



March 11, 2015

## Final Investigative Report Concerning Ombudsman Complaint OM2014-1340

### COMPLAINT

The manager of a local pest control company contacted the Municipal Ombudsman's Office because one of his trucks was pulled over by the Anchorage Police Department, and his business vehicle was seized and impounded by APD because the driver was on the Municipality's scofflaw list. The manager believes that he did his due diligence by obtaining a copy of his employee's driving record from the State of Alaska, Division of Motor Vehicles, and questions how he was supposed to be aware of the Municipality's scofflaw code. The complainant believes that seizing and towing his vehicle was unfair.

### FINDINGS

This complaint against the Municipality of Anchorage, Police Department is **INDETERMINATE**.

### BACKGROUND

Scofflaw is a noun coined during the Prohibition era meaning a person who drinks illegally. It is a compound of the words scoff and law, meaning one who mocks or ridicules the laws. The meaning has since been extended to describe one who flouts any law, especially those which are difficult to enforce, and particularly traffic laws (Wikipedia).

On April 10, 2007 the Anchorage Assembly passed AO 2007-60 which made it a misdemeanor for a person to "operate, drive, or remain in physical control of a motor vehicle on a public street if they have accumulated three or more delinquent traffic fines, the total of which is equal to or greater than \$1,000, for moving violations committed within the municipality." The newly enacted code made vehicles operated, driven, or physically controlled by a person in violation of the code subject to impoundment and forfeiture. AO 2007-60 was enacted with a delayed effective date of October 1, 2007, to allow time for the Alaska Legislature to pass legislation that would allow municipalities to enact and enforce local ordinances such as AO 2007-60.

The final version of the state legislation, Senate Bill 145, passed late in the 2007 Legislative Session and was signed into law by Governor Palin on July 31, 2007. The final version removed any references to commitment of a misdemeanor and the number of delinquent traffic citations; the only trigger was "\$1,000 or more in delinquent traffic fines for moving violations committed within the municipality" (AS 28.01.015.a.5). On December 11, 2007, to conform to AS 28.01.015.a.5, the Anchorage Assembly passed AO 2007-161 which repealed AO 2007-60 and added AMC 9.28.035 (Abatement of vehicles operated by delinquent offenders). AMC 9.28.035 makes operation of a motor vehicle by a person with more than \$1,000 in delinquent Municipal traffic fines a public nuisance subject to abatement.

According to Assembly Memorandum 733-2007 the "purpose of abatement is to remove vehicles operated by persons who, by not paying their traffic fines, are a danger to the public because they have not subjected themselves to the rehabilitative efforts of the court. The purpose of abatement is not to

generate revenue.” AM 237-2007, which accompanied AO 2007-60, stated that “APD sees a sufficiently high correlation between motor vehicle accidents caused by driver misconduct and drivers involved who have accumulated significant delinquent fines for moving violations. As a public safety measure, the ordinance is intended to deter or prevent that conduct by placing at risk of forfeiture the very instrument abused by scofflaws, who threaten public safety. Safe highways for Anchorage motorists, not increased revenue, is the goal.”

## **ANALYSIS AND CONCLUSIONS**

The manager of a local pest control company contacted the Municipal Ombudsman’s Office because one of his trucks was pulled over by the Anchorage Police Department, and his business vehicle was seized and impounded by APD because the driver was on the Municipality’s scofflaw list. In order to retrieve the vehicle the business was required to pay the Municipality a \$410.00 administrative fee, plus towing and storage fees to the tow company. The manager believes that he did his due diligence by obtaining a copy of his employee’s driving record from the State of Alaska, Division of Motor Vehicles. He noted that the employee had a valid State of Alaska Driver's License at the time of hire. He questions how he was supposed to be aware of the Municipality's scofflaw code. The complainant stated that he had been in business for 35 years in Anchorage, and that he had never heard of AMC 9.28.035, the Municipality’s scofflaw code. The code allows for the seizure, impoundment, and possible forfeiture of motor vehicles operated by persons who have accumulated delinquent Municipal (minor) traffic fines totaling more than \$1,000.00. The complainant believes that seizing and towing his vehicle was unfair.

