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[Classifieds](#)

[Court Update -2021](#)

[Edition](#)

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[Municipal Directory](#)

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[Product & Service](#)

[Directory](#)

[Surveys and Data](#)

[Town & City Magazine](#)

[Home](#) > [Resources & Publications](#) > [Town & City Magazine](#) >

The Curious Case of 'No Means No'

Every year, we advise governing bodies, budget committees and other town officials to carefully review the language of proposed warrant articles with the Department of Revenue Administration (DRA) prior to presenting the articles at the budgetary public hearing, creating the warrant, and presenting the articles to the town meeting or the deliberative session. Among the many reasons for repeating this advice is to guard against the unintended effects that could be caused by [RSA 32:10.1\(e\)](#), the "No Means No" provision of the Municipal Budget Law.

Governing bodies have broad authority to transfer funds between approved purposes in the operating budget under RSA 32:10. On the positive side, this authority allows governing bodies the flexibility to adjust to events as they actually occur during the year. Unfortunately, in the past, this flexibility also was used to accomplish purposes which were expressly rejected by the voters at town meeting. For example, suppose the selectmen propose a special warrant article to purchase a computer system. The voters expressly reject this article at town meeting. Shortly thereafter, the governing body transfers appropriations from various line items to enhance the appropriation in budget account item 4902, "machinery, vehicles and equipment," and purchases the computer from this line item. The item the voters expressly rejected shows up at town hall, and the voters feel their will has been ignored, their officials are not accountable, and their participation in town meeting means nothing.

January 2009

[The Curious Case of 'No Means No'](#)

[Creating Record Retention Policies: A Practical Guide](#)

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Prior to 2004, the action of the governing body would clearly have been permissible under RSA Chapter 32, provided only that there was at least some initial budget appropriation for line item 4902. Understandably, the citizens in towns who observed this type of behavior felt this was an abuse by the governing body, and asked the legislature to intervene. In 2004, the language of RSA 32:10, I(e) was amended, so that it now reads:

The town or district meeting may vote separately on individual purposes of appropriation contained within any warrant article or budget, but such a separate vote shall not affect the governing body's legal authority to transfer appropriations, provided, however, that if the meeting deletes a purpose, or reduces the amount appropriated for that purpose to zero *or does not approve an appropriation contained in a separate article*, that purpose *or article* shall be deemed one for which no appropriation is made, and no amount shall be transferred to or expended for such purpose. (2004 changes in italic.)

Now, when the voters say "no," they mean "no."

Q. What does the Department of Revenue Administration have to say about this?

A. In their publication, Suggested Warrant Articles for Towns and Village Districts, 2009, they warn about the statute as follows:

If the municipality plans to add any new positions or activities to a traditional line item that will generate lively discussion, we suggest treating this function separately in an "individual" or "special" warrant article rather than jeopardizing the entire operating budget article. Individual articles to be addressed separately from the operating budget should be listed separately on the budget form in the pages provided. However, under RSA 32:10, I(e), if the separate article fails, no money can be transferred or expended for that purpose (no means no).

They further make the point in the publication, Technical Assistance for Towns, Village Districts and Budget Committees, 2009:

Because it may be difficult to accurately predict the future fiscal year's expenditures when budgeting, circumstances may transpire during the year which make it necessary to transfer an unexpended balance from one appropriation to another voted appropriation where additional expenditures will be needed. No transfers can be made from appropriations voted in "special" warrant articles. You must maintain records which show the voted appropriations against the properly classified and authorized expenditures. These records must be available to the budget committee, if any, and to citizens who request to see them [see RSA 32:10, I(b) and (c) for more information on these records]. You cannot over expend the total voted bottom line of the budget. RSA 32:10, I(e) prohibits making transfers or expenditures for a purpose of an appropriation in a separate article which was not approved.

Q. As a governing body member, I understand the principle. What would happen if the town meeting voted to make no appropriation for a service that other laws mandate us to provide?

A. There is no answer in the statute, and we have no case law on the issue. Hopefully, town meeting would not vote to take such a step, but it could occur. Under state law, two areas of concern are road maintenance, which is mandated by [RSA 231:3](#), and the local welfare program, which is mandated by [RSA 165:1](#). The results are also unclear if the vote were to prevent the town from complying with a federal requirement, such as the Americans with Disabilities Act, an applicable environmental law, or an employment law such as the Fair Labor Standards Act. To prevent this result, the moderator should understand the issue. The governing body should be prepared to speak on the issue, and advise of the uncertainty that would result from such a vote. If the vote does occur, we suggest town counsel and the DRA be advised immediately, and the governing body may need to decide whether a lawsuit should be filed to review the action of the meeting.

Q. Assume that a special warrant article seeking an appropriation is defeated at the annual meeting. The governing body later applies for and receives either a grant or a private donation which will cover all of the proposed expense. Can the money be accepted under RSA 31:95-b and then used by the governing body to accomplish the purpose?

A. Be careful here! You have a legal argument that such an action is appropriate, because [RSA 31:95-b](#), IV(b) indicates that such an action would be "exempt from all provisions of RSA 32 relative to limitation on expenditure of town or village district moneys." This seems to suggest that the money could be accepted and used as the governing body directs for any legal public purpose, even after a "no" vote on the issue. However, on a practical note, the voters at town meeting said "no" to the purpose! Was the vote based purely on an unwillingness to spend the money, or did the vote reflect a sentiment that the purpose itself was flawed? Do the minutes of town meeting capture the debate, or are they silent on the issue? Do the terms of the grant or the donation give you enough time to take the issue back to the voters to try again? Do you have enough evidence available to convince the DRA that the intent of the voters was clear? Usually the evidence will be conflicting, and the conservative advice will be to take the issue back to the voters to try again.

