

A
Handbook
for

VERMONT
MODERATORS



Office of
the Vermont
Secretary of State
2009

A Handbook for Vermont Moderators

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Introduction

Before there were selectboards, clerks, or treasurers in Vermont, even before there were established towns, there were moderators. When Governor Benning Wentworth chartered the first Vermont town in 1749, he appointed Col. William Williams to be the moderator of Bennington's first meeting, "which he is to Notify and Govern according to the Laws & Custom of our Said Province."

Thirty years later, Vermont was an independent republic. In its first law on town meeting, adopted in February of 1779, the Vermont General Assembly ordered that towns meet at ten o'clock in the morning of some day in March to elect officers. The first order of business was the election of a moderator for the meeting.

The election of a moderator is still the first order of business for Vermont town meetings held on the first Tuesday of March in municipalities not using the Australian ballot system for election of officers. Moderators are essential. Which candidate shall be elected a selectboard member or what sums the town should vote for highways are questions that cannot be settled by an "aye" or "no" vote. A moderator is needed to handle the motions, the amendments, and the process of deciding. Voters cannot do it alone.

The job of moderator has never been easy, in large measure because of the lack of firm rules to follow in the conduct of the meeting. Moderators have had to punt more often than they would prefer. Two decades ago the situation improved, in part as a result of the 1982 legislative act making *Robert's Rules of Order* the basic rules of order for Vermont town meetings.

For many years, the Office of the Secretary of State and then the Vermont League of Cities and Towns has sponsored workshops for moderators, to review the basic steps and give moderators a chance to talk to each other about the mechanics and the strategies of running a municipal meeting. This handbook is a product of those early workshops.

This edition of the *Moderator's Handbook* is a revision of a publication that was first produced in 1985 by then Secretary of State (and town moderator) Jim Douglas. Like the earlier publication, the 2009 *Moderator's Handbook* contains citations to state law, court cases, exercises, and an ample sampling of our own opinions on how to be a moderator in Vermont. The best parts reflect the fact that it has been reviewed and edited by practicing Vermont moderators. We hope it will be of use. We will be grateful for your comments, criticisms, or suggestions for improvement.

A handwritten signature in black ink, appearing to read "Deborah L. Markowitz". The signature is fluid and cursive, with the first name "Deborah" being the most prominent.

Deborah L. Markowitz
Secretary of State

The Role of Moderator

Moderators are the referees of municipal meetings. They guide and mold the meeting from opening gavel to adjournment with an authority that is second to no one, not even the selectboard, during the time the meeting is in session. They do not take positions or sides, and they seldom vote, but they stamp each meeting with their presence. In many cases, the character of a municipality is the character of its moderator.

Every municipal meeting in Vermont needs a moderator. The Australian ballot system of voting has displaced some of the work of moderators, by moving questions formerly voted in open session into the polling place, where the town clerk is presiding officer, but the office of

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moderator is far from becoming obsolete. Some towns still vote all questions and elect all officers in open session, but most towns still vote some issues on the floor.

The town is not the only municipality that needs a moderator, of course. Moderators are needed by town school districts, union school districts, villages, and fire districts. Each receives special treatment here, where the laws relating to those municipalities differ from the general powers and duties of a moderator.

The niceties of *Robert's Rules of Order* and the laws of Vermont notwithstanding, meetings are driven by the dynamics of personality and community fervor. The ultimate judge of what should be done is the people, through their power to support or overrule the moderator, and no authority will stand in their way. Only the moderator has the power to channel the passions and ideas of the people toward a procedural resolution of their problems and needs.

Vermont law on the role of a moderator is very sparse. The law says a moderator shall be elected at the annual meeting for a term of one year [17 V.S.A. § 2646(1)] unless a municipality has voted to elect officers by the Australian ballot system [17 V.S.A. § 2680 (b).] The moderator elected at last year's annual meeting will preside at this year's annual meeting, until a new moderator is elected. That new moderator will take office after being elected, and will preside at the remainder of this year's meeting and at special meetings throughout the year until the beginning of next year's annual meeting. There is no requirement that moderators be sworn before taking office. 24 V.S.A. § 831. If the moderator is absent, a selectboard member must preside until a moderator pro tempore is chosen. 17 V.S.A. § 2657.

***Robert's Rules of Order* can be purchased in most stationery stores or downloaded at <http://www.sec.state.vt.us/townmeeting/>**

Chapter 2

Preparation for Town Meeting

Help prepare the warning. In January, before the annual meeting is warned, the selectboard, school board or other legislative body develop the warning for the meeting. A moderator ought to be present when this is done to ensure that questions are written and ranked properly. It is the moderator, in most cases, who suffers when errors are made in the warning. Even if the board does not take the advice of the moderator, at least the moderator will be able to question the board at this time about their intentions in drafting articles for the warning.

Review warning. Before the meeting begins, the moderator should read through the warning and discuss the various proposals with appropriate municipal officials and voters, including those who have led petition drives to place

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questions on the warning. Many moderators line up voters to be recognized first to move each article onto the floor after it has been read, to avoid problems, and allow discussion to begin on the article.