In the course of his inquiry the Ombudsman reviewed AMC 9.28.035, Assembly Ordinance 2007-60 accompanied by Assembly Memorandum 237-2007, Assembly Ordinance 2007-161 accompanied by Assembly Memorandum 733-2007, Alaska Senate Bill 145, the minutes of the May 10, 2007 meeting of the State House Judiciary Standing Committee, and other pertinent documents. In 2007 the Municipality of Anchorage initiated discussions with members of the Alaska State Legislature regarding enactment of a state statute that would assist municipalities in collecting delinquent traffic fines from egregious offenders, while removing those individuals characterized as a safety hazard from the roadways. Subsequently Alaska State Senator Lesil McGuire introduced Senate Bill 145, which added Alaska Statute 28.01.015(5), authorizing municipalities to impound motor vehicles operated by individuals who have over \$1,000 in delinquent traffic fines within that municipality.

The complainant provided the Ombudsman with the name of the employee driving the company vehicle at the time of its seizure and impoundment. In reviewing the employee’s driving record the Ombudsman learned that the employee has fifteen traffic/driving convictions, and one suspension/revocation for driving with a suspended/revoked license. All nine of his delinquent Municipal traffic citations, totaling \$2,254.00, were issued within the last five years. Typically DMV records requests for insurance purposes cover the most recent five years of a person’s driving record. The Ombudsman called and emailed the complainant multiple times to request additional information, including when he had last obtained a copy of his employee’s driving record from the DMV, and the employee's date of hire. The additional information was necessary for the Ombudsman to complete his inquiry. The complainant failed to respond to the Ombudsman’s requests. The complainant’s failure to respond to the Ombudsman’s repeated requests for additional information left the Ombudsman no choice but to discontinue his inquiry and issue an “INDETERMINATE” finding.

While the Ombudsman could not reach a definitive conclusion regarding the complainant's allegations and was forced to terminate his inquiry, the Ombudsman’s review of the scofflaw program and its

implementation raised some concerns. Does the employee's driving record automatically invalidate the complainant's assertion that the seizure and impound of his business vehicle was not fair? The employee had a valid Alaska Driver's License issued by the State of Alaska, Division of Motor Vehicles, the employer had insurance, and the vehicle's registration was current. Lacking familiarity with the scofflaw code, why would the employer expect the vehicle to be seized, towed and impounded by the Anchorage Police Department? Is the scofflaw program fair? How was the complainant supposed to know of the requirements of the Municipality's scofflaw code and be aware that his employee was on the scofflaw list?

Is the scofflaw program fair? Fair to whom? State Statute and Municipal Code allow motor vehicles to be towed and impounded for multiple offenses, including driving with a suspended driver's license, driving without insurance, and operating a motor vehicle while owing more than \$1,000 in delinquent traffic fines. Is it fair to licensed drivers who follow the rules to allow those who flaunt the rules (scofflaws) to operate vehicles without any consequences for their actions? Is it fair to an 85-year old grandmother who loans her car to her 19-year old grandson that her car is seized, towed, and impounded because her grandson is on the scofflaw list? Would it be any fairer if her car was impounded because her grandson was operating her car with a suspended driver's license? Fairness is usually based on how something impacts us personally. From the perspective of the Ombudsman fairness is often more about implementation, rather than the code or program. Is the program or code being implemented fairly and impartially? Based on the available evidence, the Ombudsman believes that the scofflaw program is being implemented fairly and impartially.

The bottom line is that when a person loans a motor vehicle to another person, or employs someone to drive a company vehicle, they are assuming liability for that person's actions, and potentially any outstanding legal issues related to that person's operation of said motor vehicle. Personal and business vehicles are significant financial investments that transport persons to work, appointments, recreational activities; they facilitate deliveries to customers, and serve a myriad of other functions in our daily lives. Motor vehicles can also be deadly weapons under certain circumstances. Persons loaning their personal vehicles, or employing persons to operate their business vehicles, should always be cognizant of their liability and do their due diligence; the bottom line is that they are liable for the actions and legal liabilities of those driving their vehicles.

