

May a municipality spend more money than was included in the budget as a line item for a particular town office?

There are four general areas of questions the Law Center frequently receives on this topic:

- Whether the selectboard can exceed either the total budget amount approved or the specific amount allocated for a single budget line item;
- Whether the selectboard can “shift” funds appropriated for a line item to add additional funds to another line item to spend more than that approved by the voters;
- If money was allocated by the voters, is the selectboard mandated to make the purchase and spend the amount approved; and
- Can the selectboard appropriate money for an expenditure for which the voters appropriated *no* funds?

Like with many, many questions of municipal law the only right answer with regard to municipal budgeting and spending questions is “it depends.” One general school of thought on these questions is that selectboards derive their authority from the statutes and have obligations and authority to perform certain tasks regardless of the actions of the voters. This school believes that the budget is not a contract and selectboards have some latitude to move money around whether the appropriation was approved through a line item or independent article. Another school is a strict constructionist view that selectboards are bound to follow the approved budget and may not deviate from the expenditures approved without consent of the voters.

Generally, the VLCT Law Center tends to believe that the answer lies in borrowing a bit from each school of thought. For example, selectboards clearly have the latitude and responsibility to perform certain core governmental functions and address emergencies regardless of the approved budget.

Town highways are an example of an obligation that the selectboard has with regard to spending. Vermont statutes provide that “it shall be the duty and responsibility of the selectmen of the town to,” perform a lengthy list of highway related functions that are set forth in 19 V.S.A. § 304. The board would be obligated to perform these duties even if the voters had rejected the town highway budget. They would also be required to continue plowing, sanding and salting town highways even if those individual line items and the entire budgeted amount had been exceeded due to a tough winter like last year.

Likewise, when a town experiences unexpected emergency situations such as floods or fires, we believe that the selectboard has more authority (really a responsibility) to spend funds on rescues, approval of overtime, hiring of temporary workers, rental of heavy equipment, temporary rental of property and other such actions necessitated to protect the public and assure that essential municipal services can continue to be provided. The New York City budget could not have anticipated the huge amount and variety of expenses it has encountered in wake of the terrorist attacks. If that happened in Vermont, selectboards would not have to wait for a properly warned meeting to act.

In answer to the four questions posed above, here are some general guidelines to follow, to which there are undoubtedly numerous exceptions:

Generally, the board can expend more than is appropriated for the individual line items and for the budget as a whole if there is some legal requirement or unexpected circumstances that would require the board to do so. This rule would apply to separately warned articles as well, though in our opinion a higher threshold of need should be present before such action. An even higher threshold for spending more on separate articles should apply if the phrase “not to exceed \$X” is included in the article wording.

Generally, the board can shift amounts of funds from one line item in the budget to another line item, except that funds raised from highways taxes may only be shifted to another highway line item or carried forward into the next budget year for highway purposes (19 V.S.A. § 312).

Generally, if the appropriation is from the general budget article, such expenditures are not required to be made and should be at the selectboard’s discretion. The Law Center believes, generally, that a budget approved by the voters *enables and authorizes* the board to make the approved expenditures and is not a mandate to spend. Just because the voters approved spending \$100,000 for a new truck does not mean that the selectboard could not buy one for \$90,000 if they could get better deal than they expected. Similarly, if this mild winter weather continues, and the town does not expend its budget, they should not plow and sand bare roads to use up all the money authorized by the voters.

The Law Center believes that this principle holds true for both budget line items and separately-warned articles. Some attorneys have opined that the legislative body is mandated to spend money if a separately warned article is approved. The Law Center disagrees with this position. Under Vermont statutes, the legislative body has authority and responsibility to provide for the general supervision of the affairs of the town. See 24 V.S.A. § 872. In our view, as long as no other entity has been specifically vested with the authority to make decisions about staffing or purchases, the legislative body has the discretion to spend even if an appropriation is approved through a separately warned article.

Generally, if the voters do not approve an appropriation for an expenditure, the board cannot expend money for it unless there is some legal requirement or unexpected circumstances that would require the board to do so.

In general, the Law Center would encourage boards to follow the wishes of the voters unless necessity requires alternative action.

There is virtually no case law in Vermont to guide municipal officials and attorneys with regard to these matters. Accordingly, at the end of the day, local officials must do what they are always called upon to do – use their Yankee common sense and ingenuity when dealing with matters of municipal finance and consult your town attorney.

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