

Clerk/Sheriff, remote payments in posting cash bonds

Number: INFORMAL

Date: January 16, 2009

The Honorable Ken Burke
Clerk of the Circuit Court
Pinellas County, Florida
315 Court Street
Clearwater, Florida 33756-5165

Dear Mr. Burke:

You have asked for this office to comment on whether the clerk of the circuit court and the sheriff's office may enter into a contract with a vendor to provide remote payment services to persons who wish to access their credit or debit accounts in order to post a cash bond. While you state that the clerk of courts is ultimately responsible for the management of bail bond funds, pursuant to section 903.105(2), Florida Statutes, you have designated the Pinellas County Sheriff to accept bond deposits on your behalf.

Recently, you have learned of a system whereby detainees or others may access cash through the use of a credit card or debit card in order to post bond. Use of such a system insures that the funds approved by the detainee's bank or credit card company are sufficient to cover the amount of the bond and the funds are securely transmitted to the clerk with no charges made to the booking agency. You would facilitate this arrangement through a contract with a vendor which provides the remote access service, but does not assume any role as a surety.

You note that in Attorney General Opinion 89-65, this office stated that section 215.322(4), Florida Statutes,[1] does not allow a sheriff to accept credit cards for monetary appearance bonds. This conclusion was based upon a finding that a monetary appearance bond or bail is not a financial obligation owed to a unit of government for which credit cards or debit cards may be accepted.[2] You distinguish the factual situation in Attorney General Opinion 89-65, in that the remote payment services vendor provides a method for the detainee to access an existing credit or debit account to withdraw cash and does not involve acceptance of a credit or debit card by the sheriff.

You assert that the situation you have described is distinguishable from the one presented in Attorney General Opinion 89-65. However, your inquiry necessarily involves a determination of both whether the clerk or sheriff has the authority to enter into agreements with a vendor of remote payment services and the legality of an arrangement whereby the clerk or sheriff accepts funds from a remote payment service. If the vendor is acting as the agent of the sheriff for purposes of accepting a credit card or debit card to post a bond under the terms of the contract, then the conclusions in Attorney General Opinion 89-65 may be applicable. It is well settled that an agency or officer may not do indirectly that which it is prohibited from doing directly.[3]

This office has been advised that a case currently before the First District Court of Appeal

addresses the issue of whether a vendor such as you have described is acting as a bail bond agent subject to licensure under Chapter 648, Florida Statutes.[4] Resolution of this issue by the court hopefully will provide direction to you and the sheriff in this matter. In light of the pending litigation, this office will defer to the judiciary's jurisdiction and not comment on the use of such a system by the clerk and sheriff.[5]

I trust that these comments will be of assistance to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tsh

[1] Section 215.322(4), Florida Statutes, provides:

"The Chief Financial Officer may establish contracts with one or more financial institutions, credit card companies, or other entities which may lawfully provide such services, in a manner consistent with chapter 287, for processing credit card, charge card, or debit card collections for deposit into the State Treasury or another qualified public depository. Any state agency, or the judicial branch, which accepts payment by credit card, charge card, or debit card shall use at least one of the contractors established by the Chief Financial Officer unless the state agency or judicial branch obtains authorization from the Chief Financial Officer to use another contractor which is more advantageous to such state agency or the judicial branch. Such contracts may authorize a unit of local government to use the services upon the same terms and conditions for deposit of credit card, charge card, or debit card transactions into its qualified public depositories."

[2] Section 215.322(1), Florida Statutes, states the statute's purpose to encourage state agencies, the judicial branch and units of local government to accept credit cards, charge cards, and debit cards for the payment of goods, services, and information. Subsection (5) of the statute, provides:

"A unit of local government, which term means a municipality, special district, or board of county commissioners or other governing body of a county, however styled, including that of a consolidated or metropolitan government, and means any clerk of the circuit court, sheriff, property appraiser, tax collector, or supervisor of elections, is authorized to accept payment by use of credit cards, charge cards, and bank debit cards for financial obligations that are owing to such unit of local government and to surcharge the person who uses a credit card, charge card, or bank debit card in payment of taxes, license fees, tuition, fines, civil penalties, court-ordered payments, or court costs, or other statutorily prescribed revenues an amount sufficient to pay the service fee charges by the financial institution, vending service company, or credit card company for such services. A unit of local government shall verify both the validity of any credit card, charge card, or bank debit card used pursuant to this subsection and the existence of

appropriate credit with respect to the person using the card. The unit of local government does not incur any liability as a result of such verification or any subsequent action taken."

[3] *Cf. Green v. Galvin*, 114 So. 2d 187 (Fla. 1st DCA 1959), *cert. denied*, 116 So. 2d 775 (Fla. 1959), *appeal dismissed*, 117 So. 2d 844 (Fla. 1960), for the proposition that a public official cannot do indirectly that which he is prohibited from doing directly.

[4] *Accredited Surety and Casualty Company vs. State of Florida, Dept. of Financial, etc., et al*, (Fla. 1st DCA, Case No. 08-3054), Lower Tribunal Case No. 94421-08-DS, Declaratory Statement by the Department of Financial Services, *In the Matter of: Larry Campbell, Sheriff of Leon Co., Fla.*, May 22, 2008.

[5] See Paragraph IV, Frequently Asked Questions About Attorney General Opinions at www.myfloridalegal.com.