



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: House Committee on Government Operations
From: BetsyAnn Wrask, Legislative Counsel
Date: February 12, 2014
Subject: H.602; 17 V.S.A. § 2646; “if a town so orders”

The Committee is considering H.602 (an act relating to municipal budget committees), which amends 17 V.S.A. § 2646. A question came up during Committee discussion as to whether it is the municipal legislative body or the voters that has the authority to “order” certain positions in 17 V.S.A. § 2646 when that statute uses the phrase “if the town so orders.” *See* Attachment A, which highlights in yellow the use of that phrase in that section. H.602 also is consistent in using that phrase.

The phrase made me question whether it is the legislative body that has the authority to order these positions. This is due to 24 V.S.A. § 872 and caselaw related to that section. *See* Attachment B, which provides the text of 24 V.S.A. § 872, and specifically subsection (a) of that section, which provides that the selectboard has the general supervision of the affairs of the town and shall cause to be performed all duties of towns and town school districts not committed by law to the care of any particular officer.

That section has been the subject of Vermont caselaw regarding municipal regulatory authority. In one such case, Kirchner v. Giebink, the Vermont Supreme Court held that “absent some specific statutory limitation on their authority, the selectmen have the general supervisory power over town matters.” Kirchner v. Giebink, 150 Vt. 172, 174-175 (1988). The Court in Kirchner noted that the Legislature can create exceptions to the broad authority of a selectboard. Id. at 175. For example, the Court noted that a statute might specifically require a vote of the electorate to make a certain decision. Id.

Vermont courts have also noted the administrative function of selectboards. For example, in Lawton v. Town of Brattleboro, 128 Vt. 525, 529 (1970), the Vermont Supreme Court noted that a selectboard is “required to undertake many administrative duties imposed and authorized by the statutory law concerning the safety, convenience, and health of [its] townspeople.”

Moreover, when a court will attempt to give meaning to a statute, it “must look at the whole statute, the subject matter, its effects and consequences, and the reason and spirit of the law.” In re R.S. Audley, Inc., 151 Vt. 492, 494 (1989) (citing Langrock v. Dept. of Taxes, 139 Vt. 108, 110 (1980)). A court may also look at how different words are used and may assume that the use of different words was intentional. State v. Levine, 117 Vt. 320, 324 (citing Snyder v. Central Vermont Railway, 112 Vt. 190, 193 (1941)).

Perhaps a court will never need to attempt to ascertain the meaning of “if a town so orders” in 17 V.S.A. § 2646 because the question of what entity has that authority to “order” might never be challenged. But if a court were to analyze the statute, it might look at how, for example, in subdivision (9), a town would be required to elect a collector of delinquent taxes if the town so orders, for a term of one year, unless the town votes that the delinquent tax collector be elected for a term of three years. A court might determine that the General Assembly meant for there to be a difference between ordering and voting, especially considering that it’s clear that voters vote, but a selectboard might have the authority to order under its general supervision authority set forth in 24 V.S.A. § 872.

I have searched Titles 24 (municipal law) and 17 (election law) to see whether “if a town so orders” or similar language is used elsewhere (without referring to the entity who may make an order). Aside from judicial-type orders and drawing orders on funds, I found 24 V.S.A. § 3904, which provides that a town may order military records of town residents be printed and sold. *See* Attachment C. According to the statute’s annotations, this section hasn’t been amended since 1864, and the annotations also do not show any caselaw analyzing the meaning of this provision. Considering the caselaw regarding 24 V.S.A. § 872, I would think the authority to order these records under 24 V.S.A. § 3904 would belong to the selectboard.

It is my understanding that the Committee would like to make legislative intent clear that it is the town voters who should have the authority to decide whether the town needs the officers under 17 V.S.A. § 2646, rather than the selectboard. If this is the case, the amendment provided should provide that clarity, by replacing “if the town so orders” with “if the town so votes” throughout 17 V.S.A. § 2646 and in the new amendment to that section. *See* amendment document #297139 v.1.

Thank you for your time. I look forward to discussing with the Committee.

