

How much legal discretion does a selectboard have when it receives a petition to include an article on the warning for town meeting for an advisory vote on an issue not directly related to town business, like the war in Iraq or universal health care?

While the applicable statute, 17 V.S.A. § 2642, suggests that a petition needs only the signatures of five percent of the registered voters and to be filed with the town clerk not less than forty days before town meeting, the Vermont Supreme Court has established an additional requirement - that of authority for the voters to act. In *Royalton Tax Payers Protective Association v. Wassmansdorf*, 128 Vt. 153 (1969), the Vermont Supreme Court set out that a petition must not be “useless, frivolous, or for an unlawful purpose,” and 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.” Following on this, 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*, 128 Vt. 384 (1970).

If an article sought to be included in a warning does not constitute business proper and appropriate for transaction by the voters (as evidenced by specific statutory authority), then there is no legal obligation on the part of the selectboard to include it in the warning – inclusion is a matter left to the discretion of the selectboard. Nonetheless, in considering the exercise of this discretion in the context of an article for an advisory vote on matters such as the war in Iraq or universal health care, a selectboard should keep in mind that at town meeting every citizen is a legislator. And, while every legislative body is charged with certain tasks and responsibilities (in the case of town meeting – approving the town budget, electing officers, etc.), there is some intrinsic value in the democratic discourse in which such legislative bodies engage.

As Susan Clark and Frank Bryan point out in *All Those in Favor*, their recent book about Vermont town meeting, “Town meeting’s strength and richness resides in the opportunity to engage in the verbal deliberations essential to direct involvement in the legislative process. Town meeting is a *parliament* – that is, a ‘place for speaking.’ (And of course the value of public debate is found as often in listening to one’s fellow citizens as in speaking oneself.)”

The key for the selectboard is to know the proper balance between addressing and accomplishing the business of the town and providing a forum for public discourse on broader issues. Because this balance will differ from town to town, the most successful selectboards will be those with the best sense of what the citizens want their town meeting to be like.

- Jim Barlow, Staff Attorney, VLCT Municipal Assistance Center

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