

Social Service Agency Appropriations: How Much Information is Required for Town Meeting Warning Articles?

In April of this year, Judge Mary Miles Teachout of the Rutland Unit of the Vermont Superior Court issued a decision holding that the language of social service appropriation articles for the Middletown Springs' 2010 town meeting were statutorily insufficient because the articles failed to provide enough information for Middletown Springs voters. *Pepperman v. Town of Middletown Springs, et al.*, 140-2-10 Rdcv (Apr. 11, 2011). Under Vermont law, voters may appropriate money at town meeting for the support of social service programs and agencies that provide services to town residents. 24 V.S.A. § 2691. The 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."

In 2008, Walter Pepperman, a resident of Middletown Springs, objected to the manner in which the Town was handling and warning social service agency appropriations. Specifically, Pepperman wanted the selectboard to adopt a resolution whereby it would make a determination that the proposed appropriations were "necessary" under the statute and that they were for the benefit of town residents. In 2009, the Town adopted a policy requiring all social service organizations that wanted to have funding requests appear on the warning provide documentation of the services being provided and how those services would be made available to Town residents. This information would be made available for inspection at the town offices.

Despite the new policy, Pepperman continued to believe that the Town was not in compliance with 24 V.S.A. § 2691. The Town's practice to warn social service agency appropriations was as follows: "Shall the voters of Middletown Springs vote to appropriate [amount requested] to [name of requesting organization]?" Pepperman believed that the statute required the Town to include language stating that the voters were to decide if each social service agency appropriation was "necessary" and "would benefit Town residents." When the selectboard in 2010 warned social service agency appropriations in the same basic form it had used in 2008 and 2009, Pepperman brought suit.

Pepperman's primary allegation in the lawsuit was that the form of the Towns' social service agency appropriation articles failed to comply with 24 V.S.A. § 2691 in that the articles failed to provide sufficient information to the voters to instruct them about the standard they must apply in voting on a proposed social service appropriation. Judge Teachout agreed, holding that the article language was insufficient because it failed to "include terms that specify that the voters must deem the proposed appropriation necessary for the program and the program must serve town residents." According to Judge Teachout, without such information the voters "cannot make the determination whether required by statute ... because they have no way of measuring what the organizations will use the money for and the necessity of that use, nor whether the organization's program serves Town residents. ... Therefore simply naming the organization is insufficient to show 'character and purpose' and runs afoul of 24 V.S.A. § 2691." In some instances, according to the judge, the name of the social service agency is sufficient to indicate the charter and purpose of the proposed appropriation. However, when this is not the case, the

selectboard is obligated to provide some brief description of the use to which the money will be put in order to allow the voters to make their determination.

Although Judge Teachout's decision in this case does not bind other Vermont municipalities, it is instructive on how other courts in the state may address the issue. In light of Judge Teachout's decision, VLCT advises that when crafting warning articles for social service agency appropriations, in addition to providing the name of the social service agency and the amount requested for appropriation, the selectboard should include a brief description of the purpose for the proposed appropriation. For example, an article might provide, "Shall the voters of _____ appropriate [amount requested] to [name of organization] *for nutrition services for children?*" or "Shall the voters of _____ appropriate [amount requested] to [name of organization] *for transportation services provided to senior citizens and disabled persons?*" In providing this brief description, the selectboard must be careful not to imply an opinion on the worthiness or necessity of the appropriation or to otherwise comment on the appropriation, as 17 V.S.A. § 2666 provides, "Neither the warning, the notice, the official voter information cards, nor the ballot itself shall include any opinion or comment by any town body or officer or other person on any matter to be voted on."

A social service agency's request for an appropriation can be placed on the warning by the selectboard's own motion or by a petition signed by five percent of the voters and submitted to the town clerk not less than 40 days before the date of the meeting. 17 V.S.A. § 2642. When a social service agency appropriation request is supported by a petition, the selectboard should work with the petitioners to insure that the petitioned article is presented in the appropriate form. Along these lines, VLCT recommends adoption of a policy on handling social service agency appropriations. By employing such a policy, a selectboard can require agencies requesting appropriations to submit a more complete description of their programs for inclusion in the town report and encourage their representatives to attend the town meeting or public informational hearing to explain the appropriation request to the voters and answer voters' questions. VLCT's Model Social Service Agency Appropriation Policy is available through the VLCT Resource Library, <http://resources.vlct.org/>.

On another note, Judge Teachout dismissed Pepperman's claims against the individual selectboard members and his claims for monetary damages against the town. On the claims against the individual defendants, Judge Teachout found that 24 V.S.A. § 901(a) "clearly states that where an action lies against a municipal officer, the action shall be brought in the name of the Town in which the officer serves. Mr. Pepperman's claims against the individual defendants, all of whom are selectpersons, arise from their role in approving the Town warning and ballot language. The claims against the individual defendants must be dismissed because they are being sued in their capacity as municipal officers." The selectboard members were also entitled to immunity because "voting to approve ballot language is a legislative act and entitles the individual defendants to absolute immunity." As for Pepperman's claims for damages against the Town of Middletown Springs, Judge Teachout noted, "The legislative approval of language for a Town warning and ballot is a quintessential governmental function. Therefore, the Town of Middletown Springs is entitled to sovereign immunity and all claims for damages must be dismissed." The decision is available at www.vermontjudiciary.org/20112015%20Tcdecisioncvl/2011-4-15-1.pdf.

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