legal effects of the case are worth learning. This case could have a reverberating impact on the way that municipal officials in the State deal with public money and credit cards.

**Q:** What are the possible repercussions for municipal officials from the Illinois Supreme Court decision in this case?

**A:** The Illinois Supreme Court determined that, when it comes to spending public money or credit, it can be a felony to violate the provisions of the Illinois Constitution. Therefore, local public officials and employees should be extremely careful when the public revenues are involved in any manner.

In the case of *People v. Howard,* a mayor was convicted of official misconduct for using the city’s credit card for personal reasons—despite the fact that he paid those credit card bills with his own assets when they became due.

The city council of Pekin had obtained a credit card, and the city council adopted a resolution authorizing the heads of city departments to use the city’s card to confirm hotel reservations, pay in advance for training sessions, order educational materials, and pay expenses while engaged in city business. After his election in 2004, the mayor became an authorized user of the city’s card.

On three separate occasions in 2004, the defendant used the City’s card to obtain more than $1,400 in cash advances. He used these advances to play video poker at the Par-A-Dice Casino in Peoria, Illinois. The mayor used the city’s card only after he had exhausted the funds that were available to him through his personal debit and credit cards. While the City of Pekin was the sole obligor with respect to the city’s card, the mayor paid the bills from his own assets when they came due.
Because of his handling of the city's credit card, the mayor was indicted on three counts of official misconduct. The official misconduct statute states that a public officer or employee commits misconduct when, in his or her official capacity, he or she commits any of the following acts:

(a) Intentionally or recklessly fails to perform any mandatory duty as required by law; or

(b) Knowingly performs an act which he knows he is forbidden by law to perform; or

(c) With intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority; or

(d) Solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.

A public officer or employee convicted of violating the statute forfeits his office or employment and commits a Class 3 felony. A person cannot be convicted under this statute unless the State can show that he or she violated an identifiable statute, rule, regulation, or tenet of a professional code and can demonstrate how the defendant exceeded his or her lawful authority.

In the Howard case, the mayor was accused of exceeding his lawful authority because he violated the public funds clause of the Illinois Constitution. That clause states that "public funds, property or credit shall be used only for public purposes." The mayor used the city's credit to receive cash for his personal gambling purposes.

The mayor argued that he could not be convicted of official misconduct because a violation of a provision of the Illinois Constitution cannot serve as a predicate unlawful act for that offense. According to the mayor, the Constitution is not a "statute, rule, regulation, or tenet of a professional code" for the purposes of the official misconduct statute, and, thus, his conduct, while contrary to the Illinois Constitution, did not constitute "an act in excess of his lawful authority" under the official misconduct statute. The Illinois Supreme Court disagreed, finding that the Constitution can serve as a predicate unlawful act for the offense of official misconduct. The Court noted that the Illinois Constitution is the supreme law of Illinois, and, as such, every citizen is bound to obey it, and every court is bound to enforce its provisions. The provision of the Criminal Code providing that "no conduct constitutes an offense unless it is described as an offense in this Code or in another statute," did not alter the Court’s analysis.

The mayor also claimed that the city never lost any money because he paid the credit card bills with his private funds. He further argued that to allow a conviction for such a minor infraction would encourage overzealous prosecution. The Court disagreed with these arguments as well. The Court refused to read a de minimis exception into the plain language of the statute because that would be a matter best resolved by the Legislature. The Court did, however, warn against the danger of overzealous prosecution, and it suggested that the General Assembly
review the official misconduct statute and decide whether a *de minimis* exception should be included.

Therefore, the Illinois Supreme Court held that the mayor’s indictment for official misconduct for using the city’s credit card for personal use, even though he reimbursed the city, was sufficient because a violation of the Illinois Constitution can serve as a predicate unlawful act for purposes of the official misconduct statute.

What does this case mean for local officials? It means that, when using public money or credit, officials should be exceedingly diligent to "dot their i's and cross their t's". Even minor infractions can lead to felony prosecutions with possible convictions.

There is probably not a widespread use of municipal credit cards to fund personal gambling. But there are other uses of the credit cards that can snare the unwary.

For example, if an official is using the credit card to reserve a hotel room for a conference and he or she also decides to book a double occupancy so that his or her spouse can attend, then that extra amount for the double occupancy of the hotel room may not be considered a public purpose. This could be true even if the official reimbursed the municipality for the extra cost of the double occupancy. Like in the *Howard* case, merely dedicating any public credit toward a nonpublic expense triggers the official misconduct statute—regardless of who ultimately pays the bill. Whether any prosecutor would bring a charge is the real concern, and one in which the Supreme Court warned about.

Municipal officials are often faced with situations where an expense could encompass both public and nonpublic purposes. When faced with this situation, it is a common practice of many officials to use the credit card to pay the entire expense and then reimburse the municipality for any part of that expense that was not a public use. If, however, there is any question as to whether an expense is a public purpose, the best practice is for the official to pay the expense out of his or her pocket and then seek reimbursement from the municipality for the portion of the expense that involved a public purpose. Following this practice will help avoid the unpleasant effects of a felony indictment.

This monthly column examines issues of general concern to municipal officers. *It is not meant to provide legal advice and is not a substitute for consulting with your municipal attorney*. As always, when confronted with a legal question, contact your municipal attorney because certain unique circumstances may alter any conclusions reached in this article.

2. At least one of the checks for payment bounced, but the mayor asserted that he quickly remedied the problem and made a payment in full.
3. 720 ILCS 5/33-3 (West 2006).
4. *Id.*
6. IL. Const. art. VIII, § 1(a).
7. *Id.*
8. 720 ILCS 5/1-3.

© 2008 Illinois Municipal League