

What's in a Warrant Article? Nothing Extra, Please

Q. Who decides what goes on the warrant and how it appears?

A. The selectmen, but only within the limits of what the law allows. Preparation of the warrant is the selectmen's responsibility. They are responsible for seeing that all properly petitioned articles are included, and they may insert additional articles of business right up to the day the warrant is posted (except that appropriations articles must be disclosed or discussed at the earlier budget hearing and, in municipalities with an official budget committee, the final proposed budget is prepared by the budget committee). [RSA 39:2](#); [RSA 32:5](#).

However, selectmen may only include warrant articles that propose actions that are legal. Municipalities and their officials get all of their authority to act from the State through statutes. *Girard v. Allenstown*, 121 N.H. 268 (1981). It is not enough to say that no law prohibits a certain action; instead, we must find authorization for a particular action in the law. If we cannot find it, we must conclude that towns and their officers are not permitted to take that action. Therefore, selectmen may only put things into the warrant that are permitted or required by law.

Q. Can the selectmen or budget committee put recommendations on the proposed operating budget?

A. Yes; the amounts recommended by the selectmen and the official budget committee are what appear on the proposed operating budget. [RSA 32:5](#), IV. The Department of Revenue Administration (DRA) MS-6 form for the proposed line item operating budget shows the selectmen's recommended amounts. In towns with an official budget committee, the DRA MS-7 form includes columns for both the selectmen's and budget committee's recommended amounts. These forms are posted with the warrant for the meeting. [RSA 32:5](#), VII.

Q. Can recommendations appear on other appropriations articles?

A. Yes, selectmen and official budget committees are also required to include a notation of their recommendation or non-recommendation on all "special" warrant articles. [RSA 32:5](#), V. A "special" warrant article is one that proposes an appropriation and: (a) is submitted by petition; (b) calls for the issuance of notes or bonds; (c) calls for an appropriation to a capital reserve or trust fund; or (d) any other separate appropriations article that the selectmen label as "special," "non-transferable" or "nonlapsing." [RSA 32:3](#), VI. The recommendation requirement does not apply to non-money articles, or to other separate appropriations articles that don't fall within one of the four "special" categories.

Selectmen and official budget committees are also required to include a notation of their recommendations or non-recommendations with a warrant article proposing cost items of a collective bargaining agreement. [RSA 32:19](#).

Helpfully, even if a recommendation is required by [RSA 32:5, V](#), the statute goes on to provide that “defects or deficiencies in these notations shall not affect the legal validity of any appropriation otherwise lawfully made.” In prior years, DRA officials felt they had no choice but to invalidate an appropriation if the recommendations were not put on special articles. However, with the passage of this portion of the statute, the only true risk now is that a court could say it was done wrong and make the town do it right the next time around.

Q. In an official ballot referendum (SB 2) town, sometimes the selectmen and/or budget committee change their recommendations after the deliberative session. Which recommendation goes on the ballot for the second session?

A. The revised recommendation goes on the ballot. The governing body and the official budget committee in SB 2 towns can change their recommendations if the first (deliberative) session has amended an amount in a special warrant article. However, the 10 percent limitation for budget committee towns is still calculated on the initial recommendations of the budget committee. [RSA 32:5, V\(b\)](#).

Q. Can we include information about the individual members' recommendation votes?

A. Yes, but only if the voters authorized it at a previous town meeting. As of 2007, town meeting may vote to require the inclusion of the numeric tally of all votes of the selectmen and official or advisory budget committee regarding recommendations on the warrant next to all separate appropriations warrant articles, whether or not they are “special.” [RSA 32:5, V-a](#); [RSA 40:13, V-a](#). The “numeric tally” is the total result of the vote on the item, such as “Budget Committee recommends this article by vote of 9 to 2. Selectmen do not recommend this article by a vote of 3 to 2.” However, towns have no authority to include a roll call of how each individual voted.

A vote to include the numeric tally also authorizes a town to include these recommendations on separate warrant articles, not just special warrant articles and those relating to cost items in a collective bargaining agreement. Without such a vote, recommendations should continue to appear without the numeric tally and only with special articles and cost items of collective bargaining agreements.

Q. It has always been our town policy to include a roll call vote of the selectmen's recommendation with every warrant article. Are you saying we should stop doing this?

