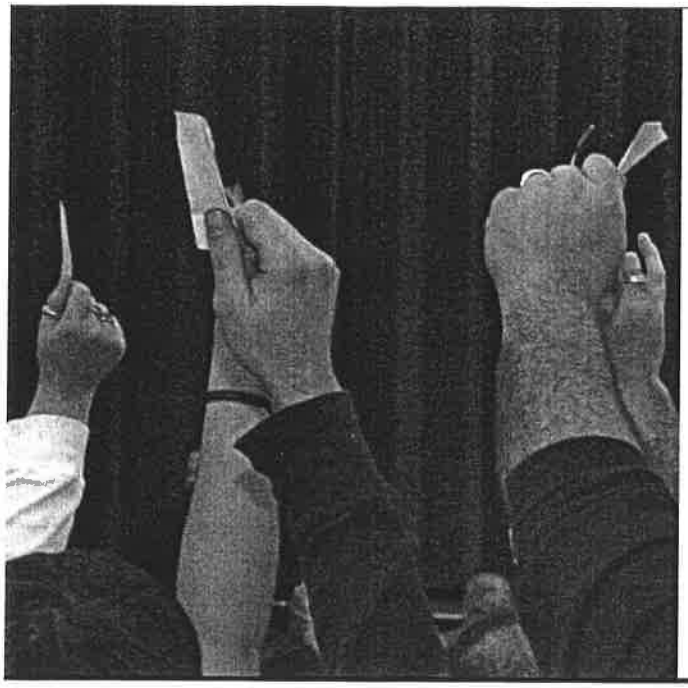

# 16 Things Every Citizen Should Know About Town Meetings

By H. Bernard Waugh, Jr.
2015 Update by Cordell A. Johnston

This article, written by H. Bernard Waugh, Jr., then NHMA Legal Counsel, first appeared in *Town and City* magazine in February, 1990. It has been updated by Cordell A. Johnston, NHMA Government Affairs Counsel, where necessary. Although this article was first written before the adoption of "SB 2," and therefore contemplated only the "traditional" form of town meeting, almost everything in it applies to SB 2 town meetings as well.

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We keep hearing it in New Hampshire: "Town meetings don't work anymore." "They're an anachronism." "They're rigged." "Nothing important is decided there." But these are self-fulfilling prophesies. Local voter apathy feeds on itself.

It's not all apathy, either. This article assumes that part of the problem is good old honest ignorance: people who've moved in from places without town meetings; young people who grew up in families with no tradition of participation for them to absorb; people who for years have heard their cynical friends telling them they can't make a difference and never bothered to find out the truth.

This is for them, and you. Officials and others receiving this magazine should feel free to share or reproduce this article for other voters. An informed town is in everyone's interest. In the end, nobody benefits from voter ignorance.

## 1. Every Voter Is a Legislator.

Those quaint sayings about town government being a "pure democracy" are true! State law refers to the town meeting as the "legislative body" (RSA 21:47). The town meeting is to the town what the Legislature is to the State, or the Congress is to the United States: the town meeting has all the basic power. There is no higher authority in town. But in order to have the right to participate, you must be a registered voter of the town, and you must attend. If you don't go, how can you justify blaming anybody but yourself?

## 2. The Moderator Presides, and Can Do What It Takes to Maintain Order.

The town meeting's business is regulated by the moderator, and your right to vote is subject to the moderator's authority to keep order. Voters may not talk without being recognized. If someone keeps on being disruptive after being warned, the moderator can ask a police officer to escort him/her out of the meeting (RSA 40:9).

## 3. The Voters Can Always Overrule the Moderator by a Simple Majority.

The moderator isn't a king. S/he is merely a facilitator to enable the voters to take orderly joint actions. It is illegal for the moderator to preside in such a way as to make it impossible to overrule his/her rulings. Therefore, people who say that the moderator "rigs" the meeting are talking through their hats.

Many voters mistakenly believe that state law contains all sorts of complicated parliamentary rules governing town meetings. It doesn't. All state law says is that the moderator can prescribe rules, but the voters can alter those rules (RSA 40:4). Nobody can pull parliamentary tricks as long as the voters stay alert and remain aware that they can vote, by a simple majority, to change the rules to accomplish what the majority wishes to accomplish.

Some towns, at the beginning of the meeting, adopt some set of rules for convenience, such as Robert's Rules of Order.

