



March 14, 2014

Final Investigative Report Concerning Ombudsman Complaint 2013-0356

COMPLAINT

An Anchorage citizen contacted the Municipal Ombudsman's Office regarding the penalty and interest that the Municipality of Anchorage assessed upon the late payment of property taxes by her friend's estate, of which she is the personal representative. The property owner died before her June 15, 2013 property tax payment was due. By the time that the complainant was able to access the tax payer's assets in order to settle the estate, the June 15th tax payment was past due and the Municipality assessed a 10% penalty and 5.25% interest on the estate. The complainant believes that it was unfair for the Municipality to charge penalties and interest in this instance since her friend missing the payment deadline was due to her death.

FINDINGS

The complaint against the Municipality of Anchorage, Treasury Department regarding the 10% penalty assessed against the estate is **JUSTIFIED**. The Ombudsman issues **NO FINDING** regarding the 5.25% interest assessed against the estate, for reasons outlined in the analysis below.

ANALYSIS AND CONCLUSIONS

The complainant contacted the Ombudsman's Office on August 27, 2013. Her friend had been gravely ill for several months, and had been treated in an out-of-state medical facility, where she died on May 31, 2013. The complainant subsequently learned that she had been named as the personal representative for her friend's estate. The complainant was authorized by the court to access her friend's assets in order to settle the estate in mid-July 2013. When the complainant contacted the Municipality's Treasury Department to make arrangements to pay the deceased's property taxes, she was informed that because the deceased had missed the June 15th payment deadline, the estate owed a 10% penalty and 5.25% interest on the outstanding tax bill. The complainant protested that assessing penalty and interest on the estate was not fair, and did not make sense because her friend had missed the payment deadline due to her death. Department staff informed the complainant that there was no appeal process and no provision in Municipal Code for waiving the penalty or interest. The complainant asked with whom she could file a complaint regarding the process, and staff referred her to the Ombudsman's Office.

The Ombudsman reviewed the relevant State Statute and Municipal Code to determine if the department's contention that they could not waive the penalty and interest assessed against the estate was an accurate interpretation of existing statute and code. The Ombudsman's inquiry revealed that Alaska Statute (AS) 29.45.250 states that municipalities "may" add a penalty upon late payment of property taxes, and AS 29.45.250(a) states that interest "shall" accrue upon late payment of property

taxes. Additionally, Anchorage Municipal Code (AMC) 12.15.060.C.1.a states that "A penalty of ten percent on the unpaid balance of a tax installment which was due shall be added to the delinquent tax." AMC 12.15.060.C.1.b states, in part, that "interest shall be charged on the unpaid balance of delinquent taxes." Given the context in which "shall" is used in the relevant State Statute and Municipal Code, the term must be construed to be mandatory. Because the Municipal Code requires that penalty and interest be assessed upon late payment of property taxes, regardless of the circumstances, the department staff was correct when they informed the complainant that the penalty and interest could not be waived; the department staff followed the existing Municipal Code.

In looking at the totality of the facts in this investigation, the issue for the Ombudsman to consider is the fairness and equity of the existing Municipal Code. Is it fair and equitable for the Municipality of Anchorage to assess penalties and interest upon the late payment of property taxes under any circumstance, even when the citizen taxpayer misses the payment and/or filing deadline because they die (or are in a coma, or seriously ill)? Is this how local government should be treating the citizen taxpayers who fund local government? The Ombudsman believes that current Municipal Code is not fair and reasonable, and that this is not how we should be treating citizen taxpayers. Human compassion, fairness and equity still have a place in government.

AS 29.45.250 states that municipalities "may" add a penalty upon late payment of property taxes. The context of the word "may" in this instance means that municipalities may impose a penalty upon late payment of property taxes at their discretion. Since the penalty is discretionary, municipalities can choose to allow for an administrative appeal process for waiver or refund of penalties under exceptional circumstances. While current Municipal Code requires both interest and penalty upon late payment of property taxes, the Assembly can amend the current code to allow for waivers, refunds and an appeal process.

