





OFFICE OF THE OMBUDSMAN Memorandum

DATE: April 29, 2019

TO: Anchorage Assembly

FROM: Darrel W. Hess, Municipal Ombudsman 
May Ramirez-Xiong, Deputy Ombudsman 

SUBJECT: AMC 9.28.035 – Abatement of Vehicles Operated by Delinquent Offenders

For some time, the Municipal Ombudsman's Office has had serious concerns about certain aspects of AMC 9.28.035 as written and as interpreted by the Municipality. AMC 9.28.035 – Abatement of Vehicles Operated by Delinquent Offenders, more commonly known as the Scofflaw ordinance, states in part that "Any motor vehicle operated by a person who accumulates delinquent traffic fines totaling more than \$1,000.00 is a public nuisance subject to abatement as provided in this section." Traffic fine is defined as "{a} fine issued by the municipality for a moving violation. Traffic fine does not include fines for parking violations." However, the term "moving violation" is not defined in the code. The Finance Department is proposing to amend the definition of a "traffic fine" in Municipal Code (AO 2019-59), to clarify that "moving violations" may include equipment violations or paperwork violations. For the reasons outlined in this memo, the Municipal Ombudsman's Office opposes this proposed change to code.

BACKGROUND

In early 2007, the Municipality of Anchorage (MOA) began exploring ways to deal with a relatively small group of individuals who had accumulated over \$4 million in delinquent traffic fines. The MOA began lobbying members of the Alaska State Legislature to pass legislation that would allow local governments to enact local Scofflaw ordinances.

On March 27, 2007, Assembly Members Shamberg and Tesche introduced AO 2007-60, accompanied by AM 237-2007. The ordinance made operation of a motor vehicle in the MOA by a person who accumulated three or more delinquent traffic fines totaling more than \$1,000 a misdemeanor, and their vehicle subject to impound and possible forfeiture. AM 237-2007 noted that "Safer highways for Anchorage motorists, not increased revenue, is the goal of AO 2007-60." The Assembly approved AO 2007-60 on April 10, 2007, with an effective date of October 1, 2007. The purpose of the delayed effective date was to give the Alaska Legislature time to pass legislation enabling municipalities to enact and enforce local ordinances such as AO 2007-60. When AO 2007-60 was adopted, proposed legislation was before the Judiciary Committee of the State House of Representatives. The Administration and Assembly believed that passing a

local ordinance ahead of any enabling state legislation would provide guidance to the Legislature.

On May 10, 2007, multiple representatives of the MOA appeared before the Alaska State Legislature, House Judiciary Standing Committee to speak in support of Senate Bill 145, "An Act relating to municipal impoundment and forfeiture", sponsored by Senator Lesil McGuire. The meeting lasted nearly 40 minutes and included a robust discussion of the terms "moving violation", "traffic fines" and "traffic". The term finally agreed upon was "moving violation". The bill's sponsor expressed her concern with criminalizing the act of driving a motor vehicle while the driver owed more than \$1,000 in delinquent traffic fines. She believed that this would be creating a "crime upon a crime". Steve Smith with the Anchorage Police Department opined that SB 145 was "a worthwhile tool for law enforcement to use to attempt to change the behavior of those for whom the existing laws don't seem to matter." SB 145 passed late in the 2007 legislative session, and was signed into law by Governor Palin on July 31, 2007. The final version of the bill defined operating a vehicle while owing more than \$1,000 in delinquent fines for moving violations as a civil public nuisance, not a criminal misdemeanor.

On November 27, 2007, at the request of the Mayor, the Chair of the Assembly introduced AO 2007-161, accompanied by AM 733-2007. The ordinance repealed AO 2007-60 and re-enacted the relevant sections of Anchorage Title 9 to conform to the parameters of the final legislation enacted by the Legislature and signed into law by the Governor. A vehicle driven within the MOA by a Scofflaw was defined as a civil public nuisance, not a criminal misdemeanor. AM 733-2007 stated that "The purpose of abatement is not to generate revenue." The current ordinance has been in effect since it was adopted by the Assembly on December 11, 2007.

ANALYSIS

It is our understanding that the MOA has been interpreting the term "moving violations" in the Scofflaw ordinance to include equipment and paperwork violations, and that the purpose of AO 2019 is to clarify and codify this interpretation. The Ombudsman's Office has concerns that including equipment violations and paperwork violations in the definition of "moving violations" is inconsistent with the State of Alaska DMV's interpretation of a moving violation, the intent of the Alaska State Legislature, and that it appears to contradict the numerous statements by the MOA that the Scofflaw ordinance is solely about public safety, not debt collection.