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In other towns, the moderator just makes rulings as the meeting goes along. Either way is fine. Either way, the *only* legally-binding rule is that the voters can overrule the moderator by a simple majority.

**Example:** Suppose the town begins the meeting by deciding to adopt Robert's Rules for the duration. And suppose, a little later, someone moves to amend a motion a certain way, which is perfectly proper under Robert's Rules, and the moderator declares that the amendment is valid. But now suppose it is moved and seconded to overrule the moderator, and the motion carries. Who wins? The voters, of course. Even though the moderator was "right" under Robert's Rules, the voters are "right" because they are the higher authority when acting by majority vote.

## 4. There's No Such Thing as an "Illegal Vote."

"What!? You mean the town's lawyers are all wrong?" No, I don't mean that. Pay close attention. It's true that there are plenty of types of town votes which, if they pass, will not be legally binding (i.e. would not be enforceable in court). But that doesn't mean the town can't vote on those things anyway. No group of voters has ever been arrested for taking a vote, no matter how off-the-wall it might be.

**Example:** Suppose it is moved and seconded to create a "No Parking" zone in front of the town hall. Then the town's attorney says that vote would be of no legal effect because state law gives the selectmen, not the town meeting, complete control over parking regulations. Does that mean the vote can't be taken? Of course not. If you let the lawyer intimidate you like that, you don't have the stubborn, independent Yankee gumption I think you have. In my view, legal opinions are far too often used to effectively deprive voters of their right to express their views and preferences to the officials they have elected to serve them.

If a vote most likely isn't going to be binding, then it's best, in order to avoid later confusion, to rephrase the motion in a form that recognizes that it may not be enforceable in court, but still lets the officials know that it may be enforceable at the ballot box. For example, "I move that the selectmen be strongly urged to create a 'No Parking' zone in front of the town hall."

Most of the rules in this article tell you what types of town meeting votes are legally enforceable in court. But don't be misled into thinking that non-binding votes are somehow "illegal." Use the lawyer's advice to help make your votes as effective as they can legally be, not to discourage you from taking a vote.

## 5. It's OK to Ask Questions.

The beauty of the traditional "deliberative" session of town meetings (as compared with questions on the "Official" or "Australian" ballot usually used for elections) is that through the process of discussion and debate, the voters can educate themselves about the question at hand, and about the procedure, and become able to vote more intelligently. Don't shyly assume that everybody but you knows what's going on. They probably don't.

## 6. No Vote Can Be Legally Binding Unless Its Subject Matter was Stated in the Warrant.

The "warrant" is a sort of agenda for the town meeting, which is posted two weeks in advance by the selectmen. In most towns it's also printed in the town report, published before the annual town meeting. The requirement that all subject matter must be stated in the warrant (RSA 39:2) keeps the meeting orderly, prevents surprise, and lets voters who might otherwise stay home know that some topic of interest to them is coming up for discussion and possible action.

The warrant law requires only the *general* subject matter to be stated. The actual votes don't have to be word-for-word the same as the warrant articles. You don't have to "take it or leave it." Amendments will be legally valid, so long as they are within the same general subject matter. But amendments which add some brand new subject matter will not be legally effective (*Sawyer v. Railroad,* 62 N.H. 135).

You can see from this rule that any vote taken under a warrant article entitled "other business" cannot be legally binding, because that article doesn't state any subject matter. Of course a vote to name someone "Volunteer of the Year," a vote to thank the Girl Scouts for the sandwiches, or even a vote to strongly urge the selectmen to appoint an advisory committee to look into a parking garage, doesn't *have* to be legally binding, and therefore can be passed under an "other business" article.

## 7. Any Ten Voters Have the Right to Add Articles to the Warrant by Petitioning the Selectmen Five Weeks in Advance of the Annual Town Meeting.

Under state law, the selectmen have complete control over the contents of the warrant, *except* that they must insert any article submitted by petition, signed by 10 or more voters, submitted to them by at least the *fifth Tuesday* before the annual meeting (RSA 39:3). (There is a different deadline for SB 2 towns.) In other words, ordinary citizens can contribute to the agenda (can keep the meeting from being "rigged," if you will), but it takes a little advance planning.

[EXCEPTION: Petitions for Zoning or Building Code amendments have to be submitted at least 90 days before the annual meeting (RSA 675:4) and need 25 signatures instead of just 10.]