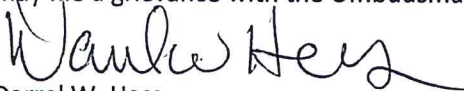
AS 29.45.250(a) states that interest "shall" accrue upon late payment of property taxes. The context in which "shall" is used must be construed to mean that interest upon late payment of property taxes must be charged; the Municipality cannot amend Municipal Code to allow for waiver of interest upon late payment of property taxes, because any waiver would conflict with State Statute. AS 29.45.010 authorizes municipalities to levy property taxes, and requires that the taxes be assessed, levied and collected as provided in the chapter. Municipalities cannot adopt and implement codes, policies and/or procedures regarding property taxes that conflict with AS 29.45.

Because Alaska State Statute permits municipalities to impose a penalty upon late payment of property taxes at their discretion, and because municipalities can enact legislation to allow for an administrative appeal process regarding assessment of penalties upon late payment of property taxes under exceptional circumstances, and because current Municipal Code does not allow for an adequate, fair and reasonable administrative appeal process, the Ombudsman finds the complaint that the 10% penalty assessed by the Municipality in this case was unfair, to be JUSTIFIED. The Ombudsman believes that charging interest upon late payment of property taxes under all circumstance is not always fair and equitable. However, because assessing interest upon late payment of property taxes is mandated by State Statute, the Ombudsman has NO FINDING regarding the complainant's concern with this issue. *It is up to the State Legislature to address this issue.* A preliminary report regarding this matter was provided to the department on March 7, 2014, and the department's response was received the same day. Based on the investigation of this case, the Municipal Ombudsman recommends the following:

That Anchorage Municipal Code, Chapter 12.05 be amended to allow for waiver or refund of penalties assessed upon late payment of property taxes under exceptional or extraordinary circumstances. The revisions should include who is authorized to make determinations regarding waiver and refund, the standards for waiver and refund, and the appeal process. *The department disagrees with the Ombudsman's recommendation. The department's response is attached to this report.*

Based upon this finding, and this recommendation, this case is closed.

If you object to the Ombudsman's decision to decline or discontinue this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C.R. 2.60.006.

A handwritten signature in black ink that reads "Darrel W. Hess". The signature is written in a cursive, flowing style.

Darrel W. Hess
Municipal Ombudsman

Treasury Department Response to the Ombudsman's Report Regarding Complaint 2013-0356

Treasury concurs with the portion of your report that addresses the facts of the case and how existing law was properly and fairly applied. Note: the interest rate charged is actually 5.25% and not 5.50%.

The remainder of your report, which suggests injecting subjective language into Municipal Code is problematic and unworkable for reasons stated below. I would recommend that your report be shortened to focus on the facts and conclusions of the specific case.

- First and foremost, federal law prohibits us from asking for any private medical related information. Local law cannot trump federal law. This is not information we should be privileged to receive and it is not information that we can readily evaluate because we are not trained to be evaluators of medical conditions.
- The taxpayer has many tools and options provided by the MOA to ensure that their taxes are paid on-time every year. It is the individual taxpayer's sole responsibility to manage their finances to cover contingencies. Specific to this case, the taxpayer's condition was worsening leading up to the tax due date and steps could have been taken to ensure their tax bill was paid on time.
- The MOA tax law is purposely written to be interpreted and enforced in a very clear cut manner, without ambiguity. This ensures the most efficient, fair and equitable service to taxpayers as a whole. When any type of subjectivity is involved this will clearly increase risk of different interpretations and different treatment amongst individuals – this, in turn, further increases the risk of violation against U.S. constitutional protection for fair and equal treatment.
- A change to Municipal Code would increase the cost of government, reduce efficiency and lead to revenue / budget shortfalls.
- The MOA Code is highly effective and functions as the legislative body and administrative branch intend and need for it to work.
- The MOA Code regarding property tax penalty matches the prevailing standard across the country.