Prepare notes on procedure. Many moderators put together loose-leaf notebooks covering all of the details and questions they have had to face in previous meetings, as well as notes on how *Robert's* treats various questions of procedure. Since the job of moderating is so intense an experience, and so infrequent a task, a sourcebook can be an essential tool.

Set up meeting so only voters vote. The law says that a moderator must follow “reasonable and necessary procedures to ensure that persons who are not voters of the town do not vote.” 17 V.S.A. § 2656. These may include setting up a checklist at the door of the meeting room and separate, roped-off areas for voters and non-voters. In other towns, voters checked at the entrance checklist are given cards to hold up, or have their hands stamped to identify themselves as voters when they speak or vote. Where the assembly consists of voters and non-voters, some moderators ask that non-voters stand at the beginning of the meeting, and then remind them that they may not vote or otherwise participate in the meeting without the permission of the assembly, although they are still welcome to watch the proceedings. Once identified, non-voters will then be less likely to become confused about their role and voters will be more likely to help the moderator enforce the rule against participation by non-voters.

Review *Robert’s Rules of Order*. A good moderator will also review *Robert’s* thoroughly before each meeting to ensure technical competence, especially with motions. Vermont town meetings vary in their use of formal and informal rules of procedure, depending on the technical sophistication of the moderator and the voters. As voters become more familiar with *Robert’s*, however, moderators will be at a disadvantage if they continue to rely on the old way of running meetings, without adequate support from General Robert.

Ensure minutes accurately reflect motions and votes. Although minutes are the clerk’s responsibility, a moderator ought to ensure that the minutes accurately reflect the various motions and votes made and taken at the meeting. In addition to keeping your own notes, insist that the meeting be tape recorded (and/or videotaped, if you can arrange it), so that you have some other reliable medium other than notes to turn to when a question arises about what happened.

State Law Versus *Robert's Rules*

Authority. Moderators should remember the pecking order of authority—when state law speaks to procedure it beats *Robert's*; when state law speaks to procedure, but specifically allows a meeting to decide to act in another way, the vote of the people prevails; when a moderator rules on a question of procedure, the voters may appeal the decision and allow the voters to decide the question.

This does not mean that the people's will is always supreme, however. Ultimately, state law may overrule the voters. For example,

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if the voters overrule the moderator and allow an article already decided to be reconsidered, state law will regard the original vote as valid and the reconsideration as a nullity, no matter what the voters decide. Laws and rules have meaning; within those laws

and rules the voters are free to decide the questions for themselves.

State law and *Robert's* do not diverge much. The principal differences are calling for a paper ballot vote and reconsideration.

Paper Ballots. *Robert's* requires a majority vote of those present and voting to demand a paper ballot. State law allows a paper ballot on the request of seven voters, unless the town has provided some other procedure. 17 V.S.A. § 2658. One town, for instance, decided at the beginning of a municipal meeting that paper ballot votes were too time-consuming to remain at the whim of seven voters, and voted to require a majority vote on a request for a paper ballot. A moderator may, of course, decide at any time to use any form of voting, paper included, by saying as a preface, "If there is no objection, we'll vote by paper ballot on this motion." If a single voter objects, then seven voters may request a paper ballot. If seven will not support a ballot, then no paper ballot may be used for that question.

Reconsideration. State law also prohibits a town from reconsidering an article once it is voted and the assembly has begun work on another article. 17 V.S.A. § 2661. It is good practice for the moderator to instruct the assembly that this is the rule at the beginning of the meeting, and then to allow adequate time for a motion for reconsideration to be made before taking up the next article. Once a new article has been taken up, the prior article may be reconsidered or rescinded only at a new meeting, petitioned by five percent of the voters. *Robert's* is more generous in allowing reconsideration, but must be ignored on the subject, given state law. The moderator must be diligent in ruling out of order all motions on articles previously decided, even when those "decisions" have been defeats of main motions, if the assembly has taken up the next article.

Consider only properly warned articles. State law also prohibits consideration of articles that have not been warned. If somebody forgot to warn an article or even if a majority of the voters want to add an article that did not appear on the warning, it's too bad, but it's too late to consider them at this meeting. You will need another warning and another meeting to consider it. This is also why you cannot take binding action under the article "Other business"

because the action won't be binding as it hasn't been warned. 17
V.S.A. § 2660(d).

You can't amend warned articles to serve as substitutes for articles or subjects that haven't been warned.

Amendments must be germane. The same rule applies to amendments of properly warned articles. You can't amend warned articles to serve as substitutes for articles or subjects that haven't been warned. You can't amend the article to purchase a truck by substituting "grader" for "truck" because a grader wasn't warned.

You can't amend the article to appropriate \$100 by taxes for a local service club by substituting "grant \$100 of tax exemption" for "appropriate \$100 by taxes" because exemption hasn't been warned. An amendment must be germane to the subject that was warned, and it must be reasonable to achieve the purpose of the article as warned.

