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New Hampshire Town And City

LEGAL Q&A: Top 10 Legal Questions from Members Regarding Town Meetings

New Hampshire Town and City, November/December, 2018

By Stephen C. Buckley

1. Should zoning and building code warrant articles be discussed and debated at our SB2 Deliberative session?

Warrant articles that propose the adoption or amendment of a zoning ordinance or building code have already been subject to a public hearing process before the Planning Board prior to the deliberative session. Although RSA 40:13, IV states that the first session of the meeting shall consist of explanation, discussion, and debate of each warrant article, since zoning and building code articles cannot be amended after the final Planning Board meeting, inviting discussion on such articles might give voters the incorrect impression amendments might be permitted. It is suggested that the better practice would be to have a member of the Planning Board or the town's land use staff be present at an information table to answer questions about proposed zoning articles.

2. How about discussion and debate of the Default Budget in an SB2 deliberative town meeting, should this be allowed by the moderator?

An amendment to RSA 40:13, HB 1307, 2017 NH Laws Chapter 241, has clarified the default budget's role at the deliberative session. RSA 40:13, IV will now expressly permit voters to discuss and debate the default budget, along with other articles on the warrant. That being said, RSA 40:13, XI(b) still prohibits the voters from amending the default budget at the deliberative session.

3. I need to prepare an official ballot for a zoning amendment to be voted at town meeting. There is a little confusion on the wording for the ballot. The Planning Board secretary said she was informed by Planning Board members at the public hearing that the entire proposed ordinance needs to appear on the ballot. Would you please provide some guidance as to what language/wording needs to be appear on the ballot? Does the entire new section need to appear on the ballot?

The full text of the zoning amendment does not have to appear on the official ballot. However, it is a good idea to post the full text of the zoning amendment at the polling station so the voters can read that text before voting. The correct language for the ballot article comes from RSA 675:3, VII, and should be worded as follows "Are you in favor of the adoption of the amendment to the town zoning ordinance as proposed by the planning board as follow: (insert topical description)?"

The language to be inserted into the parentheses would be a short, two or three sentence synopsis of the zoning amendment that would briefly describe the parts of the zoning ordinance being amended and the effect of the amendment.

4. It has always been my understanding that you cannot raise a money article on the floor of Town Meeting. Some one is saying that is not true. Care to weigh in?

A warrant article that has no appropriation may not be amended from the floor of the meeting to have an appropriation. This would violate the cardinal rule that the subject matter of all business to be acted upon at the meeting be distinctly state in the warrant. RSA 39:2. However, an article that has an appropriation may be increased, decreased, or reduced to zero.

5. At Town Meeting this year we had the same group of people petition about 15 of our warrant articles to request secret written ballot on articles. Next year they said they are going to do this for all the articles, but is there anything we can do so this won't happen?

The town cannot prevent a person from making a request for a secret ballot on any article on the warrant, provided the person so requesting complies with RSA 40:4-a. The person seeking the secret ballot vote cannot ask for a secret ballot vote before the start of the town meeting. The person seeking a secret ballot can only make that request when the article is being actively considered by the town meeting, and the request for the secret ballot must be made prior to a vote by voice or division vote. The request must be in writing and it must be made by 5 (five) voters who are present. There is nothing the town can do to prevent this from happening. Here is the statute in its entirety:

40:4-a Secret Ballot. –

I. (a) At any meeting of a town with a population of more than 500, 5 voters who are present may make a request in writing prior to a vote by voice vote or division vote that the vote be taken by secret written ballot. Upon receiving such a request, the moderator shall conduct the vote by secret "yes-no" ballot.

(b) Notwithstanding any other provision of law, on the request of 5 voters who are present, the moderator shall conduct a recount on any vote taken by secret written ballot under subparagraph (a). The recount shall take place immediately following public announcement of the vote taken providing that the vote margin is not more than 10 percent of the total vote cast. There shall be no fee required for a recount under this section.