Finally, we come back to the complainant's questions regarding his alleged lack of familiarity with the scofflaw program. How was he supposed to know of the Municipality's scofflaw code, and that his employee was on the scofflaw list? If his employee possessed a valid driver's license, and his vehicle was insured and registered, why would the complainant expect his vehicle to be seized, towed and impounded by APD? When SB 145, AO 2007-60, and AO 2007-161 were introduced and enacted in 2007 there was a considerable amount of publicity (radio, television, print), multiple public hearings, a radio public service announcement produced by the Municipality, and a public awareness campaign with billboard signs on People Mover buses. The Municipality made a good-faith effort to inform the public of the new section of code and the potential consequences of a scofflaw being caught driving a vehicle on the streets of Anchorage. The Finance Department set up a scofflaw webpage at [www.scofflaw.muni.org](http://www.scofflaw.muni.org). The webpage contains the history of the program, frequently asked questions, the radio PSA, a vehicle owners "beware" section, and a list of all current scofflaws.

Unfortunately, over the past few years, due to budgetary constraints, the Municipality has not done much to promote public awareness of the scofflaw program, other than the scofflaw webpage and the scofflaw link on the front page of muni.org. In other words, Anchorage's residents, in order to learn

about the scofflaw program, are expected to go to muni.org and search for a program that they most likely don't know exists. There is no information regarding the scofflaw program on APD's impound webpage, or the Department of Law's impound page. The scofflaw link on the front page of muni.org is listed under the "For Business" header and simply says "Scofflaw" (What if Grandma does not own a business?). In the present day computer age and world of social media, the Municipality has a myriad of opportunities to promote public awareness of the scofflaw program at minimum cost. While citizens have an obligation to educate themselves regarding laws, government has an obligation to make an effort to educate and inform citizens, especially regarding newer, relatively obscure laws.

**Because the complainant in this case did not respond to the Ombudsman's requests for additional information necessary to conduct his inquiry, the Ombudsman finds this complaint to be INDETERMINATE.** A preliminary report was provided to the Anchorage Police Department, Municipal Finance Department, Treasury Division, and Municipal Attorney's Office. **Based on the investigation of the case, the Municipal Ombudsman recommends the following:**

**(1) that information regarding the Municipal scofflaw code be posted on the Anchorage Police Department's impound webpage, with a link to the scofflaw program webpage.** *The Finance Department, Treasury Division concurs with this recommendation.*

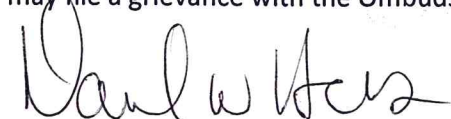
**(2) that information regarding the Municipal scofflaw code be posted on the Municipal Department of Law's impound webpage, with a link to the scofflaw program webpage.** *The Finance Department, Treasury Division concurs with this recommendation.*

**(3) that the scofflaw link on the front page of muni.org be revised to include some verbiage regarding the program, and make it clear that the program is not just "For Business" and can effect anyone who owns a vehicle.** *The Finance Department, Treasury Division will work with web developers to change the MOA's main scofflaw webpage link to read: "Public Awareness: Scofflaw (Business & Individuals)".*

**(4) that the Anchorage Police Department and the Municipality conduct (at least annually) a social media awareness campaign to inform the public regarding the scofflaw program.** *The Finance Department, Treasury Division noted that the MOA does not have a main Twitter or Facebook account, but there are other social media outlets for potential public awareness campaigns that they could explore, such as occasional APD Twitter/Nixle messages concerning the scofflaw program. Treasury has already taken additional measures to inform the public about the scofflaw code. Their bulk mailing contract was renewed this month with Peregrine Solutions and, beginning with the April 2015 Delinquent Criminal/Civil Fines and Fees (DCF) demand letters, a scofflaw informational notice (attached) will be inserted in all letters being sent for Minor Offense (MO) cases. Each DCF demand letter for subsequent traffic violations will contain this reminder message about the Scofflaw program.*

**Based on this finding, and these recommendations, 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.



Darrel W. Hess  
Municipal Ombudsman

**Don't let your Minor Offense fines  
turn you into a Scofflaw!**



[scofflaw.muni.org](http://scofflaw.muni.org)

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Scofflaws are repeat traffic offenders owing more than \$1,000 in citations (Minor Offense Fines). Scofflaws present a safety risk to the public, and whatever vehicle they drive is subject to impoundment.

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Scofflaws put every driver on the road at risk. They are a threat to public safety. Dangerous driving often ends in serious injury or death. Scofflaws also inflate insurance rates in the Anchorage area. That means everyone pays for Scofflaws