Moderator's behavior

Don't enter legal debates. Moderators occasionally are asked to rule on legal questions. For instance, "Is this meeting legal, Mr. Moderator, since I didn't get a copy of the town report?" This chilling question is just one of hundreds that could be and are asked of moderators each year. The best policy is not to answer it.

Having the town attorney present during the meeting is handy when legal issues arise. The moderator is responsible for deciding procedural questions, but should simply refuse to serve as an authority on other kinds of questions involving a substan-

tive knowledge of law or of subjects related to the articles on the warning. Find someone else to make a statement, or recommend that the voter take up the question with the courts or the select-board, but don't get involved in legal or substantive questions, not if you expect to retain the respect of the assembly for your impartiality and fairness.

Some moderators appoint parliamentarians, but *Robert's* is clear in stressing that the authority to rule on parliamentary questions, even when a parliamentarian is appointed, remains with the moderator.

Appoint a parliamentarian for the meeting. The benefit of some other authority to hand questions of this sort to in the midst of a town meeting should be obvious. Some moderators appoint parliamentarians, but *Robert's* is clear in stressing that the authority to rule on parliamentary questions, even when a parliamentarian is appointed, remains with the moderator.

A moderator should be cautious. In 1987, a moderator introduced two write-in candidates at the town meeting. The candidates were running for offices to be filled by Australian ballot the same day. In late fall of that year, a superior court judge invalidated the election and ordered a new one, arguing that the moderator's introductions constituted improper influence.

Here's another trap. "I move to amend the article to vote the sum of \$590,000 as set in the report calculated by the same methods and the same ratios as used last year." Suppose as moderator you recognize this is an illegal attempt to reestablish last year's grand list and forestall reappraisal of property in town. Would you rule it out of order as illegal?

The moderator is the only person at town meeting who is required to be impartial throughout the meeting.

Most moderators agreed they would not, recognizing that their authority is limited to questions of procedure, not substantive law. Look for the town attorney, if he or she is present, if not, let it proceed. There's always reconsideration at a subsequent meeting if changes need to be

made.

Remain impartial. The moderator is the only person at town meeting who is required to be impartial throughout the meeting. The minutes of one town meeting give the example of a moderator who reads an article, recognizes one who will move the article as written, then steps down to say a few words on it, then returns to the podium to handle the voting on the question.

This was a mistake. You have to remain impartial. If you must speak on a motion, step down before the article is read and don't come back until the vote has been completed. A selectboard member is the best candidate to take over for you, as long as he or she

isn't too closely associated with the subject too. In any case, as moderator, you may choose the temporary moderator, using your considerable unanimous consent powers. Of course, if your ruling is challenged, you will need to put the question to the voters, and if necessary hold an election to appoint a moderator pro tempore on this question.

Act with unanimous consent when possible. Unanimous consent is as important as any of the tools a moderator has at his command. To implement this procedure, you will need to state what you intend to do and introduce that statement with the phrase, "If there is no objection ...," or some other phrase which is akin to it, in order to prompt voters who do have objections to state them at the time. We do not see any authority to act by unanimous consent without some statement to this effect.

A good moderator facilitates the meeting and the wishes of the voters.

Facilitate the will of the voters. A good moderator facilitates the meeting and the wishes of voters. In one town meeting, for example, the minutes show that, "The moderator, sensing a balance of opinion of this issue, reminded voters that a paper ballot may be requested on any issue."

Nothing to complain about here. The moderator's actions are fine. In fact, we compliment the moderator for having the sensitivity to "sense[e] a balance of opinion on this issue" and to instruct voters in how to ask for a paper ballot.

Sometimes, of course, the voters turn against you, and overrule your decision. *Robert's* explains that, "when the chair rules on a question about which there cannot possibly be two reasonable opinions, an appeal would be dilatory and is not allowed," and concludes that his rulings are sacrosanct and immune from appeal.

We're not so confident about that point. There could be two reasonable opinions on a host of close questions. *Robert's* itself is seldom so final and conclusive that an alternative argument would fail to mature if you gave the opponent a little time to think it through. To us, the moderator is the facilitator of the voters' meeting, and not its chairman or president which in corporations or associations are more powerful executive positions than that of moderator. There are bound to be times when the voters overrule you, and that's fine. You needn't walk off the stage when it happens.

What to do when the assembly seems determined to head for perdition, in spite of *Robert's* or state law? Let's say they refuse to live with your ruling that no binding action can be taken under "Other Business." So they overrule you? So what. The courts will take care of any loose ends, and in time even the most remote voters will learn the rules.

When an appeal is taken from the moderator's decision the form of the questions to the voters should be, "Shall the decision of the moderator be sustained?"

Moderator does not oversee Australian ballot voting.

Remember to distinguish between your role as moderator and that of the presiding officer of an Australian ballot election. The presiding officer of Australian ballot elections is the municipal clerk.