ATTACHMENT A

§ 2646. TOWN OFFICERS; QUALIFICATION; ELECTION

At the annual meeting, a town shall choose from among its legally qualified voters the following town officers, who shall serve until the next annual meeting and until successors are chosen, unless otherwise provided by law:

(1) A moderator;

(2) A town clerk for a term of one year unless a town votes that a town clerk shall be elected for a term of three years. When a town votes for a three-year term for the office of town clerk, that three-year term shall remain in effect until the town rescinds it by the majority vote of the legal voters present and voting at an annual meeting, duly warned for that purpose;

(3) A town treasurer for a term of one year unless a town votes that a town treasurer shall be elected for a term of three years. When a town votes for a three-year term for the office of town treasurer, that three-year term shall remain in effect until the town rescinds it by the majority vote of the legal voters present and voting at an annual meeting, duly warned for that purpose;

(4) One selectboard member for a term of three years who shall be elected by ballot;

(5) One lister for a term of three years who shall be elected by ballot, unless the town has voted to eliminate the office of lister in accordance with the provisions of section 2651c of this chapter;

(6) One auditor for the term of three years who shall be elected by ballot, unless the town has voted to eliminate the office of auditor in accordance with the provisions of section 2651b of this chapter;

(7) A first constable, and if needed a second constable, unless the town has voted to authorize the selectboard to appoint constables as provided in section 2651a of this chapter. The terms of office of the first and second constable elected or appointed shall be for one year unless a town votes that they shall be elected or appointed for terms of two years. When a town votes for a two-year term for the offices of first and second constable, the two-year terms shall remain in effect until the town rescinds them by a majority vote of the legal voters voting at an annual meeting, duly warned for that purpose;

(8) A collector of current taxes, **if the town so orders**;

(9) A collector of delinquent taxes, **if the town so orders**, for a term of one year **unless a town votes** that a collector of delinquent taxes shall be elected for a term of three years. When a town votes for a three-year term for the collector of delinquent taxes, that three-year term shall remain in effect until the town rescinds it by the majority vote of the legal voters present and voting at an annual meeting, duly warned for that purpose;

(10) One or more grand jurors;

(11) A town agent to prosecute and defend suits in which the town or town school district is interested;

(12) A trustee of public funds **if the town has so ordered**;

(13) A trustee of public money, but only in towns that retain possession of a portion of the surplus funds of the United States received under the Act of 1836;

(14) A cemetery commissioner **if the town has so ordered**;

(15) One or more patrol officers to patrol town highways under the direction of the selectboard, **if the town so orders**;

(16) One or two road commissioners who shall be elected by ballot **if the town has so ordered**; otherwise they shall be appointed by the selectboard as provided in section 2651 of this chapter. The road commissioners shall be elected for a term of one year unless a town votes that the commissioners shall be elected for a term of two or three years. When a town votes for a two-year or three-year term for the office of road commissioner, that two-year or three-year term shall remain in effect until the town rescinds it by the majority vote of the legal voters present and voting at an annual meeting, duly warned for that purpose;

(17) Three water commissioners unless the town votes to elect additional selectboard members, in which case the number of water commissioners shall, at the discretion of the selectboard, be the same as the number of members that comprise the selectboard. The commissioners shall be elected by ballot **if the town has so ordered**; otherwise they shall be appointed by the selectboard as provided in section 2651 of this chapter.

ATTACHMENT B

§ 872. SELECTBOARD; GENERAL POWERS AND DUTIES

(a) The selectboard shall have the general supervision of the affairs of the town and shall cause to be performed all duties required of towns and town school districts not committed by law to the care of any particular officer.

(b) The selectboard shall annually, on or before July 31, acknowledge receipt of and review the document made available by the Auditor of Accounts pursuant to 32 V.S.A. § 163(11) regarding internal financial controls and which has been completed and provided to the selectboard by the treasurer pursuant to section 1571 of this title.

(c) The selectboard may require any other officer or employee of the town who has the authority to receive or disburse town funds to complete and provide to the selectboard a copy of the document made available by the Auditor of Accounts pursuant to 32 V.S.A. § 163(11). The officer or employee shall complete and provide the document to the selectboard within 30 days of the selectboard's requirement. The selectboard shall acknowledge receipt of and review the completed document within 30 days of receiving it from the officer or employee.

ATTACHMENT C

24 V.S.A. § 3904:

§ 3904. PRINTING AND SALE OF RECORDS

A town may order such records printed and kept for sale at a price not to exceed an advance of 20 percent of the cost of publication.