



Legal Questions Answers

By Paul G. Sanderson, Esq.

Town Meeting Warrant Articles

Q. What is the “town warrant” and why is it important?

A. The New England town meeting is one of the purest expressions of democracy in the world. The tradition dates back to the earliest times of our settlement. Citizens have the opportunity to openly discuss and debate the issues affecting them, and by their votes direct how those issues will be managed for the coming year. Since 1969, towns have had the option to divide the conduct of the meeting into two parts, a day for an election of officers by official ballot, and a separate time as set by the selectmen for the conduct of town business. Since 1995, towns, school districts and village districts have had the option of adopting the official ballot referendum town meeting, which calls for a first session for discussing and amending warrant articles and a second official ballot session for final voting. RSA 40:13 sets the dates of these meetings.

The agenda for the business portion of town meeting is contained in the town warrant, which is a document issued by the selectmen ordering the inhabitants of the town to gather together for the conduct of the town’s business. Historically, attendance at the meeting was compulsory, and inhabitants were fined for failure to appear, or for tardiness. Today, the importance of the warrant derives from RSA 39:2, which states in part, “The subject matter of all business to be acted upon at the town meeting shall be distinctly stated in the warrant, and nothing done at any meeting... shall be valid unless the sub-

ject thereof is so stated.” The purpose of this statute is to assure that all citizens have an opportunity to know in advance the issues that will be discussed, and also enables the selectmen to create a budget for the community that addresses all of the functions of municipal government that are likely to be conducted during the coming year.

Q. If the warrant is so important, who writes the text of the articles?

A. RSA 39:2 and 39:5 makes the selectmen ultimately responsible for creation of the warrant. If they fail to do so, a justice of the superior court may create the warrant, and fine the selectmen for their neglect. See RSA 39:10 and 39:13. There is no specific statutory form that must be used, and the selectmen generally control the order that articles appear on the warrant. However, there are checks and balances built in to the process to assure that the selectmen do not have total control over the language used, or the issues that are brought before the town.

If one or more articles deal with the issuance of a bond or a note, such articles must appear in consecutive numerical order, and must be acted upon prior to the conduct of all other business, other than the election of officers or balloting upon zoning questions. See RSA 33:8-a. The language contained in these warrant articles is often the collaborative effort of the selectmen, the head of the affected town department, the town attorney, and counsel for the agency that will

issue or guarantee the bond or note. The language may be drafted to attain a specific result under the tax laws, or other laws applicable to the project under consideration.

There are enabling statutes passed by the legislature to permit towns to do certain things, and the language of the enabling statute may require a warrant article considering the issue to use specific language. See, for example, RSA 31:95-b, dealing with appropriations.

The town may consider an offer to participate in a program operated by the state or federal government, or to receive a grant from one of these other units of government. The other unit of government often specifies the language that must be used to authorize participation in the program, or acceptance of the grant.

A land use ordinance, or a change to the ordinance may be proposed by the selectmen or a village district commission, but RSA 675:3 requires the planning board to hold a public hearing as part of the adoption procedure. In practice, most warrant articles proposing changes to the land use ordinance come from the work of the planning board.

Finally, citizens are able to petition the selectmen to place an article in the warrant. This power of citizen initiative is guaranteed by RSA 39:3, and the selectmen have little power to change the language as proposed.

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Q. Can a citizen attend my town meeting and propose anything he or she wants to the meeting. If the proposal passes in open meeting, won't it be effective?

A. It is possible that the proposal will be effective if it is brought up under the article that is usually inserted to deal with "all other business that may legally come before the meeting." However, there are limits.

Remember RSA 39:2, which requires that the warrant state the subject matter of the business to be acted upon in order for the action to be valid. If the proposal deals with an action to "obtain the sense of the meeting," recognize another citizen for exceptional service, request the selectmen to study an issue, or otherwise take an action that does not involve the expenditure of funds or contractually bind the town, the action will probably be valid. If the proposal requires that money be raised, appropriated, and spent, passage of the proposal will not be valid unless the subject matter has been stated in the warrant, a public hearing on the purpose conducted pursuant to RSA 32:5, and citizens have been warned by posting of the warrant that this issue will be placed before the town for a vote.

Q. If warrant articles have to be created in advance of the meeting, what are the rules for placing a matter on the warrant?