The meeting in many towns has split into two discrete parts—the open meeting and the Australian ballot election. Each has its own presiding officer, and the moderator has nothing to do with the Australian ballot election, with one exception. That is, in towns that hold their town meeting on Monday night (which since 1992 could also be held on Saturday or Sunday before town meeting, if the electorate so votes), when the voters reach the place in the

warning where there is an article to be voted by Australian ballot on the following day, the moderator should ask if there is any discussion of the article. Stop short of taking action, or considering amendments or other motions that affect the article, however, since the question itself is beyond your control.

Similarly, a moderator need not “recess” the Monday night meeting until the following day; he may adjourn the meeting without fear of compromising the Tuesday election. Whatever is done Monday night, the town clerk as presiding officer will still be able to declare the polls open and later to close them, independently of what has occurred on Monday night.

When you hold your town meeting on Tuesday you may permit discussion of Australian ballot items at the floor meeting except for the election of candidates. This reflects a change in the law that was made in 2008. The law now provides “Notwithstanding section 2508 of this title [prohibiting politicking in a polling place], public discussion of ballot issues and all other issues appearing in the warning, other than election of candidates, shall be permitted on that day at the annual meeting, regardless of the location of the polling place.” 17 V.S.A. § 2640(c).

When you hold your town meeting on Tuesday, discussion of questions that are the subject of Australian ballot articles is now permitted, except for the election of candidates. 17 V.S.A. Section 2640(c).

Chapter 5

Voting

The general rule. The law says this about voting: “When a vote declared by the [moderator] is immediately questioned by one voter, he shall divide the meeting, and if requested by seven voters, shall cause the vote to be taken by paper ballot, unless the town has provided some other procedure in such cases.” 17 V.S.A. § 2658.

The general rule is that every vote must first be taken by voice vote (or “viva voce,” as it’s fun to say). The only exception is the election of certain officers. The meeting must vote by paper ballot for selectboard members, listers, auditors, and elective road and water commissioners. The clerk may be instructed to cast one ballot for uncontested offices.

All those in favor of the article indicate by saying “Aye” [“Aye”]; those opposed, “No” [“No”]; the [“Ayes”/ “Noes”] appear to have it; the [“Ayes”/ “Noes”] do have it; and the article is [passed; defeated].

Don’t move on to the next article or vote. It’s not over. If one voter questions you (“Division!”), you divide the meeting, having those in favor of the motion stand and be counted, and then those opposed. Then you declare the result again.

It’s not over yet. Seven voters may now stand and ask for a paper ballot vote on the article, and they have a right to get it. Get out the board of civil authority, the checklist, set up a line and a box and somebody get some paper.

Note that it’s just as proper for those seven voters to stand up directly after you have made a declaration on the voice vote,

which would mean that you would skip the division and go straight to the paper ballot.

Does it seem awkward, inelegant, and hard to manage? Many moderators feel this way. This is where the local option comes in.

The law says voting must be done this way, “unless the town has provided some other procedure in such cases.” Put an article in the warning “To see if the town will vote to adopt a rule of majority voting to order a paper ballot.” A majority vote of the town

In handling the voting on motions, the moderator must restate the motion, and explain the implications of a vote of “Aye” and of a vote of “No.”

meeting is required to adopt this as a rule. Or a voter could move the adoption of a new procedure “to require paper ballots on all budget votes,” and since the motion was without notice, a two-thirds vote would be required for adoption of the rule.

Robert’s tells us that division is used as a standard method of voting, in lieu of voice voting, whenever a two-thirds vote is required to carry a motion.

In handling the voting on motions, the moderator must restate the motion, and explain the implications of a vote of “Aye” and of a vote of “No.” It’s easy to get mixed up, as a voter or as a moderator. One moderator, juggling a main motion to appropriate \$500 to the county mental health agency, and an amendment to raise the \$500 to \$1,000, explained to the meeting that, in the vote on the new amendment, “a voice yes vote would be for \$500 and a no vote would be for \$1,000.” After the vote, he declared that the “No” vote had won and that \$1,000 had been voted for the county mental health agency.

This was in error. The moderator must put the question as it was moved, by giving the electorate a chance to reject or adopt the amendment on its face. A “No” vote would be a vote against the amendment to the main motion to raise the amount to \$1,000.

Furthermore, in the example cited, the moderator took an improper shortcut by settling the question on the amendment vote. Done properly, he would have put the amendment to a vote, saying

At the end of discussion of an amendment, the moderator should call for a vote, first on the amendment and then, if discussion is complete, on the original motion as amended.

“Those in favor of the amendment, say Aye; those opposed, No.” If passed he would then have put the amended main motion to a vote. Instead, he put the amendment up against the amount stated in the main motion and called the result the end of it.

