

departments and their members appointed for fixed terms, subject to removal only for cause." However, the legislative purpose in separating the licensing and examining boards into the two Divisions of Professions and Occupations is not immediately apparent.

It is true that some distinction has been made between a profession and an occupation. In *Lambert v. Mullan*, 83 So.2d 601 (Fla. 1955), the court said that the attributes of generally recognized professions are "attainments in specialized intellectual training and knowledge of some department of learning, science, or art as distinguished from mere skill in employment habitually engaged in for livelihood or gain." *Accord*: Black's Law Dictionary (4th ed.), p. 1375. One's "occupation" is the particular business, profession, trade, or calling which engages one's time and efforts—an employment in which an individual regularly engages, or the vocation of his life. *Id.*, p. 1230. Generally, the distinction between a profession and an occupation has been made by the court in interpreting a particular statute; and, in the final analysis, the question of whether a particular occupation is to be deemed a "profession" depends upon the legislative intent in adopting that statute. For example, the occupational license tax on professions levied by the statute in effect in 1938 was held not to include such professional persons as school teachers, journalists, ministers of the gospel, musicians, ballplayers, professional entertainers, registered nurses, or pharmacists who prepare and dispense drugs in connection with their own retail drug businesses. *See Lee v. Gaddy*, 183 So. 4 (Fla. 1938). *Accord*: *Lambert v. Mullan*, *supra*, and AGO 071-47, holding that registered nurses and pharmacists are not engaged in the practice of a "profession" within the meaning of the occupational license tax provisions of §205.461, F. S. 1971. It is significant here that the constitutional provision requiring governmental reorganization to include boards authorized to "grant and revoke licenses to engage in regulated occupations" apparently refers to all regulated occupations, whether ordinarily thought of as professional or as nonprofessional, and that other legislative acts concerned with these examining and licensing boards make no such distinction. *See* §215.37, F. S., relating to the deposit of all fees, license charges, and other charges made by examining and licensing boards, and §455.01, *id.*, defining "administrative board" to mean "minor regulatory boards created by the state." Both of these statutes list the examining and licensing boards here in question without separating them into "professional" or "occupational" boards; and, as noted above, under the express terms of §20.30, *supra*, the two divisions of "professions" and "occupations" are not administered separately but are administered directly by the secretary of the department. In these circumstances, the distinction as it appears in §20.30, *supra*, does not serve any discernible purpose; and the legislature might wish to consider grouping all of these regulatory boards into a single "division of professions and occupations."

073-26—February 16, 1973

STATE AGENCIES

FINANCIAL MATTERS—AUTHORITY TO ACCEPT CREDIT CARDS IN PAYMENT FOR GOODS AND SERVICES

To: L. K. Ireland, Jr., Secretary, Department of Administration, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. Do state agencies have the authority to enter into agreements

and accept credit card payments as compensation for goods and services sold?

2. If question 1 is answered in the affirmative, what recourse would such agencies have for losses incurred in connection with such sales?

3. If question 2 is answered in the affirmative, would a state agency be obligated to accept any credit cards willing to meet the conditions specified for a particular credit card company?

SUMMARY:

In the absence of any statutory authority a state agency may not accept credit cards in payment of goods and services—or licenses or taxes—supplied or collected by it.

Your inquiry does not make clear the types of goods and services that are to be “sold” by the state agencies. Many state agencies are, of course, responsible for issuing regulatory licenses of one kind or another, for which they charge a fee; and others collect taxes of various kinds. All of such fees and taxes, when collected, become state funds subject to control and disposition by the state, through the legislature. *See*, for example, §215.37, F. S., providing for the disposition of fees and other charges collected by examining and licensing boards. And any sale of goods or services by the state or its agencies must be authorized by law, the terms of which must be substantially followed, including the mode or medium of payment prescribed by the statute. *See* 81 C.J.S. *States* §107, p. 1079, *Cf.* §273.05, F. S., providing for the sale of state-owned surplus tangible personal property. It should be noted also that an administrative agency or officer does not possess any inherent powers. Such agency is limited to the powers granted, either expressly or by necessary implication, by the statute creating it. *St. Regis Paper Co. v. State*, 237 So.2d 797 (1D.C.A. Fla., 1970); 1 Fla. Jur. *Administrative Law* §22. *Accord:* Attorney General Opinion 058-228.