## 8. Ordinary, Everyday Language is Perfectly Okay.

Are you hesitant to submit petitioned warrant articles, or to make motions at town meeting, because you think you'll need to hire a lawyer to come up with the right wording? Don't be! The N.H. Supreme Court has said time and again that technical rules will not be used to defeat the plain intent of the voters, using ordinary common language. As U.S. Supreme Court Justice Holmes once said:

> "The machinery of government would not work if it were not allowed a little play in the joints." (Quoted in *Lamb v. Danville School Board,* 102 N.H. 569.)

In fact, if you're worried about the wording, it might be better to check with, say, an English teacher, instead of a lawyer, to see if your proposed wording says what you intend it to. There are a few types of articles where the traditional words can be legally important [the worst example is a vote to discontinue a road "subject to gates and bars"], but these are few and far between.

## 9. Any 50 Voters Can Call a Special Town Meeting.

A "special" town meeting means any meeting other than the annual meeting. In most towns, the annual meeting is held the second Tuesday in March (RSA 39:1). But the selectmen can call a "special" meeting whenever they feel there's a need for it. In order to petition for a special meeting, you need 50 voters' signatures on a petitioned warrant article, submitted to the selectmen. The selectmen *must* call the meeting, unless the annual meeting is only 60 days away or less, in which case they can just add your petitioned article to the annual meeting warrant (RSA 39:3).

[CAUTION! Money articles (i.e. articles requiring the appropriation of funds) can't be voted on at special meetings unless at least half the town's voters show up, *or* unless the selectmen have petitioned the Superior Court (RSA 31:5).]

## 10. You can Ask for a Secret Written Ballot on *Any* Question.

There are two ways for the voters to request a secret written ballot at town meeting: (a) Any 5 voters can make the request in *writing* to the moderator before a vote is taken, (if the town's population is less than 500, it only takes 3 voters) or (b) *After* a vote has been taken and declared by the moderator, any *seven* voters can *orally* request the vote to be taken again using a secret written ballot, but the request must be made immediately, before the meeting moves on to other business (RSA 40:4-a and 40:4-b).

## 11. Virtually any Town Vote can Later be Reconsidered and Rescinded.

So you think you finally finished the debate over the blankety-blank town administrator's salary. The rest of the meeting is routine. Now you can go home and pay the babysitter. Right? Well, no, you'd better not. Unless the meeting votes to restrict reconsideration, that salary vote can legally be reconsidered later, right up until the meeting is finally adjourned, even if it's 2 a.m. and almost everyone's gone home (*Byron v. Timberlane School District,* 113 N.H. 449).

In fact, if two votes taken by a town meeting are inconsistent, the Courts will probably say that the later vote impliedly rescinded the earlier vote, even if there was no formal vote to reconsider (*Lamb v. Danville School Board,* 102 N.H. 569).

However, the town meeting may vote to restrict reconsideration on one or more articles (RSA 40:10), and this is commonly done. This action doesn't prohibit reconsideration. If the meeting votes to restrict reconsideration


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of an article, it may still subsequently vote to reconsider the article; but if it does, the reconsideration must take place at an adjourned session held at least seven days later. Notice of the time and place of the adjourned session must be announced before the close of the original session and published in a newspaper at least two days before the session.

In an SB 2 town, a vote at the deliberative session to restrict reconsideration is deemed to prohibit further action on the restricted article until the second (official ballot) session (RSA 40:13, IV). Votes taken on the official ballot may not be reconsidered.

## 12. The Actions of One Town Meeting are not Binding on Later Town Meetings.

This rule is just a logical extension of the rule that all (or at least most) votes can later be reconsidered. The right to reconsider and rescind a prior vote (either explicitly or by implication) carries over from one year to the next, or from the annual meeting to a special meeting.

**Example:** Suppose you went home after that important vote on the anti-surfing ordinance. But, listening to the radio the next day, you find out that the vote was reconsidered and rescinded after you left. If you can get 49 other voters to join you in petitioning for a special meeting, you can bring about another vote on that same ordinance.