Chapter 6

Motions

Basic motions. *Robert's* is used as the reference on motions, and we will not presume to repeat all of those details here, but we do feel obligated to note some of the eccentricities of motions in Vermont town meeting. When you read *Robert's*, pay particular attention to the basic motions and their relationship to each other. Many editions of *Robert's* have tables or charts to help you find the basic information on different motions. At a minimum, these charts—or reference keys you design yourself—should tell you at a glance whether a motion is privileged, incidental, or subsidiary; whether it is debatable or amendable, whether it requires a second, and whether it requires a two-thirds or majority vote to pass.

Keep in mind the distinction between a motion and an article.

The warning contains the articles to be voted. No article can come before the meeting unless it is moved. A main motion brings an article to the floor, and the main motion and the process of deciding the main motion may then be affected by various other motions.

When you read *Robert's*, pay particular attention to the basic motions and their relationships to each other.

The names *Robert's* gives for motions may not be the same words used by voters at a municipal meeting. The motion to table an article until a later time when a similar article is being considered is the motion to Postpone Definitely or to a Time Certain in *Robert's*. The motion to close or cut off debate is treated by *Robert's* as Previous Question. The motion to pass over may be an Objection to the Consideration of the Question, if made after

the main motion is moved but before debate begins. It may also be construed as a motion to Suspend the Rules, if made before the main motion is moved.

Motion to pass over. The motion to pass over is an unique Vermont tradition. While you will not find it used in *Robert's* the Vermont Supreme Court has recognized the motion. "The vote to pass over this article, though not strictly parliamentary, may be the judgment of the town upon the merits of the question, as fully obtained as if the motion and vote had been to dismiss the article. We assume, in the absence of any evidence to the contrary, that the town, by its vote under the fourth article, decided not to pay bounties to soldiers who had re-enlisted to the defendant's credit, or, in other words, the town, by that vote, declined to pay bounties to this class of soldiers." *Livingston v. Albany*, 40 Vt. 667 (1867).

Motions must be based on warned articles. In a Vermont town meeting, the main motion must be based on an article on the warning of the meeting. No main motion is allowed at a meeting, unless it is based on a duly warned article. How far the main motion can stray from the article has been the subject of a small debate among moderators.

The article as warned was, "To see if the town will vote to raise a sum not to exceed \$1,000 for the county mental health agency." The moderator pointed to the first voter who raised his hand, who said, "I move to appropriate \$500 for the county mental health agency."

Here the first question is the relationship between the article as warned and the main motion that brings the article before the assembly. Many moderators have no problem accepting this main motion because \$500 is "a sum not to exceed \$1,000." Others will firmly insist on a main motion which is identical to the article as warned, because they know how easy it is to lose track of where

you are at town meeting. They would insist on a main motion at \$1,000 and would then accept an amendment at \$500, if that is offered. Try as we have, we can find no answer to this in *Robert's*, which for all its authority is not always well suited to a town meeting format.

Certainly, the subject and the object of a main motion must have been warned in order for the town meeting to consider it. Straying too far afield from the article is risky. Be cautious on this, if you would accept a main motion that differs from the article as warned.

Effect of voting down a motion. In voting a main motion, remember the rule against reconsideration and the need to explain to the voters the impact of voting down the main motion, which is to end all consideration of the subject and to come back at a future meeting to vote the article.

Knowing what motion may be made after a main motion has been moved and seconded and how to handle them is another essential skill of a moderator.

Precedence of motions. Knowing what motion may be made after a main motion has been moved and seconded and how to handle them is another essential skill of a moderator. For instance, the school budget has been properly warned, and a proper main motion is on the floor, duly seconded, to raise a sum not to exceed \$3,500,000 for the support of schools. After the debate proceeds for a while, another voter moves that action on this article be postponed until May 23, when the district will better know the amount of state aid they can expect. The moderator rules this motion out of order, "because another is on the floor at this time."

Whoops. The key is the concept of precedence. A motion to postpone definitely or to a time certain, according to *Robert's*

takes precedence over the motion to amend and the main motion. If the motion to postpone definitely is adopted, action on the amendment and on the main motion is suspended until the day specified in the motion arrives. To insist that the assembly complete action on the motion to amend the school budget before taking up the motion to postpone definitely is an error. A motion to postpone definitely takes precedence – that is, temporarily replaces the motion to amend the budget amount with the motion to postpone definitely, as the immediately pending question. Rather than ruling the motion to postpone definitely out of order, the moderator should have taken up consideration of it immediately.

The motion to postpone definitely is a subsidiary motion, which requires a second. It's debatable, but debate may not stray into the merits of the main motion or the motion to amend, but must stick to whether the main motion should be postponed and to what time; it is amendable, but only as to the time; and requires a majority vote of those present and voting.

Another familiar subsidiary motion is Previous Question, also called to motion to cut off or cease debate or "call the question." In one town, after a voter had moved that debate cease, the discussion continued for another 15 minutes, with the moderator doing nothing. This happens frequently in towns with relaxed procedures and with moderators who are too easy or who don't like to order voters to do anything. But it's necessary here to be more disciplined. Once the motion for Previous Question is made, it takes precedence over all debatable and amendable motions to which it is applied. It is non-debatable. But more importantly, its precedence forces the moderator and the assembly to turn to the motion immediately and to resolve it before discussion proceeds on either the main motion or amendment to which it is applied. A two-thirds vote is required to cut off debate and bring the question

to which it is applied to vote.

