



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL  
HARRISBURG, PA 17120

16TH FLOOR  
STRAWBERRY SQUARE  
HARRISBURG, PA 17120  
(717) 787-3391

JOSH SHAPIRO  
ATTORNEY GENERAL

January 28, 2019

Bradley C. Bechtel, Esq.  
Chief Counsel  
Pennsylvania Game Commission  
2001 Elmerton Avenue  
Harrisburg, PA 17110

Dear Mr. Bechtel:

In accordance with Section 204(a) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a), which allows Commonwealth agencies to seek a binding opinion on a matter arising in connection with the exercise of the official powers or duties of the agency, you requested a legal opinion on behalf of the Pennsylvania Game Commission (PGC) concerning its authority to issue hunting or furtaking licenses to customers that pay with a debit or credit card where such forms of payment require a “swipe fee.” After careful review, we conclude the PGC’s governing statute provides it the discretion to authorize such payments.

Section 2726 of the Game and Wildlife Code (“Code”) makes it unlawful for an Agent<sup>1</sup> to knowingly issue a hunting or furtaking license “at a fee greater than the fee<sup>2</sup> prescribed in this title....” 34 Pa. C.S. § 2726(a)(1)(v). The Code specifies only two fees through which an Agent may charge additional money. We address each in turn.

First, Section 2709(c) sets an “Agent Fee” of \$1.00 for each license or replacement license as “full compensation for [the Agent’s] services.” 34 Pa. C.S. § 2709(c). The swipe fee at issue is not compensation for the Agent’s services; a third party processor receives this fee directly from the customer as compensation for its payment services. The Agent receives no part of the swipe fee and charges the same amount for the license without regard to the form of payment. Rather, the swipe fee is an optional cost to the customer that may be paid in exchange for the convenience of paying with a debit or credit card.

Second, Section 2709(d) authorizes a fee for “transaction costs” associated with the Pennsylvania Automated License Service (“PALS”); the Code limits this fee to actual costs, not to exceed \$1.00. 34 Pa. C.S. § 2709(d). The Code does not define these “transaction costs” or otherwise indicate whether a “transaction cost” includes a third party processor’s swipe fee. Where a governing statute is ambiguous, the law grants the Commonwealth agency’s interpretation controlling weight unless clearly erroneous. *See Whitaker Borough v. Pennsylvania Labor Relations Bd.*, 556 Pa. 559, 562, 729 A.2d 1109, 1110 (1999).

---

<sup>1</sup> Agents are defined to include County Treasurers and certain PGC employees. 34 Pa. C.S. § 2722(a).

<sup>2</sup> This fee includes the applicable license fee set by 34 Pa. C.S. § 2709(a) and the agent fee and transactions costs described in 34 Pa. C.S. §§ 2709(c)-(d).

Bradley C. Bechtel

January 28, 2019

Page Two

The absence of a definition for “transaction costs” creates just such an ambiguity, leaving its resolution to the PGC’s expertise. Under Pennsylvania law, the Legislature supplies, either expressly or by implication, the power and authority exercised by administrative agencies. *See Commonwealth v. Butler County Mushroom Farm*, 499 Pa. 509, 454 A.2d 1 (1982). Further, the law vests an administrative agency with “the implied authority necessary to the effectuation of its express mandates, because the Legislature cannot foresee all the problems incidental to the agency’s carrying out its duties and responsibilities.” *Sewer Authority of Scranton v. Pennsylvania Infrastructure Investment Authority*, 81 A.3d 1031, 1039 (Pa. Cmwlth. 2013).

Under this implied grant of authority, the PGC may provide its own reasonable definition of what does, and does not, constitute a “transaction cost.” Given its nature as a cost imposed by, and remitted solely to, a third party, the PGC possesses full authority to determine that a swipe fee is not a “transaction cost” of PALS. This interpretation of Section 2709(d) is not clearly erroneous; rather, it is a logical construction and does not conflict with the plain language of the Code.

For the foregoing reasons, PGC may authorize the payment of hunting or furtaking licenses by debit and credit cards where a third-party processor imposes a swipe fee because such a fee is neither an “Agent Fee” nor a “transaction cost” and its payment does not violate the Code.

In accordance with Section 204(a)(1) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a)(1), you may rely on the advice set forth in this Opinion and shall not in any way be held liable for doing so.

All the best,



JOSH SHAPIRO

Cc: Jonathan Scott Goldman, Esquire  
Amy M. Elliott, Esquire