

SB

372

CS SB 372

The purpose of SB 372 is to correct an oversight in SB 371 Chapter 43 SLA 77. The intent of the law was to have it apply to home rule municipalities as well as general law municipalities and SB 372 would clarify this point.



Municipality  
of  
Anchorage



POUCH 6 659  
ANCHORAGE, ALASKA 99502  
(907) 274-2525

GEORGE H. SULLIVAN,  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

August 26, 1977

Senator Edward C. Willis  
Box 402  
Eagle River, Alaska 99577

Re: Senate Bill No. 37/Chapter 48 SLA 77.

Dear Senator Willis:

During the First Session of the Tenth Legislature, you co-sponsored Senate Bill No. 37 entitled "An Act Relating to the Sale, Repurchase and Disposition of the Proceeds of the Sale of Tax Foreclosed Real Property". This bill was subsequently enacted by the Legislature as Chapter 48 SLA 77. As you remember, your bill amended various portions of AS 29.53 dealing with foreclosure procedures by local government. Specifically, the bill was intended to prevent the loss of valuable interests in real property through inadequate notice or the inadvertent actions of local government. I believe you are familiar, for example, with the situation involving property originally owned by Mr. Russell Oberg in the Chugiak/Eagle River area.

In studying provisions of Title 29 concerning tax foreclosure, I have recently discovered that several of the sections in AS 29.53 are omitted from the list of sections applicable to home-rule municipalities under AS 29.13.100. As you can see from the attached copy, the provisions of AS 29.53 that are applicable to home-rule municipalities in Alaska end with Section 350. It is therefore apparent that the portions of your bill (SB 37) amending Sections 370-380 of AS 29.53 could be construed to be inapplicable to the Municipality of Anchorage as a home-rule local government. However, I want to assure you that it has been the Municipality's policy to follow the provisions of AS 29.53 in the foreclosure, sale or dedication of real property.

SB 372 Extending provisions of law governing the sale, repurchase, and disposition of the proceeds of the sale of tax-forclosed real property to home rule municipalities.

This is a housekeeping measure. Reference SB 37 passed last year to remedy a situation which was reoccurring in Anchorage. (The Oberg case)

The intent of SB 37 was to have the law pertain to home rule municipalities as well as general law. It was a drafting oversight that this provision was not included in SB 37.

Present Law:

Bill Sec. 7

Effect of Amendment:

Tax foreclosed land is redeemed by paying liens, penalties, interests and costs.

①

"Costs" shall include cost of publishing notices & locating mortgage and Lien holders.

Redemption period expiration notices are sent to record owners

②

also sent to all lien and mortgage holders, if value is \$10,000 or more.

No provision

③

Municipalities may recover costs of publishing notices and locating mortgage and lien holders (as required by section 2)

Foreclosed land can be held for public purposes by resolution

④

must be done by ordinance; notice must be sent to former owner (unless land has been held more than 10 years)

Record owner can repurchase land by paying taxes, interests, and delinquent taxes

⑤

must also pay the <sup>Administrative</sup> costs of foreclosure and sale (including publishing costs, and costs of locating mortgage & lien holders)

Right of former owner to repurchase expires after one year

⑥

expires after ordinance adopted providing the land be kept for a public purpose

Proceeds from sale of foreclosed land are divided between borough and municipality

⑦

owner is entitled to proceeds in excess of taxes, interest, penalties, and costs. (must claim within 6 mos.)

AS 29.48.130(a) requires assembly or council to use ordinances to exercise certain powers.

⑧

adds to those powers which must be exercised by ordinance the retention or sale of tax-foreclosed property

COMPARISON :

SB 37

to

Present law

*notice costs recovery by munis.*

*proceeds recovery by owners*

16 years

## Foreclosure Victims Seek Changes

"Somebody just asked me wasn't it awful about the Oberg's losing land for taxes when I found out the same thing happened to me."

That statement was made recently by Thilman Wallace of Chugiak who said the Greater Anchorage Area Borough had also taken 39 1/2 acres of his land as park and open space land after foreclosure for less than \$200 in taxes due from 1973.

Wallace, who has had his problems with the borough and neighbors in his struggle to subdivide Swiss Alps apparently was delinquent in property taxes and failed to make payment during the one-year redemption period. His land — which he said is worth \$200,000 — and foreclosed land in which Russell and Elsie Oberg had an interest were foreclosed in March, 1974 and dedicated as borough open space land July 28, 1975. That dedication ended their rights to pay off the taxes and redeem their property.

Wallace said he later received a notice on one of three adjacent parcels he owns in Chugiak, advising that the property would be put up for tax sale. He said he immediately went to the borough offices and paid off outstanding taxes on several different parcels on the tax rolls. He was not aware that any had been taken, he said, and believed that he had protected all of them.

To make matters worse, Wallace said he had just raised \$15,000 and paid off a mortgage on it after the property had already been taken. The lost land is not part of the Swiss Alps homesteads.