You state that certain credit card companies are willing to waive the usual service charge made by them for the credit card services rendered to commercial enterprises if the state agencies will abide by certain stipulated conditions, namely, the establishment by the state agency of a separate bank account in the credit card bank solely for the deposit of credit card sales invoices, and the agreement of the state agency to stand the loss when it honored a credit card that had expired or that had been canceled, and which it had failed to verify prior to making the sale.

I must advise against a state agency's entering into such an agreement—whether for the sale of “goods or services” or for the collection of license fees or taxes. In the first place, the deposit of state funds is governed strictly by statute, *see* §§18.101 and 18.102, F. S. (1972 Supp.). A special credit card bank account established by a state agency for the purpose of depositing credit card sales invoices is neither a “clearing” nor a “revolving” account within the purview of these statutes. And I have the view that, if such an account is to be established, it must be done pursuant to legislative authority with appropriate legislative guidelines. *Cf.* AGO 071-77, holding that, in the absence of specific statutory authority, the Department of Professional and Occupational Regulation cannot establish a clearing trust fund into which the department would deposit all receipts on behalf of all boards and from which the department would transfer amounts assessed against each board and distribute the balance of the receipts to each board's operating trust fund.

In the second place, the adoption of such a method of payment would inevitably result in some loss because of the expiration of a credit card, the cancellation of the card by the credit card bank, or failure of a state agency to verify the account's validity as required—usually when the sale or charge is fifty dollars or more. And I could not, in good conscience, approve a method of financing the sales of a state agency's goods or services that would inevitably result in some loss to the

state, and certainly would require additional expense in checking on the status of a particular credit card customer in order to minimize such loss, in the absence of statutory authority, express or necessarily implied, to do so.

I have not overlooked the fact that some state and county officials customarily accept checks in payment of certain licenses and taxes, contrary to the general rule that, in the absence of a statute so providing, taxes must be paid in cash or money or legal tender. *See* 84 C.J.S. *Taxation* §623, p. 1242. *Accord:* *Peninsula Land Co. v. Howard*, 6 So.2d 384 (Fla. 1942); *Wadsworth v. State*, 142 So. 529 (Ala. 1932). This custom and usage is apparently recognized by statute as to occupational and beverage licenses and sales taxes. *See* §832.06, F. S., providing for the refund to the tax collector of occupational and beverage license and sales tax funds forwarded to the departments concerned by the tax collector when paid by a check that turns out to be worthless. *And see* §215.34, *id.*, providing the procedure, as between the state treasurer and the state agency making the deposit, for handling a worthless check given in payment of any "licenses, fees, taxes, commissions or charges of any sort authorized to be made under the laws of the state and deposited in the state treasury" It might be noted that there is nothing in such statutes to indicate that the acceptance of the check by the official constitutes anything other than a conditional payment and that if the check is never presented or is dishonored, the tax or fee remains a charge. *See* 84 C.J.S. *Taxation* §623, p. 1243.

In any event, I find nothing in the statutes referred to above—or in any other statute—from which it may be inferred that a state agency or official may enter into an agreement with a credit card bank providing for the payment of "goods and services"—or license fees or taxes—under the bank's credit card system, agreeing that any loss incurred through the use of the system would be borne by the state, and providing for the establishment in such bank of a separate bank account for the purpose of depositing the credit card invoices. And in the absence of any such authority, express or necessarily implied, I must advise against the use of such a system by a state agency.

Accordingly, your first question is answered in the negative. This answer makes it unnecessary to reply to your second and third questions.

073-27—February 16, 1973

ELECTRICAL CONTRACTORS

COUNTY COMPETENCY EXAMINATION AND REGULATION OF CONTRACTOR CERTIFIED BY FLORIDA ELECTRICAL CONTRACTORS' BOARD PROHIBITED

To: Ray Mattox, Representative, 57th District, Winter Haven

Prepared by: Richard Bennett, Assistant Attorney General

QUESTIONS:

1. Has the legislature by enacting Ch. 71-224, Laws of Florida (part VII, Ch. 468, F. S.), creating the Florida Electrical Contractors' Licensing Board, acted to preempt the field?
2. Does Ch. 71-224, Laws of Florida, prevail over any conflicting special laws?

SUMMARY:

To the extent that the building trade code of Pinellas County, as authorized by Ch. 57-1727, Laws of Florida, is inconsistent with Ch. 71-224, Laws of Florida, said code is void and of no effect, the legislature having preempted the field of regulation and licensing of electrical contractors by Ch. 71-224, *supra*.