

INVESTIGATIVE REPORT

*Final Finding and Closure -- Public Version
In this public report, the complainant's name
has been changed to protect her privacy.*

Alaska Ombudsman Complaint J098-0002
February 18, 1998

SUMMARY OF THE COMPLAINT

On January 15, 1998, the Alaska Office of the Ombudsman gave notice by telephone to the City and Borough of Juneau (CBJ) assessor of its investigation of the following complaint:

The City and Borough of Juneau, contrary to law, fined the complainant more than state statutes allow for late filing of personal property tax assessment forms.

Assistant Ombudsman Mark Kissel investigated the complaint. On January 23, 1998, a preliminary investigative report was mailed to CBJ City Manager Dave Palmer. CBJ Attorney John Corso responded for Mr. Palmer on February 12.

BACKGROUND

The complainant, Clarenda Jones, owns and operates in Juneau a small business, Knicknacks Unlimited. As a business owner, she is subject to the CBJ business personal property tax.

Each year the city assessor mails to all businesses a property tax assessment form on which owners are required to list business assets such as automobiles, furniture, business machines, leases and supplies. Owners are also required to estimate the taxable value of the assets as of January 1 of the tax year.

Forms for the 1997 tax year were mailed on December 3, 1996, and were due on January 31, 1997. The assessor placed ads in the local newspaper during that time reminding business owners of the filing

deadline.

Ms. Jones failed to meet the filing deadline. She said she did not receive the assessor's forms and did not see the newspaper ads. As a consequence, the assessor levied a penalty of \$25 for late filing. Ms. Jones' tax liability was \$0.37.

Ms. Jones paid the tax but appealed the penalty. She argued that she did not receive the assessment form and that a \$25 penalty was excessive in her case. She appealed to City Assessor Shane Horan, who consulted with Finance Director Craig Duncan before rejecting her argument. Ms. Jones learned on January 8, 1998, that CBJ assigned her account to a collection agency. The amount due had grown to \$25.48. On January 14, Ms. Jones complained to the Office of the Ombudsman.

INVESTIGATION

The CBJ Municipal Code at 15.05.060(e) is clear about the penalty for missing the filing deadline:

The postmark shall determine the date of filing for mailed declarations. A base penalty of twenty-five dollars plus an additional penalty of ten dollars per day to a maximum of twenty percent of taxes due shall be billed to the business submitting late declarations.

The authority for this penalty is derived from AS 29.45.250(a), which reads in part:

A municipality may impose a penalty not to exceed 20 percent of the tax due upon the late return of personal property assessment forms. A penalty under this section may be imposed according to a formula that increases the amount of the penalty as the length of time increases during which...assessment forms are not returned.

When contacted about this issue, CBJ Attorney John Corso said that CBJ may have exceeded its authority in section 15.05.060(e), which will require CBJ Assembly action to remedy. He said he would tell the CBJ finance section to stop collection efforts against Ms. Jones pending further review of the legality of the \$25 penalty.

ANALYSIS AND PROPOSED FINDING

The CBJ assessor made a good-faith effort to alert Ms. Jones and other business owners to the deadline for returning tax assessment forms. Although Ms. Jones may not have received the form mailed in

December 1996, she had filed similar forms in the past and does not claim she was unaware of her responsibility to file an assessment form or of the approximate time such forms are due. There is no suggestion that Ms. Jones knowingly avoided filing. However, she missed a deadline to which she should have been attentive; thus she was subject to late filing penalties as provided by the municipal code.

The problem, however, lies with the municipal code; it does not agree with its authorizing statute. The Office of the Ombudsman's Policies and Procedures Manual at 4040(1) defines contrary to law as "failure to comply with statutory or regulatory requirements," or "misinterpretation or misapplication of a statute, regulation, or comparable requirement."

AS 29.45.250(a) limits the late filing penalty to 20 percent of taxes due. In Ms. Jones's case, that would be seven cents. The municipal code, however, establishes a base penalty of \$25 regardless of the amount owed. Through its administration of section 15.05.060(e), CBJ failed to comply with state statute. In framing the late filing penalty in municipal code as it did, CBJ misinterpreted or misapplied AS 29.45.250(a). Since state statutes have precedence over municipal codes, the Ombudsman proposed to find the allegation *justified*.

Although not strictly part of the complaint, the Ombudsman wondered why CBJ would expend resources over a debt of \$.37.

CBJ RESPONSE TO FINDING

Responding for CBJ, Mr. Corso agreed with the Ombudsman's findings:

The city and borough concurs with the Ombudsman's proposed findings that Ms. (Jones) missed the deadline for filing her 1997 business personal property taxes, that she was subject to penalties thereby, that the CBJ assessor imposed penalties in accordance with CBJ ordinance, and that such penalties were in excess of the 20% maximum allowed by AS 29.45.250(a).

PROPOSED RECOMMENDATIONS

The Ombudsman proposed the following recommendations as a result of this investigation:

1) CBJ should remove the \$25 penalty from Ms. Jones' account, along with any associated interest and collection agency charges, and withdraw Ms. Jones' account from the collection agency.

2) CBJ should propose to the assembly amendments to bring CBJ code in line with AS 29.45.250(a).

3) Until such amendments take effect, CBJ should cease enforcement of section 15.05.060(e) on any late filing business whose tax is less than \$125.

4) CBJ should, for the sake of efficiency, consider a policy to suspend collection efforts on debts under a threshold amount determined by the city manager.

CBJ RESPONSE TO THE RECOMMENDATIONS

CBJ accepted the first two recommendations as proposed. CBJ did not accept the third recommendation. Mr. Corso wrote that recommendation 3 would

necessitate abandonment of meritorious collection cases. The city and borough will consider each case on its merits and may, if circumstances warrant, proceed with collection of cases involving delinquencies of less than \$125. However, we will remain mindful of statutory limits and will not seek to collect more than the maximum allowed by AS 29.45.250(a).

The Ombudsman understands CBJ's reluctance to write off penalties in all cases involving taxes of less than \$125. With CBJ's assurance that it will not seek to collect more than the amount allowed by AS 29.45.250(a), the Ombudsman withdrew recommendation 3.

CBJ accepted the fourth recommendation. Wrote Mr. Corso:

The Manager advises me that he proposes to implement the substance of your fourth recommendation. He will instruct his staff that CBJ should forego collection of small delinquencies if strict enforcement of the ordinance would not provide a net public benefit.

FINDINGS OF RECORD, FINAL RECOMMENDATIONS, AND CLOSURE

Acting Ombudsman Maria C. Moya reviewed the investigation and agency response to the following allegation:

The City and Borough of Juneau, contrary to law, fined the complainant more than state statutes allow for late filing of personal property tax assessment forms.

The Ombudsman found this allegation *justified*.

After considering CBJ's response to the preliminary report, three of the four proposed recommendations stand as final recommendations:

1) CBJ should remove the \$25 penalty from Ms. Jones' account, along with any associated interest and collection agency charges, and withdraw Ms. Jones' account from the collection agency.

2) CBJ should propose to the assembly amendments to bring CBJ code in line with AS 29.45.250(a).

3) CBJ should, for the sake of efficiency, consider a policy to suspend collection efforts on debts under a threshold amount determined by the city manager.

With CBJ's acceptance of these three recommendations, the Ombudsman found this complaint *rectified*.