Amendments. The subsidiary motion, to amend, is a tricky character. One way to understand the motion to amend is to consider amendments you might rule out of order. For instance, after an article is warned, “To see if the town will vote to appropriate \$500 to the Visiting Nurse Association.” The moderator recognizes a voter who says, “I move not to appropriate \$500 to the Visiting Nurse Association.”

We would rule this out of order, as a negative amendment. Actually, it isn’t treated as an amendment here, but as a main motion, but the effect is the same. Most moderators would agree that a main motion which turns the warned article on its head, reversing its meaning, strays too far from the warned article to be treated with respect. The effect of this negative main motion is to make adoption of the main motion equivalent to doing nothing at all. The negative main motion will also be confusing to voters who will easily lose track of the meaning of a no or yes vote, even if the moderator is generous in explaining the impact of a vote either way. We’d recommend ruling the main motion out of order and then instructing the moving party to move the article as warned, in order to place the question before the voters. If you don’t want to appropriate funds to the Visiting Nurses, vote no on the main motion.

Correcting mistakes. If you find yourself in an awkward situation once a misguided main motion has come out, *Robert’s* explains that you may take one of the three avenues to correct the problem. If as moderator you have not stated the motion as moved and after instructing the voter on the reasons why a negative main motion is out of order and after recommending to the voter how a proper main motion could be made, the voter may suggest a corrected main motion without needing the permission of the assembly. If,

however, you have stated the main motion, the maker of the motion could request the unanimous consent of the meeting to correct it or, failing that, any member could move to amend the main motion to a proper form. Of course, if you simply rule the negative main motion out of order, it will simply die, unless your ruling is challenged, and another voter will hopefully pick up where the process left off by making a proper main motion.

If you find yourself in an awkward situation once a misguided main motion has come out, Robert's explains that you may take one of the three avenues to correct the problem.

The more common solution in Vermont town meetings is withdrawal of the motion by the voter who moved it. If it's been seconded, occasionally you will find that the seconded also withdraws her motion at the same time. *Robert's*

acknowledges this practice with one proviso. Technically, a request to withdraw a motion requires the consent of the assembly, so that the moderator's acceptance of the withdrawal is in the nature of a request for unanimous consent. The moderator then properly asks, "If there is no objection, the motion is withdrawn." If there is an objection, then the moderator or a voter may put the question to the assembly for a vote. A majority vote is required on this motion.

Negative amendments that work. Sometimes what first appears to be a negative amendment is something else altogether. The article as warned read, "To see if the voters approve \$20,000 for a welcome sign, to be built at the town line where the state highway enters the town from the south." A voter moves the question as warned, and it's seconded. Then an amendment is offered: "I move that the voters approve \$0.00 for a welcome sign..." At first glance you might be inclined to rule this amendment out of order on the same grounds as the previous example, but hold

your horses. You wouldn't know it from the minutes, but in the discussion with the moderator we learned that the petitioners wanted the article to authorize the building of the sign; the money was entirely secondary. In fact, the ski area that promoted the sign was willing to put up the sign at their own expense (and apparently the voters were willing to accept this contribution without resistance), if they could convince the town to give its approval to the construction of the sign.

Robert's says that there are times when voting down an article simply fails to accom-

plish what the voters want to do, even though they do not want to adopt the article as warned. In the previous example if the voters wanted to refuse money to the Visiting Nurses, and (nothing personal, Visiting Nurses: you're just a convenient exam-

Part of the parliamentary baggage we carry around with us is the old saw that you can't allow more than two amendments on the floor at the same time.

ple), they could make a motion to amend the article to read, "To oppose any appropriation to the Visiting Nurses." This motion would be in order, even though the effect of passing the amended main motion would be to deny the Nurses the funds they requested.

Multiple amendments. Part of the parliamentary baggage we carry around with us is the old saw that you can't allow more than two amendments on the floor at the same time. This is somewhat misleading without more specificity. A second, as opposed to a secondary, amendment may not always be proper, unless the secondary amendment relates (or is germane to) the primary amendment.

Suppose the highway budget article has been read, moved and sec-

ended, and debate rages. Then there is a motion to remove \$20,000 from the highway budget, which is seconded. Then a voter questions if he could amend the motion to read “\$12,000.” Here the minutes tell us that the moderator stated that there was a motion on the floor and in order to amend this, it would have to be defeated. The moderator was in error. The motion to amend the amendment to read \$12,000 is a secondary amendment and is

Allowing secondary amendments is critical. Without having that facility, we could be boxed into corners by those who make amendments.

completely in order under these circumstances. Here the secondary amendment is entirely germane to the primary amendment because the only variable that is proposed to be changed is the amount the highway fund is to be reduced. The primary

amendment does not have to be defeated before the secondary amendment may be considered.