While "moving violation" is not defined in the Alaska statutes or municipal code, the State of Alaska DMV interprets the term as those violations for which the DMV enters points on a driving record. Specifically, page 10 of the official State of Alaska, DMV Driver's Manual states that "convictions for moving traffic violations are assigned numeric point values ranging from 2 points to 10 points", with "violations with the highest likelihood of contributing to crashes. . . assigned the higher point values." Page 11 of the Driver's Manual contains a schedule of "moving traffic violations" and a paragraph at the top of the schedule that states, "If you are convicted of, or forfeit bail for, a moving traffic violation occurring in this, or any other state, points will be entered on your Alaska driving record. Assigned points are based on the following schedule:" The schedule lists all manner of different violations, but no equipment or paperwork violations. Indeed, in Alaska points are generally not entered on a driver's record for

equipment or paperwork violations. Because the DMV assesses points for “moving traffic violations” it follows conversely that if the DMV does not enter points – as in the case of equipment and most paperwork violations - it does not consider the offense a moving violation. Thus, it is the view of the Ombudsman’s Office that the MOA’s interpretation of a “moving violation” in the Scofflaw ordinance and proposed AO 2019-59 to include paperwork and equipment violations is contrary to the State DMV’s interpretation.

A survey of multiple legal websites supports the State DMV’s approach and demonstrates that generally, “Parking violations, equipment violations or paperwork violations relating to insurance, registration, inspection, do not fall under the moving violation category” (www.USLegal.com). “Unlike moving violations, most non-moving violations have nothing to do with how you were driving. Instead, they usually involve problem with your vehicle or paperwork. Some examples include expired registration, lack of insurance, or vehicle maintenance issues like a broken taillight” (www.Avvo.com). These interpretations are substantiated by *Morgan v. State*, 162 P.3d 636, 639 (Alaska 2007), in which the Alaska Supreme Court distinguished an equipment violation from a moving violating, stating that a traffic violation “was not a moving violation, but rather an equipment violation (i.e., a traffic infraction that had no ostensible relationship to the likelihood that the driver was impaired.)” Similarly, in *State v. Strassburg*, the Wisconsin Supreme Court said:

This agreement is without merit. Section 351.02(1)(b), Stats., Defines “habitual traffic offender” as a person who has twelve or more convictions of moving violations within a five-year period. A registration violation is clearly not a moving violation under sec. 351.02(1)(b). Furthermore, inclusion of non-moving offenses, such as registration violations, would be contrary to the legislative intent of the habitual traffic offender section. Section 35.01(2), Stats., states that one of the purposes of this section is “[t]o deny the privilege of operating motor vehicles to persons who by their conduct and record have demonstrated their indifference for the safety and welfare of others....” Registration violations do not generally affect highway safety, and, therefore, they should not be included in the habitual traffic offender action. Thus, Strassburg has no right to rely on the state’s ‘non-action’ when the conviction for operation of an unregistered vehicle took place.

The citations above are consistent with the fact that the State DMV does not assign points for non-moving traffic violations, which it does not consider to be reflective of a person’s ability to safely operate a motor vehicle on a public roadway. For the MOA to state that the Scofflaw ordinance is strictly about public safety, and then seize private property for delinquent fines, including fines related to offenses for which the State DMV does not assign points, appears to run counter to the public safety argument the MOA has advanced for the past twelve years. It is also worth noting that the MOA currently does not count delinquent fines for criminal traffic offenses – arguably the most egregious offenses bearing on a driver’s ability to operate a vehicle safely – in its interpretation of “moving violations” under the Scofflaw ordinance.

CONCLUSION

The Ombudsman's Office believes that including what are generally considered to be non-moving violations, such as equipment and paperwork violations, in the offenses covered by AMC 9.28.035 is inconsistent with the intent of the State of Alaska Legislature and the MOA's own argument that the Scofflaw ordinance is about public safety and not debt collection. The MOA sold the Scofflaw ordinance by merging two popular, resonant themes of "public safety" and "debt collection". As a home rule city, the MOA may have the legal right to interpret "moving violations" differently than the State of Alaska, but is it the fair and equitable thing to do? The Ombudsman's Office believes that including offenses in the calculations for the Scofflaw code that the State DMV does not consider to be reflective of an individual's driving ability or to be moving violations, and potentially seizing private property based on those calculations, is inconsistent with the MOA's statements regarding the purpose of the Scofflaw ordinance, and may be the type of disproportionate government response that the U.S. Supreme Court recently found troubling in *Tyson Tibbs and a 2012 Land Rover LR2 v. State of Indiana*. For the reasons outlined above, the Ombudsman's Office, which is charged with "*safeguarding the rights of persons and of promoting higher standards of competency, efficiency and equity in the provision of municipal services*", does not support approval of AO 2019-59, and disagrees with the MOA's current interpretation of "moving violation" relative to the Scofflaw ordinance.

Links to articles regarding Tyson Tibbs v. State of Indiana:

<https://www.routefifty.com/public-safety/2019/02/timbs-supreme-court-state-local-fines-civil-asset-forfeiture/155021/>

<https://www.dallasjustice.com/will-forfeiture-actions-be-held-unconstitutional-scotus-hears-oral-arguments-in-timbs-v-indiana/>