

AFFIDAVIT OF JANICE WILLIAMS

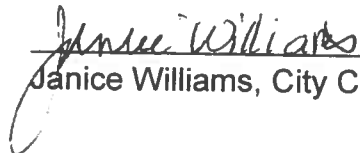
STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

Janice Williams, being first duly sworn upon oath states:


1. My name is Janice Williams. I am the City Clerk for the City of Dillingham. The statements made below are based on my personal knowledge.
2. The City of Dillingham's retention schedule shows the industry standard for election records, election certificates, petitions, and registers and all voted ballots is 1 year, and the legal standard is 1 year. Other election materials, election results, certificate and affidavits of posting, is 4 years for legal retention, 6+ current years for industry standard. There have been no taxing referendums during the period 2004-2011. The City does not have a record of affidavits of posting of city tax referendums prior to that time.

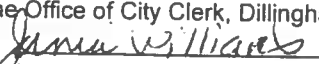
Further, your Affiant sayeth naught.

Dated this 25<sup>st</sup> day of March, 2011.

  
\_\_\_\_\_  
Janice Williams, City Clerk

SUBSCRIBED AND SWORN to or affirmed before me at Dillingham,  
Alaska this 25<sup>st</sup> day of March, 2011.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR ALASKA  
My Commission Expires: 7/17/2011

This is to certify that on the  
\_25\_ day of March, 2011, a true and  
correct copy of this document was  
hand delivered to:  
David G. Gladden  
at the Office of City Clerk, Dillingham, Alaska  
By:   
\_\_\_\_\_  
Janice Williams

AFFIDAVIT OF JANICE WILLIAMS

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

Janice Williams, being first duly sworn upon oath states:

1. My name is Janice Williams. I am the City Clerk for the City of Dillingham. The statements made below are based on my personal knowledge.
2. The City of Dillingham records do not contain an Exhibit A to Ordinance No. 77-10.

Further, your Affiant sayeth naught.

Dated this 1<sup>st</sup> day of March, 2011.

*Janice Williams*  
Janice Williams, City Clerk

SUBSCRIBED AND SWORN to or affirmed before me at Dillingham, Alaska this 1<sup>st</sup> day of March, 2011.

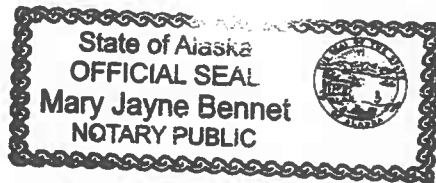
*Mary Jayne Bennet*  
NOTARY PUBLIC FOR ALASKA  
My Commission Expires: 6/23/14

This is to certify that on the  
1 day of March, 2011, a true and  
correct copy of this document was  
hand delivered to:

David G. Gladden

at the Office of City Clerk, Dillingham, Alaska

By: *Janice Williams*  
Janice Williams



CITY OF DILLINGHAM ORDINANCE

SERIAL NO. 77- 10

An ordinance adopting a Title 8 - Taxation and Special Assessments to be incorporated in the Dillingham Code of Ordinances.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF DILLINGHAM

Section 1. This ordinance is of a general and permanent nature and shall become part of the Dillingham Code of Ordinances.

Section 2. A Title 8 - Taxation and Special Assessments, as more particularly set forth in Exhibit A attached hereto, is adopted as part of the Dillingham Code of Ordinances.

Section 3. The following City of Dillingham ordinances are repealed:

Ordinance No. 1 - Real and Personal Property  
Ordinance No. 4 - Collection of Personal Property Tax  
Ordinance No. 74-2 - Due and Delinquent Dates for Property Taxes  
Ordinance No. 13 - Sales Tax  
Amendments "A", "B", "C" and "D" to Ordinance No. 13 - Sales Tax

Section 4. This ordinance is effective upon the date of its adoption.

(S E A L)

INTRODUCED: June 13, 1977

ADOPTED: July 1, 1977

Freeman A. Roberts  
Freeman A. Roberts  
Mayor

ATTEST:

Lois R. Hermansen  
Lois R. Hermansen  
City Clerk

FREDERICK TORRISI  
ATTORNEY

Alice Ruby  
FAX: 842-5462

I write to respond to your question from earlier this week: how is Anchorage getting around AS 4.21.010(c)? The answer is, very carefully, and under screaming protest, but their experience offers valuable insight for Dillingham.