But we can imagine cases where a second amendment might well be out of order. For instance, if a voter moved the following amendment to cut \$20,000 from the highway budget to increase the amount dedicated to paving town roads so that Willow Street Extension could also be paved, the moderator ought to rule it out of order, as failing the germaneness test when the second amendment is measured against the primary amendment. Remember, the secondary amendment relates to the primary amendment, not to the main motion.

Going back to our example, imagine what would happen if the moderator were right in insisting that the amendment reducing the highway budget \$20,000 had to be voted before the \$12,000 would be in order, as a new primary amendment, but if it passed, the \$12,000 amendment would itself be out of order, since it would amount to reconsideration of an issue that had been settled

by the vote approving how much the highway budget could be reduced.

Allowing secondary amendments is critical.

Without having that facility, we could be boxed into corners by those who make amendments. Town meeting process is, at its best, a negotiation, or mediation, among various factions and individuals, but without the proper procedural tools to develop a majoritarian consensus, and a moderator skilled in instructing voters on how to get where they want to go, town meeting won't work.

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Germaneness

Generally. The most difficult problem a moderator must face is deciding whether an amendment is germane. *Robert's* merely requires that amendments be germane and reasonable, without providing any formula for or definition of what is germane and reasonable. Clearly, an amendment which merely negates the motion to which it applies is not proper, nor is an amendment of an amendment of an amendment, also called a tertiary amendment in *Robert's*. But on the question of germaneness, maybe the best answer for the moderator is to rule and let the voters decide whether to overrule your decision.

If the main motion as moved is not germane to the article as warned, the main motion itself will be flawed.

The key is the relationship between a motion to amend and the article as warned. The voters have a right to know what subjects will be discussed and voted on at a meeting, at least 30 days

in advance of that meeting. If an amendment changes the subject or object of an article, voters will not have had adequate notice of that vote, and the vote would be invalid.

Old court cases. The best way of demonstrating what is germane is to review how the Vermont Supreme Court has addressed the issue. Most of the cases on the question arise from the Civil War era, when towns voted bounties to meet their quotas for soldiers.

The town of Lemington voted at March meeting of 1863 on the warned article, "To see if the town will raise money to pay the

bounty promised to soldiers.” This was a bounty authorized by the Vermont General Assembly by an act of 1862, to assist towns in fulfilling their draft quota of volunteers for the Civil War. The town voted “to raise fifty-five cents on the dollar of the grand list to pay the bounty promised to soldiers.”

The court did not think this amendment too general and indefinite. “All that is necessary in this respect is that a vote of a town raising money should indicate in general terms, the purpose or object for which the money is raised, and if that purpose or object is such as comes within the scope of the powers of the town, it is sufficient. It is not necessary to the validity of the vote that it should state the particular facts which show the present necessity of the town for the use of the money. The object specified being within the powers of the town, it is to be intended that the town has judged properly as to the occasion and necessity for the exercise of the power in the particular instance.” *Blodgett v. Holbrook*, 39 *Vt.* 336, 340 (1866).

But is it material that the bounty had already been offered by the selectmen, and was not thereafter to be offered to volunteers? “It is now also objected that the vote does not follow the warning, in this, that the warning is to see if the town will raise money to pay the bounty promised to soldiers; and in the vote the word offered is substituted for promised. This difference in phraseology is too slight to affect the validity of the vote...”

During the same period, the town of Colchester voted on three warned articles: first, to see if the town will vote to raise a tax upon the grand list to pay recruits or volunteers, for said town, who may hereafter enlist; second, to decide by vote what percent on the grand list shall be raised, and when it shall be collected and paid into the treasury of the town; third, to specifically instruct the selectboard of said town in the disposition of said funds. The people voted, according to the minutes, “that the selectboard be and

hearby are instructed to procure volunteers for the town of Colchester and use their discretion in the payment of bounties to said volunteers, and that the said selectboard are hereby empowered to borrow at the credit of the town, for five years time, not to exceed 200 cents on the grand list of the town for said purpose, and the expenses of said selectboard and recruiting services.”

Was this July 1, 1864, vote valid?

“The objection made to its validity is, that it was not warranted by the warning. It is not denied but the action of the town meeting must be limited to the matters mentioned in the warning, which the statute declares, ‘shall set forth the business to be done, and the subjects to be considered at such meeting.’ This statutory requirement has been construed with reference to its object, which is to notify all interested of the subject matter of the proposed vote or action, so that they may be able to give the subject consideration previous to the meeting, also be able to perceive their attendance at the meeting. For these purposes, only such reasonable certainty is required, as will prevent the interested parties from being misled. Greater particularity may sometimes be desirable, but is not necessary in order to make a warning legally sufficient.”