Of course there are some *Exceptions*:

a) A vote can't be reconsidered where action has been taken in reliance on that vote. Example: Suppose the annual meeting passes a vote to sell town-owned land. Later, 50 voters petition to have a special meeting to reconsider. But before the special meeting is held, the selectmen sign the deed in reliance on the first vote. The deed creates a vested interest, and reconsideration would now be too late (*Preston v. Gillam,* 104 N.H. 272).

b) A vote to go into debt (to authorize the issuance of bonds or notes) is obviously binding, since as soon as the bonds are issued, the town is legally obligated to pay off that debt. The fact that such a vote is binding on future town meetings (unlike most votes) is precisely the reason for the next rule, which is:

## 13. A Vote to Go Into Debt (Issue Bonds or Notes) Must Pass by a 2/3 Ballot Vote.

In fact, if the amount of the proposed debt exceeds $100,000, the moderator must keep the polls open for at least one hour after the end of the discussion on the issue (RSA 32:8-a). If you couldn't get a babysitter, now's the time to rush home and tend the kids so your spouse can rush in to vote on that bond issue too.

Don't be confused about this. A vote on bonds or notes does require a ballot vote, but it's not something that can appear on the *"official"* ballot (the one used for electing officers). It's simply a "Yes/No" paper ballot during the business session of the meeting, the same type of ballot used when a secret written ballot is requested.

Things are necessarily a little different in an SB 2 town, where ultimately <u>every</u> article appears on the official ballot, including bond articles. Also, a bond in an SB 2 town requires only a 3/5 vote for approval (RSA 33:8).

## 14. You Can Act On, or Amend, Particular Line Items in a Budget.

The proposed budget must be posted with the warrant, and is considered part of the warrant, giving you notice of what you're going to raise and appropriate money for. To "appropriate" money means to earmark a certain sum for a particular purpose, so that the governing board (selectmen or school board) is then authorized to spend that amount for that purpose over the course of the fiscal year.

Money can be "appropriated" either through a line item in the budget, or under a separate warrant article. The amount of any particular appropriation (line item) can be amended up or down, or an appropriation can be deleted entirely by the voters. However, it is not legally effective to *add* a new purpose (line item) to the budget. Why not? Because adding a new purpose violates Rule #6 (above)—the requirement that all business must be stated in the warrant. The voters can't take any binding action on a subject matter which wasn't stated in the warrant (or in this case in the budget).

Some people believe that voters can only act on, or amend, the bottom line of the budget, and not specific line items. That's not quite right. What is right is that the voters cannot *limit* the governing board's ability to *transfer* amounts from one line item to another during the year, as needs and priorities change. (*McDonnell v. Derry,* supra.) Therefore, even if you do vote to lower, say, the police budget by $1,000, the selectmen, later in the year, can still replace that $1,000 into the police budget, as long as they don't exceed the bottom line of the entire budget.

**Hint:** Transfers cannot be made from appropriations made by separate warrant articles (RSA 31:10, IV). Therefore, the way to prevent an appropriation from being diverted to other purposes is to submit a petitioned warrant article for that appropriation.

But just because only the bottom line is legally binding, doesn't mean the voters can't amend line items. The voters have a legal and political right to express their preferences. A vote on specific line items sends a strong message that may later be "enforceable" through the ballot box, even if it's not enforceable in court.

**Budget Act Towns:** If your town has adopted the Municipal Budget Law, RSA Chapter 32, (and thus has an official Budget Committee to prepare the budget to be voted on), then the voters are legally bound by the so-called "Ten Percent Rule." Under this rule, the voters cannot appropriate more money at any single town meeting than the total amount recommended for that meeting by the Budget Committee, plus ten percent.

Also, if the meeting votes to delete an appropriation within a warrant article or budget, or reduces the amount to zero, or does not approve an appropriation contained in a separate article, no amount of money may be spent for that purpose (RSA 32:10, I(e)). This is often referred to as the "no means no" rule.

## 15. Attend your School District Meetings Too!

The low attendance at most New Hampshire school meetings shows that far too few people understand their significance. A school district is, legally, a separate municipal entity, on equal footing with the town. Its meetings work the same way. Every one of the above rules still applies. Just erase "selectmen" and insert "school board." And erase "town meeting" and insert "school district meeting." The voters still have all the legislative power. If they don't seem to have all the power, that's only because they aren't exercising it.

Towns, and not school districts, send out the tax bills in New Hampshire. But don't lose sight of the fact that your tax bill includes money being raised for the school district, as well as for the town. In fact, usually the school share is higher than the town share. If you don't go to the school meeting and vote on the budget, more than half your property tax bill represents taxation without representation—representation you're giving up without a fight.

## 16. Democracy – Use it or Lose it.

In a town meeting, more than any other form of government on earth, your community and the services it provides emanate not from some "they" in the sky, but from *you,* the voters. If you haven't been to town meeting lately, this is a good year to inform yourself, attend, vote, and make it work.


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