A. Yes.

Q. Can we include recommendations on other warrant articles that don't include appropriations?

A. The only statutes allowing selectmen to place recommendations on the warrant or ballot are those discussed above regarding operating budgets, special and separate appropriations articles. No other selectmen's recommendations appear to be authorized by law.

However, selectmen may include additional language on a few other categories of warrant articles. For instance, when cost items for a collective bargaining agreement are on the warrant, selectmen may include a contingent article asking that, if the cost items are defeated, town meeting authorize the selectmen to hold a special town meeting to consider the cost items. [RSA 31:5](#), III. If a warrant article for a bond is not recommended in its entirety by the budget committee, the governing body may vote to place the article on the warrant with the phrase "passage of this article shall override the 10 percent limitation imposed on this appropriation due to the non-recommendation of the budget committee." [RSA 32:18-a](#).

In addition, articles regarding zoning amendments which are either proposed by the selectmen or are submitted by petition must include a notation of the planning board's approval or disapproval. [RSA 675:3](#), VIII; [RSA 675:4](#), III.

Q. Can voters require the selectmen or budget committee to include in the warrant the estimated tax impact of proposed appropriations?

A. Probably not. As explained above, the legislature authorizes and requires certain additional language on warrant articles and the official ballot. Language such as "the estimated tax impact of this article would be ____" is not permitted or required anywhere in the law and therefore it is reasonable to conclude it may not be added.

Q. May we include other explanatory information on the warrant or ballot?

A. No. The warrant and official ballot should include only the actual question for voters, and any recommendations or other language that is required or permitted by law. Explanatory information, such as the reasons the article has been proposed or the estimated tax impact of an appropriation, is not part of the action item on which the town meeting voters are being asked to vote, and therefore it should not appear on the warrant or ballot.

Q. How can we give this information to the voters?

A. Background information and estimated tax impact is likely to be of interest to voters, of course, and may be communicated in a variety of ways. Each town is required to produce an annual report, available to voters at least one week before town meeting. [RSA 41:13](#); [RSA 41:14](#). Annual reports include information regarding the financial condition of the town, annual reports of various local officials, and the proposed budget to be voted on.

It is appropriate for the selectmen or budget committee to field any questions about proposed articles at the budget hearings, deliberative session or traditional town meeting, as the case may be. It is very common for a local official to present background information to the voters at the budget hearings, deliberative session or traditional meeting. And of course, if any proponent or opponent of an article wishes to speak about that information at the budget hearing, deliberative session or traditional meeting, he or she may certainly do so.

On occasion, citizens who have petitioned to have an article included on the warrant would like to include supporting information with the warrant. As explained above, this explanatory information should not be part of the warrant because it is not part of the actual question that will be put to voters. However, if the petitioners coordinate with the moderator, it is usually acceptable to bring the information to the deliberative session or traditional meeting, and the moderator can ensure that it is distributed in a way that is not disruptive to the meeting.

Local officials may wish to present background information on warrant articles in the annual report, town newsletters, or town Web sites. It is not yet clear in New Hampshire how far officials may go in using these methods to distribute information to voters, or where the line is between acceptable provision of facts and unacceptable "advocacy" on a particular article or policy. The U.S. Supreme Court has determined that, under the U.S. Constitution, the government may use tax dollars to endorse its own policy measures without violating the First Amendment. *Johanns v. Livestock Marketing Ass'n*, 544 U.S. 550 (2005).

However, when local officials spend tax dollars to persuade the legislative body (that is, the town meeting voters) to establish a policy in the first place (such as building a new school or starting a pay-as-you-throw program at the transfer station), the answer is much less clear. A variety of state and federal courts have long held that government officials may not spend public funds advocating or opposing a ballot measure unless they offer an opportunity for opposing views to be heard. *See, for example, Bonner-Lyons v. School Committee of City of Boston*, 480 F.2d 423 (1st Cir. 1973); *Greenberg v. Bolger*, 496 F.Supp. 756 (E.D.N.Y. 1980); *Citizens to Protect Public Funds v. Board of Ed. Parsippany-Troy Hills TP*, 98 A.2d 673 (N.J. 1953). In addition, the New Hampshire Supreme Court has not yet determined if it is legal under New Hampshire's Constitution for local officials to use tax dollars for advocacy. Until there are definitive answers to these questions, the better practice is to consult with local counsel and to use caution.