The Oberg's situation had been different. They had sold part of their homestead in Peters Creek to Ernie Lampert. Lampert ran into financial difficulties and ended in bankruptcy with several liens against the property. He apparently had transferred the property to a B. Bailey, the name which was on published foreclosure lists. The Oberg's said they had asked to be notified of any foreclosure

action, but that a card to obtain this notice apparently had strayed from borough files.

Both Wallace and Oberg said they plan to take the matter to court and will argue several points in an effort to regain title to their property.

But they are also interested in seeing the state law changed to prevent situations of this type from happening to others.

State laws in Alaska allow taxing agencies to foreclose on property to recover delinquent taxes plus penalty and interest. There is a one year redemption period in which the owner may redeem his property by paying the amount due. After that time, the property may be sold.

Apparently there is another provision, however, which allows the municipality to retain the property for some "immediate public need." The municipality gains title to the land subject only to payments of state and federal liens and has no obligation to pay off mortgages or other liens. Once the land has been so designated, its redemption is not possible.

Wallace said that although he was notified that the third tract — which was delinquent on the same basis as the surrounding land which was taken — was to be put up for tax sale, he was not given notice that the two tracts were to be up for dedication as park land.

"It looks like we should have our 'Mirandy rights' or something," Wallace said. He said he had been following a murder trial underway last week in Anchorage and had been impressed with concern for rights of the two young men accused of murdering a youth who formerly lived in Peters Creek. "They kept asking the police if they had advised the accused of their rights, how they did it and when. I can't help but wonder why Russ and I didn't have the same consideration in being advised of our rights."

The local men hope to see the laws changed to require municipalities to send notices to parties who have an interest in the property on which taxes are

delinquent. Requiring lienholders to sign a card which can be misfiled or otherwise disappear should not be sufficient, they say.

They also believe that a municipality should not be able to go in land just for the taxes due. They say it should be put up for sale with the municipality collecting only the taxes and penalty and interest plus cost. If the municipality wants the land, they feel it should pay the owners or lienholders the difference between the taxes due and its market value.

Existing laws, they feel, could lead a land-hungry municipality to gobble up all land on which taxes are not paid, thus seriously reducing the tax base and putting extra burden on remaining property owners.

File:  
Office  
Ed Will

Bonds  
Funder Feb 3

Municipality  
of  
Anchorage



POUCH 6 650  
ANCHORAGE, ALASKA 99502  
(907) 274-2525

GEORGE M. SULLIVAN,  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

August 26, 1977

Senator Edward C. Willis  
Box 402  
Eagle River, Alaska 99577

Re: Senate Bill No. 37/Chapter 48 SLA 77.

Dear Senator Willis:

During the First Session of the Tenth Legislature, you co-sponsored Senate Bill No. 37 entitled "An Act Relating to the Sale, Repurchase and Disposition of the Proceeds of the Sale of Tax Foreclosed Real Property". This bill was subsequently enacted by the Legislature as Chapter 48 SLA 77. As you remember, your bill amended various portions of AS 29.53 dealing with foreclosure procedures by local government. Specifically, the bill was intended to prevent the loss of valuable interests in real property through inadequate notice or the inadvertent actions of local government. I believe you are familiar, for example, with the situation involving property originally owned by Mr. Russell Oberg in the Chugiak/Eagle River area.

In studying provisions of Title 29 concerning tax foreclosure, I have recently discovered that several of the sections in AS 29.53 are omitted from the list of sections applicable to home-rule municipalities under AS 29.13.100. As you can see from the attached copy, the provisions of AS 29.53 that are applicable to home-rule municipalities in Alaska end with Section 350. It is therefore apparent that the portions of your bill (SB 37) amending Sections 370-380 of AS 29.53 could be construed to be inapplicable to the Municipality of Anchorage as a home-rule local government. However, I want to assure you that it has been the Municipality's policy to follow the provisions of AS 29.53 in the foreclosure, sale or dedication of real property.

Senator Edward C. Willis

August 26, 1977

Page 2

I was very happy for the opportunity to provide you with input in Juneau concerning the Municipality's interests in SB 37 and appreciated your concern in developing a bill that adequately protects both the interests of local governments and affected property owners in tax foreclosure proceedings. I therefore felt that you should be advised of my findings concerning the problems with applying this measure, as presently written, to home-rule municipalities. You may wish to consider submitting a brief amendment to AS 29.13.100 that would apply all of the sections of AS 29.53 included in SB 37 to home-rule municipalities. Since there will not be another round of tax foreclosure proceedings until next year, present questions concerning the applicability of SB 37 to the Municipality of Anchorage should not cause any problems in the near future. If I can be of any further assistance in this matter, please feel free to call me at 264-4349.

Sincerely yours,



Theodore D. Berns  
Assistant Municipal Attorney

Enclosures

cc: Pete Argetsinger, Deputy Municipal Attorney

TDB/ckb