Q. We want to consider appropriating more money for stipends for our elected officials. Should we put that issue in the operating budget, or make it a special warrant article?

A. Either method is legally acceptable, or the budget writers could also adopt an approach using both techniques at the same time. The governing body has a decision to make. As noted above, the DRA suggests that the special warrant article method be used so as not to jeopardize the entire operating budget.

However, take care in drafting this article! If the purpose is shown only in the operating budget, and is reduced by the meeting to zero, the purpose then has no appropriation, and the selectmen may not transfer funds to that purpose from other lines. If the issue is contained only in a special warrant article, and it fails, then the result is the same, and the selectmen may not accomplish the purpose by transferring the money from some other purpose. These two results are clear and straightforward.

The tough one comes when the budget writers adopt a blended approach. Assume that the selectmen wish to have their stipend increased from \$1,000 per year to \$2,000 per year. They decide to leave the current \$1,000 stipend in the operating budget and, in a spirit of full public disclosure, decide to highlight the requested change for the voters and draft a special warrant article for the purpose. The language used in the special warrant article now becomes critical. Assume the operating budget passes as drafted. Now the special article comes forward as follows: "To see if the town will vote to raise and appropriate the sum of \$6,000 for the purpose of paying an annual stipend of \$2,000 to each of the selectmen." If the article fails, what has occurred? There is a strong argument that the voters have now refused to approve any appropriation for that purpose and effectively removed the purpose from the operating budget. That is because a review of the meeting will show that, although the operating budget passed, this specific purpose was reconsidered in the text of this later warrant article, and the last action of the meeting becomes its final action. At this point, the town is probably unable to pay its selectmen any stipend at all for that year. The statute would prohibit any transfer from other funds for the purpose, and the selectmen are likely to receive nothing for their service. They are certainly worse off than when they started.

Now assume the same facts, but the special warrant article now reads as follows: "To see if the town will vote to raise and appropriate the sum of \$3,000.00 for the purpose of increasing the annual stipend paid to the selectmen from \$1,000 per year to \$2,000 per year. This sum is in addition to the amount contained in the operating budget of the town. If this article passes, the selectmen will each receive an annual stipend of \$2,000, while if this article fails, the selectmen will each continue to receive an annual stipend of \$1,000." Now the intended impact of the special warrant article is crystal clear, and both the voters and the DRA will be able to determine exactly what the vote means for the ensuing fiscal year.

Q. Are there additional concerns in the SB 2 municipalities?

A. At the SB 2 deliberative session, typically a relatively small group of voters discuss and potentially make amendments to the proposed budget and warrant articles, which are ultimately presented weeks later to the larger set of voters for final vote at the election by official ballot. Since there is no opportunity for reconsideration after the deliberative session, it is especially important for the governing body, the budget committee and the moderator to be prepared to detect, explain and, hopefully, avoid adverse consequences of "No Means No." If an article that will trigger "No Means No" makes it to the official ballot, it will be very difficult to explain the issue by means of an informational campaign in the period leading up to the official ballot voting. In some circumstances it may be possible to avoid an unintended "No Means No" problem by amending warrant articles at the deliberative session so that the language on the official ballot, itself, will help explain the consequences of the votes.

Q. There is a lot at stake here; how do we deal with petitioned warrant articles, and with amendments from the floor?

A. The governing body and the budget committee are not in control of either of these situations, so the governing body and the moderator need to be ready to detect the issues and inform the voters of the effect of the proposed warrant article or amendment language under this law. It is easier with a petitioned warrant article, since the language can be provided to town counsel or DRA in advance, and a plan developed to explain the effect to the voters. An amendment from the floor gives little time to react. Thus, we suggest that the governing body have a copy of the statute with them at town meeting, and at least one member be charged with looking at each amendment to see if something unintended could occur if the article as amended fails to pass.

Q. You previously indicated that a vote on an article later in a meeting can override a vote taken earlier in a meeting. What if we vote to restrict reconsideration on the earlier article in accordance with RSA 40:10?

A. **RSA 40:10** allows a town meeting to vote to restrict reconsideration of any vote previously taken or warrant article previously taken at the meeting. If the vote to restrict reconsideration passes, then actual reconsideration of the restricted vote or article may take place only at an adjourned session of the meeting held at least seven days later with public notice. RSA 40:10, IV provides that the restriction "shall apply to any subsequent action by the meeting which alters or modifies the result of the restricted vote, or which involves the same subject matter as does the restricted vote or warrant article regardless of whether or not the term 'reconsider' is actually used." Thus the statute appears to apply to the typical "No Means No" sequence of conflicting warrant and budget appropriations votes. This may be a good way to give the governing body time to react to amendments from the floor, and it may be a good way for the moderator to exert more control over the progress of the town meeting. If the vote to restrict reconsideration is adopted, it prevents a later vote from overriding the results of an earlier vote for a period of at least seven days. It provides an opportunity for notice to be given to all voters in the town, and an opportunity for advocacy to occur in the interim period on both sides of the question. It permits all who attend the subsequent session of the town meeting to prepare alternative language for consideration at the new session.

The impacts of the "No Means No" statute are not always readily apparent, nor easy to predict in advance. The best defense against an unintended result is preparation prior to the meeting, and a consideration of the contingencies before they come before the public meeting.

In the end, the intention of the voters will guide the DRA or the court in the event of a dispute over the actions taken at Town Meeting. To that end, the governing body and the moderator must do their best to capture the discussion and debate, whether at the budgetary public hearing, deliberative session or town meeting. That discussion and debate will guide decision makers as to the intention of the voters, and hopefully prevent the unintended side effects of this law.

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