II. At any meeting of a town of a population 500 or less, 3 voters who are present may request secret balloting or recounting as provided in paragraph I.

6. Our highway department head has moved out of town and the question has come up whether or not he can speak at the deliberative session to increase the paving warrant article.

Non-residents are not allowed to speak at town meeting unless the town meeting authorizes them to address the meeting. In most towns, the moderator brings this up at the beginning of the meeting and a motion is made to permit certain designated non-residents to speak, such as the highway department head. Once the meeting votes to authorize the highway department head to speak, he may then address the town meeting.

7. Can a voter move to reconsider a vote taken by secret ballot?

Yes, a voter may move to reconsider a vote taken by secret ballot. The motion to reconsider can also be voted on by secret ballot as provided in RSA 40:4-a. Once the reconsideration is addressed then the main motion may also be handled by secret ballot.

8. Our town uses the official ballot to elect officers and to vote on other matters permitted to be on the official ballot (we are not an SB2 town). We are a March Town Meeting Town. Instead of holding the business meeting after the voting session on the second Tuesday of March, the Select Board would rather hold the business meeting on the Saturday before the voting session. Can we do this?

When the town meeting votes under RSA 39:2-a to use the official ballot to elect officers and vote on other matters on the official ballot, the select board is then authorized to choose another day for the second session of the town meeting for the transaction of all other town business. The language of RSA 39:2-a designating the business meeting as a second session clearly contemplates that the business meeting must take place on a date or time that follows completion of the first or voting session. No, the select board cannot hold the business meeting on the Saturday before the voting session.

9. As the moderator I am concerned about the distribution of information about zoning amendments in the polling place during our voting session. Could this be considered an improper form of electioneering?

Providing information about proposed zoning amendments at the polling place is permitted and does not constitute improper electioneering contrary to RSA 659:43. In fact, RSA 675:3, the statute that governs how zoning ordinances are enacted in towns and village districts, mandates that an official copy of zoning and building code proposals shall be on display for the voters at the meeting place on the date of the meeting. If the information being distributed actually advocates for the adoption or rejection of any zoning proposal that would be improper electioneering.

10. Our town is being torn apart due to a division over building a new police station. When it finally comes time for the town to vote on police station, can the select board put this item on the official ballot? We find that senior citizens feel confused when voting at town meeting on this subject because of the many amendments and confusing procedure used when the warrant article is amended sometimes more than once. Some residents feel bullied when opposing residents that are for the police station. To stop this conflict, I would like to see this vote be done by ballot, so that people working second shift get a vote, seniors can vote confidently, there are no confusing last-minute changes, and an absentee vote can be used for people out of town on vacation or business.

The official ballot cannot be used when voting on the proposed new police station. Only certain matters may be put before the voters on the official ballot, which is reserved for the election of town officers, zoning questions and other matters that are required to be put on the official ballot. RSA

39:3-d provides as follows:

- No article included in a warrant for a town meeting may be considered by placing a question on the official ballot used for election of town officers unless use of the official ballot for that article or type of article is specifically authorized or required by law.
- Any law which requires a ballot vote on an article, and which uses the term “official ballot”, shall be deemed to require the use of the official ballot for voting on that article, in towns which use the official ballot for the election of officers.
- Any law which prescribes the wording of a question, but where the term “official ballot” is not used, shall be deemed to authorize, but not require, the use of the official ballot for that question, unless a contrary intent is specified.
- Articles concerning the issuance of bonds or notes shall not be placed on the official ballot, unless the municipality has adopted a charter provision authorizing that votes on the issuance of bonds or notes shall be placed on the official ballot or unless the municipality has adopted the provisions of RSA 40:12-14.

An article that seeks to appropriate funds for a new police station would not qualify for placement on the official ballot and would have to be handled on the floor of the town meeting. Voters could request a secret ballot on the question under 40:4-a.

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