



Ombudsman Complaint A2005-0327  
(Finding of Record and Closure)

August 3, 2006

*Edited to preserve the complainant's privacy and to remove any confidential information*

In March 2005, a woman complained to the Office of the Ombudsman about the Alaska State Troopers (AST) property section in Fairbanks. Specifically, she said that the property section refused to return \$4,000 in cash that was confiscated during an AST raid in 1999.

This letter is a report of the ombudsman's finding in this matter. The complainant's identity has been removed from this public report to respect her privacy rights.

The complainant alleged that AST incorrectly told her that she could no longer claim her \$4,000 because the time limit for claiming the money had expired and the money had been deposited into the state government's general fund.

The Ombudsman opened a complaint file with the following allegation, stated in terms that comport with AS 24.55.150, which authorizes the ombudsman to investigate complaints about administrative acts of state agencies:

***Contrary to law, the Alaska State Troopers deposited the complainant's abandoned money into the state general fund and disallowed the complainant's claims to the money.***

The ombudsman finds this allegation ***justified*** as explained below.

## **INVESTIGATION**

The complainant's money was confiscated along with other items when troopers raided the house in which she lived. She said that she and her attorney asked several times about the money in the years after troopers conducted the 1999 raid. She said she was told that it was being held as evidence. In 2001, the state decided that the woman would not be charged with a crime. On September 25, 2001, AST evidence custodian Angie Wills sent the woman a letter notifying her that she could now claim her property. The letter stated that if she did not claim the money within 30 days, it would be "disposed of in a manner prescribed by law (AS 12.36.030)."

The complainant admitted that she failed to check her post office box during this time. Consequently, the certified letter was returned to AST as unclaimed. In November 2004,

the woman said she learned that her money was no longer being held as evidence. She also learned from AST that the money had been presumed abandoned and deposited into the state's general fund because she failed to respond to the letter. She said that staff at the AST evidence section told her she could no longer claim her money. At that time she contacted the ombudsman.

AS 12.36.030 addresses the disposal of unclaimed property used as evidence. It states that law enforcement agencies can dispose of property not claimed by the owner within one year after the final disposition of the case. Further, AS 12.36.030 refers to another statute, AS 34.45, for details on disposing of abandoned property. Specifically, AS 34.45.230 deals with intangible property held by the courts and public agencies. It states that money that is unclaimed for more than a year after becoming payable is presumed abandoned.

The statute goes on to provide specific instructions concerning the disposition of abandoned property. AS 34.45.280 and .320 require holders of abandoned property to report such property and deliver it to the Department of Revenue.

AS 34.45.380 provides a procedure for owners to claim abandoned property. The Unclaimed Property Section (UP) in the Department of Revenue holds property for owners in perpetuity, because the law sets no time limit for claiming abandoned property.

## ANALYSIS AND FINDING

The allegation is that AST acted contrary to law. The Office of the Ombudsman's Policies and Procedures Manual at 4040(1) defines *contrary to law*. The portion of the definition applicable to this investigation is:

(B) misinterpretation or misapplication of a statute, regulation, or comparable requirement;

AST deposited the abandoned money in the state general fund, misinterpreting or misapplying AS 12.36 and AS 34.45, which require the funds to be delivered to the Department of Revenue. AST staff also provided erroneous information to the complainant, hindering her legal attempt to reclaim her property. Consequently, the ombudsman finds the allegation *justified*.

During the course of this investigation, Assistant Ombudsman Mark Kissel contacted Rachel Lewis, project coordinator for the Department of Revenue Unclaimed Property office. Ms. Lewis said that the complainant had a rightful claim to the \$4,000 and agreed to pay her out of the state's unclaimed property fund, even though AST erroneously deposited the unclaimed money into the general fund.

UP returned the woman's \$4,000 in April 2005. AST Major Howard Starbard told Mr. Kissel that he had amended AST procedures for disposing of unclaimed cash to accord with AS 34.45.

Col. Julia Grimes, director of AST, accepted the ombudsman findings.

Because AST amended its procedures for handling abandoned property, the ombudsman believes that no recommendations are necessary.

Consequently, the ombudsman closed this case as *resolved* and *rectified*.