The Statute, and the reading given it in Lagos v City & Borough of Sitka, leaves room for taxation of alcohol at the same rate as any other item is taxed at within the city. Anchorage has an 8% bed tax, so the tax proponents are seeking to tax booze at exactly the same rate. Judge Reese has now held that this satisfies AS 4.21.010(c) and Lagos. There is likely to be an appeal on the issue.

Dillingham, of course, also has a bed tax. As I advised in my letter of 6-4-92, bed taxes are sales taxes in Alaska under the Homer case. A copy of my earlier opinion follows.

The problem is that the Council did not follow my advice and classified the bed tax as some sort of excise tax. It was not submitted to the voters.

The bed tax is \$5.00 and the sales tax is 5%. That is approximately a 10% tax. If the Council were willing to submit both the bed tax and the alcohol tax to the voters, I think we could defend such taxes if challenged, although of course I cannot guarantee this. What I would do is structure the vote to repeal the present bed tax and simply raise the rate of the sales tax on the letting of rooms and the sale of alcoholic beverages to whatever rate the Council voted to impose. This approach is not without risk, but it does offer a way to tax alcohol sales without waiting for the amendment of AS 4.21.010(c).

Please feel free to call me on this and we can discuss it further. I will deliver the original of this letter to the City Manager in case you wish to have it circulated.

Sincerely,

FREDERICK TORRISI  
ATTORNEY

June 23, 1994

Steve Hardin  
Acting City Manager  
City of Dillingham  
FAX 842-3691

CONFIDENTIAL

Dear Steve:

You asked yesterday about taxes on the alcohol industry in general and specifically about imposing a higher business license tax on liquor stores and bars. I am prepared to respond only to the former, but I will give you my thoughts on the latter as well.

As you know, Anchorage recently imposed higher license fees on adult-oriented businesses, or whatever they called them. One could argue that they are more difficult to regulate or even keep track of, and there are other rationales to support a higher license fee. But if the subject is revenue-raising, the amounts involved would appear to be insignificant given the small numbers of such establishments here, even if they were charged 5 or 10 times what our businesses pay (\$100). If the Council wishes me to research this matter further, then I would be happy to do so.

On the broader subject, I enclose a copy of a letter I sent to Alice Ruby in March. By restructuring our present bed tax and submitting it to the voters along with an alcohol tax, I believe we can tax alcohol sales at 8 or even 10% and survive a legal challenge. Of course you can't rely on these funds for next year's budget because you never know what the voters will do. But as the State and feds eye increasing sin taxes, I do believe now is the time to try this if the Council truly wants to raise taxes on the liquor industry.

I am writing you this today so that it can be distributed to Council members tonight. I have marked it confidential primarily given my long-held view that our bed tax itself should have gone to the voters. Please let me know if the Council would like to see a draft ordinance on this subject.

Thank you.

Sincerely,

  
Fred Torrissi

FT:ilk

My amicus curiae "fact sheet" in Gladden v. City of Dillingham, Inc. SCOTUS#12-1338

Fact 1: Dillingham ordinance 77 -10 adopted June 1977 Repealed City of Dillingham's taxing authority.

Fact 2: "A Title 8-Taxation and Special Assessments, as more particularly set forth in **Exhibit A** attached hereto, is **adopted** as part of the Dillingham Code of Ordinances."

No "adopted" Exhibit A exists today, therein it is impossible to "codify" text from the "adopted" Exhibit A that does not exist.

Fact 3: City of Dillingham ordinance 77-10 was no mere "repeal and reenactment" of CODI taxing authority.

Fact 4: No record exists of any CODI tax referendums

Fact 5: No record exists to support CODI taxing authority as codified today.

Fact 6: I have lived in this community post 1977 and have suffered the following injuries as a result of this illegal tax: (List \$\$\$\$\$\$ amount)

My Hand