

How much discretion do the town manger and selectboard have to deviate from the voter-approved annual town budget?

Generally, any municipal spending requires voter approval. Such authorization is usually obtained through the voters' approval of the town budget. However, the selectboard has some implicit discretion, by virtue of its responsibility for affairs of the town, to address those unanticipated circumstances that arise during the fiscal year by managing spending on individual budget line items within the overall amount approved by the voters. The discretion to manage the budget is, in some instances, limited by state statute. For example, highway fund moneys cannot be used for non-highway purposes (19 V.S.A. § 312), sinking fund moneys cannot be used for non-sinking fund purposes (24 V.S.A. § 1777), and reserve fund moneys can only be used for other purposes with voter approval (24 V.S.A. § 2804).

There is also some implied discretion afforded the selectboard to exceed the gross annual municipal budget. For example, the selectboard's obligation to keep local highways in good and sufficient repair during all seasons of the year may obligate it to expend more money during a fiscal year than has been appropriated by the voters for the highway budget. State law recognizes the inherent discretion of the selectboard in at least three indirect ways: First, there is no prohibition against municipal deficit spending in Vermont law. Second, in the event a deficit occurs, there is a statutory provision to cure the deficit either by a special tax approved by the voters or a mandatory deficit reduction tax imposed by the selectboard. 24 V.S.A. § 1523. Finally, the selectboard can draw orders on the treasurer, for which there are insufficient funds, and there is a process by which such orders, if not paid by the treasurer, will accrue interest. See 24 V.S.A. § 1576.

Notwithstanding its implied discretion, a selectboard that deviates from the approved town budget (both between lines and within the total budget) is always subject to the wrath of the voters. As a practical matter, the greater the deviation from the approved budget, the more inclined the selectboard should be to seek voter approval for an expenditure. It should be remembered that the selectboard always has the ability to call a special town meeting to obtain approval from the voters. It should also be remembered that if the voters have amended a specific line item in a budget, they have sent a message to the selectboard about spending in that area. While the actual binding effect of the amendment may be debatable, the intention of the voters is not wisely ignored.

The relationship between the town manager and the selectboard is similar. The town manager is the general purchasing agent of the town, and, with some specific exceptions, the town manager has authority to "perform all the duties now conferred by law upon the selectboard." 24 V.S.A. §§ 1236(1)(3). The town manager also has those specific responsibilities set out in the statute. From this, the manager would appear to hold some measure of the same inherent discretion enjoyed by the selectboard in managing spending on individual budget line items within the overall amount approved by the voters.

Nevertheless, as the selectboard's discretion is limited by the voters, the town manager's discretion is limited by the selectboard: The selectboard retains the responsibility to sign orders on the general fund (but not the highway fund). 24 V.S.A. § 1236(2)(5). Next, "in all matters, the town manager shall be subject to the direction and supervision and shall hold office at the will of such selectmen, who by majority vote, may remove him at any time for cause." 24 V.S.A. § 1233.

The unwritten imperative of all the statutes is communication. The town manager should communicate regularly with the selectboard about the state of the town's financial affairs and the budget. The selectboard should also communicate with the voters when considering a deviation from the budget. At the end of the day, it must be remembered that it is the voters' money that is being spent.

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VLCT News, August/September 2005