***Our town has received a petition for an article to be placed on the warning for town meeting to appropriate money for a preschool in another town. Children from our town attend the preschool. If the preschool is not located in our town, should the article be included in the warning?***

The statutory authority for social service appropriations is found at 24 V.S.A. § 2691. That statute provides, in part, "At a meeting duly warned for that purpose, a town or incorporated village may appropriate such sums of money as it deems necessary for the support of social service programs and facilities ***within that town for its residents*** (emphasis added)."

In 1987, the City of Vergennes challenged voter-approved appropriations for three regional social service agencies. The City refused to turn over the funds, asserting, among other things, that the agencies had not shown that the funds would be spent on town residents. The matter went to the Vermont Supreme Court.

Although the City did not raise the issue directly, the Supreme Court noted that 24 V.S.A. § 2691 appeared to be directed to programs and facilities based "within that town" rather than at agencies that extend services to City residents but are based elsewhere. The Court stated that the basis for determining where the service is should be the residents' demonstrated need, not the locale of the agency. To require an agency to be physically present in the City would be contrary to other provisions of the statute empowering the City to seek social services from outside its limits. Under the facts and circumstances of the case, the agencies should be considered to be social service programs "within that town," i.e., within the City of Vergennes. *Addison County Community Action v. City of Vergennes*, 152 Vt. 161 (1989).

Having determined that the regional agencies should be considered "within that town," the issue would seem to have been resolved: a regional social service agency is to be considered within the town if it provides services to residents there. However, a month later, the Court amended the decision to allow the City to require the agencies, as a condition of the receipt of the voter-approved money, to enter into a contract with the City to ensured that the money be devoted to services within the City.

Though not stated, this additional requirement was apparently in response to 24 V.S.A. § 2692, which provides that the legislative body of a municipality making an appropriation to a social service agency "may make a contract with public or private agencies or persons concerning the provision of those services."

What is the import of the amended holding? On its face, it would seem to require social service agencies not located within the municipality to have a contract with the municipality before they can receive voter-approved appropriations. However, the language of 24 V.S.A. § 2692 is permissive, not mandatory. The statute does not require a contract with a social service agency; it only allows one.

In any case, we would advise that the petitioned article to support a preschool in another town should be included in the warning if town children attend the preschool. Voter-approved appropriations for social service agencies are widespread, commonplace, and authorized by statute. Very often, these agencies are regional in nature and not physically located in the town voting on the appropriation. As the Supreme Court stated, to require the agency to be physically present in the town would be contrary to other provisions of the statute empowering the town to seek social services from outside its limits. Ultimately, if the article is included in the warning, the voters will decide if this preschool appropriation should be approved.

- Jim Barlow, Attorney, VLCT Municipal Assistance Center