How much discretion does a selectboard have when it receives a petition signed by five percent of the registered voters to include an article on the Town Meeting warning?

The selectboard is only **required** to include items on the warning for which the voters have explicit authority to act at town meeting.

There are many examples of questions where, if a valid petition is received (with adequate signatures and a question which voters have the authority to answer), the town must include the item on the warning. Some examples, with their corresponding authority, are as follows:

1. the repeal of the business personal property tax. 32 V.S.A. § 3849;
2. a proposal to fund a feasibility study for establishing a town library. 17 V.S.A. § 2664; or
3. a petition to authorize the selectboard to employ a town manager. 24 V.S.A. § 1241.

However, even if the selectboard receives a petition signed by at least five percent of the registered voters, if there is no statutory authority for the voters to act on the matter, the board can decline to post the petitioned article on the warning.

The legal framework for this act of discretion by the selectboard comes from several places. To begin with, it is important to remember that Vermont towns only have that authority which is expressly granted to them by the statutes. Thus, in determining what towns are able to do, it is important to look at both the statutes and the case law that surrounds them. On the question of petitions, 17 V.S.A. § 2642 suggests that the only standard that needs to be met is the signatures of five percent of the registered voters and proper filing with the town clerk not less than 40 days before town meeting. However, if one also looks at the case law, it is clear that there is an additional standard which must be met - that of authority for the voters to act. The case law is found in several places, though two of the most often cited are as follows:

1. In 1969, the Vermont Supreme Court established the standard for inclusion on the warning in what has come to be called the Wassmansdorf ruling. *Royalton Tax Payers Protective Association v. Wassmansdorf*, 128 Vt. 153 (1969). In the *Wassmansdorf* ruling, the Court established two standards that must be met in order to properly respond to the five percent petition: 1) the subject matter must not be "useless, frivolous, or for an unlawful purpose;" and 2) the subject matter must "set forth a clear right which is within the province of the town meeting to grant or refuse through its vote."

2. In 1970, the Court declined to force a school district to hold a special meeting to discuss fiscal procedures after being petitioned to do so, reasoning that "the duty to warn relates to business to be transacted." *Whiteman v Brown*, et al, 128 Vt. 384 (1970). In short, this ruling suggests that if an article sought to be included in a warning does not constitute business proper and appropriate for transaction (as evidenced by specific statutory authority to conduct the business), then there is no obligation to include it.

Thus, in reviewing both the statutes and the case law surrounding them, it is VLCT's opinion that towns are only required to include petitions on the warning that propose an action that is appropriate for the voters to act on.

Moreover, while advisory articles calling, for example, for the condemnation of herbicides or genetically modified foods are interesting debates, their scope is outside of the authority of the town and therefore they are not business proper before the town. Selectboards should not feel compelled to include those in the warning.

VLCT News, February 2003