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**Volume 7, Issue 1 / Winter 2010**

## Reconsideration of Town Meeting Vote.

Questions often arise, both in the context of a traditional town meeting and of an SB 2 town meeting as to whether votes

where a handful of voters remaining at the end of a meeting use parliamentary tactics to undo the will of the majority of voters expressed earlier in the meeting.

The statutes work as follows.

RSA 33:8-a allows voters to reconsider a bond article voted on, but requires them to wait before con-

ducting the actual reconsideration for at least seven days after the original vote. For example, if a bond article is defeated at a business session of a traditional town meeting, the voters can, during the business session, vote to reconsider the defeated article; but they must wait at least seven days before they can debate and vote again on the defeated bond article.

The statute regarding all matters which are not bond votes provides that voters can move, after the vote on

the warrant article (or an amendment to same if during the deliberative session of an SB 2 meeting) to restrict reconsideration on the vote. If such a vote to limit reconsideration passes, then no subsequent votes can be taken which will indirectly have the effect of undoing the original vote. Votes to limit reconsideration can be made in groups, that is, all votes previously taken during the meeting. It is possible for voters to "undo" the restricted status of the vote later during the meeting, but the actual reconsideration of the warrant article (or amendment) can not occur until at least seven days later. RSA 40:10 mandates that the time, date and place for reconsideration be announced prior to the close of the session, and this announcement must be followed by a notice in the newspaper at least two days prior to the reconsideration meeting.

For additional information or questions, please contact **Attorney Sharon C. Somers**.



can be reconsidered after they are taken. The general rule is that votes taken during first (deliberative) session in an SB 2 town and votes taken during the business meeting at a traditional town meeting can be reconsidered and/or rescinded. This general rule is subject to the statutory provisions of RSA 33:8-a governing bonds over \$100,000 and of RSA 40:10 on reconsideration over other matters. The intent of these two statutes is to prevent the situation

## Electioneering by Election Officials.

Local politics may be a contact sport, but New Hampshire law provides



some rules of the game. Cities and towns must provide elections that, in reality and in appearance, are conducted in a fair and impartial manner. In particular, RSA 659:44 (Electioneering at the Polling Place) aims to strike a balance between the First Amendment rights of all individuals, including election officials, to voice their political opinions and the right of qualified political candidates to run for office on a level playing field, as set forth in the New Hampshire Constitution (Part 1, Art. 11).

The statute tries to accomplish this by prohibiting electioneering which creates, in fact or percep-

tion, a situation in which the government essentially favors one candidate over another candidate. RSA 659:44 states “No election officer shall electioneer while in the performance of his official duties.” This includes both official duties at the polling place and, and for those election officials who are also public employees, at the workplace as well. (RSA 659:44-a). Note that candidates for office, other than Moderator and Town Clerk, may not work at the polls on the day of elections.

For the purposes of this section, ‘electioneer’ shall mean to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this provision shall be guilty of a misdemeanor.” RSA 652:14 defines “election officer” as any moderator, deputy moderator, assistant moderator, town clerk, deputy town clerk, city clerk, deputy city clerk, ward clerk, selectman, supervisor of the checklist, registrar, or deputy registrar.

In essence, RSA 659:44 prevents election officials acting in their official capacity from endorsing a candidate and thereby creating an appearance that those running the election

system are officially biased for one candidate and against another.

RSA 659:44 in no way restricts the First Amendment rights of the individual, i.e. an election officer acting in his or her individual capacity. While opinions may differ and the law is unsettled as to the extent the Board as an entity can endorse a candidate, there is no question that a selectman, for example, could write a letter to the editor of the local newspaper – in his or her capacity as an individual and without identifying his or her status as a selectman – expressing his or her support for a particular candidate for an office. However, the conduct of that selectman at the polling place, on election day, could constitute electioneering if he or she is holding a placard for a particular candidate and depending on close he or she is to the voters.

For additional information or questions, please contact **Attorney John L. McGowan.**

## Secret Ballots and Recounts Cont.

Secret ballots and recounts arise under three circumstances. First, if prior to conducting a vote, 5 voters request in writing that the vote be by secret ballot, then the vote must be held by secret ballot with a “yes/no” response. Note that under RSA 40:4-a (I), there are no restrictions as to the number of times in which a secret ballot can be requested nor whether the requests can be made in groups regarding multiple warrant articles.

The second circumstance is when a recount is requested for a secret ballot vote. The process

for this type of recount is that 5 voters who are present may request a recount; the request need not be in writing. The moderator must then immediately recount the secret ballot vote following the public announcement of the vote provided that the vote margin is not more than 10% the total vote cast.

Finally, under RSA 40:4-b, when a non-ballot vote (voice or hand) is questioned after the moderator declares the vote, 7 or more voters present may request a recount. The request may be done verbally or in writing but it must be made immedi-



ately after the vote announcement and before any other business begins. Following the request, the moderator shall conduct a recount of the vote by a secret “yes-no” ballot.

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