

Can a town enter into a long-term contract?

Yes. The town's budget belongs to its voters and as such only they can authorize the expenditure of town funds. "A town shall vote such sums of money as it deems necessary for the interest of its inhabitants and for the prosecution and defense of the common rights." 17 V.S.A. § 2664. Therefore, under this statutory grant of authority, there doesn't appear to be any prohibition against a town entering into a long-term contract so long as the voters approve the funds necessary to comply with its terms.

However, the problem arises in paying for the contract over a period of years. The Vermont Supreme Court has refused to bind voters at a future Town Meeting to the actions taken by the previous year's voters. "It is impossible, then, to conclude that the Legislature could have intended to give any such discretion to towns, as to put the tax forward upon a future list. That would be for one set of men to vote a tax upon the list of others." *Collamer v. Drury*, 16 Vt. 574 (1844). Consequently, voters may only vote for a tax on the grand list for the year in which the budget is to be approved. In order for a town to enter into a long-term contract it would have to approve the funds to pay for the contract for each year of its life. Under this scenario, if a town's voters refuse to authorize the expenditure necessary to satisfy the contract, then the town will be liable for breach.

One way for a town to protect itself against this occurrence is to include a nonappropriation clause in its contract. Basically, this clause sets out that a town will not be under any further obligation to make payments on the contract if its voters don't appropriate the necessary funds. Although a non-appropriation clause provides towns with a way out of a long-term contract, it also loses whatever service it contracted for. Another option a town may employ is for its voters to establish a reserve fund in which they would appropriate the entire amount of the contract so its funds may be carried forward from year to year. For example, if a town entered into a five-year contract for \$10,000 a year, its voters could appropriate the entire \$50,000 into a special account to be administered by the selectboard for that purpose.

- *Garrett Baxter, Associate, VLCT Municipal Assistance Center*

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