A. The work of a town proceeds throughout the entire year, and town employees, the board of selectmen, land use boards, and the budget committee are constantly reacting to issues and concerns as they arise. This work causes them to propose new ordinance language and to propose items of business for consideration by the town. Thus, the drafting of warrant articles should not be thought of as a task for a single day, but instead as a continuous process that leads to a single day each year when votes are cast. Language for warrant articles that will be proposed by the selectmen may be given to those boards at any time for their consideration. The selectmen may change the language of articles they propose until the date the warrant is posted. Pursuant to RSA 39:5, this must occur at least *14 days prior to the date of the meeting, not including the day of posting or the day of the meeting.*

Although the selectmen often welcome the input of concerned citizens, it is both possible and lawful for them to refuse to propose particular language in the warrant. A group of

citizens may also decide that a matter ought to be proposed for a vote without ever discussing the issue with the selectmen. In either event, pursuant to RSA 39:3, an article may be placed on the warrant if 25 or more registered voters, or 2 percent of the registered voters of the town, whichever is less, apply to the selectmen to insert the article on the warrant. This application, also called a petition in the statute, must be received no later than *the fifth Tuesday before the day prescribed for the annual town meeting.*

The reason for the difference in time between the methods is to assure that there is sufficient time under the provisions of RSA 32:5 for either the governing board, or the local budget committee if there is one, to hold a public hearing to consider all petitioned warrant articles before the budget is finalized. The key concept is that all purposes and amounts of appropriations must be disclosed or discussed at this public hearing for an appropriation to be valid. Although the action of the budget committee on a petitioned warrant article cannot serve to invalidate the article, the presence of petitioned warrant articles may impact the committee's recommendation on articles proposed by local officials.

The action taken on petitioned warrant articles may convince the selectmen to alter the language of the articles they propose before the warrant is posted.

Q. Are the rules the same for articles relating to land use issues?

A. No. Citizens may only petition for changes to a zoning ordinance, historic district ordinance, or building code in accordance with RSA 675:4. Twenty-five or more voters are required in all cases, and the petition may only be made during the period that is between 120 and 90 days prior to the date of the annual meeting. The public hearing on the petitioned amendment must be conducted by the planning board, and the petitioned article will appear on the official ballot on town election day, as opposed to being an article that is debated during the business portion of the annual town meeting.

Q. Does this mean that the language of warrant articles can't be changed at the meeting itself?

A. No. The power of a town to amend warrant articles at a meeting is well established in the cases of the New Hampshire Supreme Court. But the power to amend is not unlimited. Amendments that relate to the details of a purpose contained in the printed version of the warrant are permitted. However, if the amendment deals with some issue that is completely unrelated to the printed version, it is not allowed. For example, an article related to mosquito control can't be amended to approve the purchase of a fire truck.

The courts recognize that warrant articles are not always drafted as models of clarity, and also that amendments may be offered in the spirit of compromise to accomplish a worthwhile purpose in a slightly different manner than has been proposed. As recently as 2002, the Supreme Court

reaffirmed the idea that the printed and warned warrant article must contain the subject matter of the issue, and not the full text of what is ultimately considered by the town meeting. See *Dow v. Town of Effingham*, 148 NH 121 (2002).

Q. What if a petitioned warrant article asks the town to do something that is believed to be illegal?

A. The selectmen have very little discretion in this case, because RSA 39:3-b makes it a violation if they refuse to insert a petitioned article into the warrant. The best course of action for the selectmen is usually to include the article on the warrant, and at the meeting discuss their concerns or objections with the town meeting. Usually, the meeting will defeat proposals with clear legal defects. Alternatively, town counsel may be consulted, and other courses of action may be available, such as a petition to the superior court for instructions.

It is also possible for the selectmen, in their discretion, to propose an article dealing with the petitioned issue on the same warrant. Thus, if they feel a petitioned issue has merit, but the proposed language has legal defects, they can propose their own language to remove the defects, and advocate for their version of the article at the meeting. ■

Paul Sanderson is Staff Attorney for the Local Government Center. The LGC's legal services attorneys are available to help you sort through these or other legal issues. Call 800.852.3358 Monday through Friday from 8:30 a.m. to 4:30 p.m.