“In this case the town voted to borrow money on five years credit, to pay recruits, when the warning was to see if the town would vote to raise a tax upon the grand list to pay recruits. It is urged that is not a substantial deviation, because the object, namely, “to pay recruits,” was the same whether the money was raised in one manner or the other. The method, it is to be remembered, as well the object of raising money, is a matter of substantial interest to the taxpayers. Such of them as proposed to remove from town, or to convert their means into property exempt from taxation may have been on these accounts, more favorable to

raising the public money on five years credit, while some may have favored immediate taxation in order to compel such parties to share the burden, and may have been opposed to the payment of bounties except upon such taxation.”

“We cannot treat the vote as valid so far as it authorizes the selectboard to pay bounties and invalid as a loan. The payment of bounties was made by the warning contingent upon taxation to meet the payment. The town was not warned to see if they would vote to pay recruits, but to see if they would vote to raise a tax to pay recruits. We think the vote was unwarranted by the warning and gave the selectboard no authority to bind the town by a promise to pay the plaintiff a bounty.” *Blush v. Colchester*, 39 Vt. 193 (1867).”

The article at the 1864 special town meeting of Hinesburg asked “whether the town would vote to pay bounties to soldiers, and whether it would vote a tax on its grand list for that purpose...” This was done pursuant to an act of the General Assembly, authorizing towns to grant and vote such sums of money as they would judge best, to be paid to those who have volunteered or will volunteer. The court found no reason to complain that the town voted “to pay any that may be drafted from this town, and mustered into the service of the United States, the sum of three hundred dollars, under the present call.”

The law does not require that the business to be done, or the subject to be considered, should be set forth in the warning with greater particularity than is expressed in the statute which authorizes the town to vote money for the purpose names in the warning. All that is necessary in this respect is that the warning of the meeting to raise the money, should set forth in general terms the purposes or objects for which the money is to be

raised, with such reasonable certainty as will notify all interested of the subject matter of the proposed vote or action of the town, and the time and place of meeting.

...the meeting to raise the money should set forth in general terms the purposes or objects for which the money is to be raised, with such reasonable certainty as will notify all interested of the subject matter of the proposed vote or action of the town, and the time and place of meeting.

The court described the implications of a vote at town meeting. “The vote, raising the money, may be regarded as the finding, by the town, of such a state of facts as in the judgment of its legal voters, how, prima facie, at least, the present necessity of the tax... The law will presume that the town found all those particular facts upon which its legal voters acted, and in the exercise of their judgment and the town for the use of the money...” *Alger v. Curry*, 40 *Vt.* 437, 444, 445 (1868).

The town of Starksboro voted in a special meeting in 1947 on two questions. (1) “to see if the voters will authorize the Selectboard to purchase a ‘Marmon Herrington’ 5-ton four wheel drive truck with snow plow attached and dump truck body at a cost not to exceed twelve thousand dollars” and (2) “to see if the voters will authorize the Selectboard to purchase a suitable four wheel drive truck with proper equipment for snow removal and high maintenance at a price not to exceed \$13,000.” The record of the meeting shows that on the first article, “Arthur Clifford moved to buy a big truck,” and that this motion failed. On the second article, the record says, “Moved to buy a four wheel drive truck,” which passed.

The selectboard purchased the exact make and type of truck described in the first quoted article from the plaintiffs, who later sued to collect the balance owed. The town's defense was the lack of authority for the purchase "on the grounds that the failure of the vote on the first article prohibited the selectmen from buying the snow plow unit." The court disagreed, saying that "the motion to buy a big truck was not relevant or germane to the Article. The moderator could have properly declared it out of order...When the moderator allowed a vote on the irrelevant motion to buy a big truck on the first article, a voter could reasonably have felt that he must vote in the negative on the motion if he was in favor of authorizing the selectboard to purchase under the second article." The defense was rejected and the selectboard were held accountable for the debt on the truck. *Kaeser v. Town of Starksboro*, 116 *Vt.* 251, 254 (1950).

The town of Whitingham voted at a special town meeting in 1932 on the article, "To see if the town will vote to procure the services of Dr. F.A. Walsh and to authorize the selectboard to contract with said Dr. F.A. Walsh to establish an office in said town of Whitingham and to attend to the sick of the town." Then article passed, with an appropriation of \$2,000, which was one of the terms of a draft contract laid before and discussed at the meeting. The physician signed the contract; the selectboard refused; and they all went to court.

The question in the case was whether the word "authorize" could be read to mean a direction to the selectboard. "Considering the circumstances under which the vote in question was passed," said the court, "it seems plain that the town meeting intended to instruct the selectboard to close this contract with the plaintiff. ...We therefore hold that the vote imposed upon the selectboard a duty to sign a contract with the plaintiff." *Walsh v. Farrington et al.*, 105 *Vt.* 269, 274-76 (1933)

Citing the Walsh case as precedent, the court reiterated the point in 1970, that “the warning set forth in the terms of the statute indicated the purpose or object of the meeting with such certainty as gave notice to all interested in subject-matter of the proposed vote or action of the municipality and the time and place of the meeting. This was all that was necessary.” *Brochu et al. v. Brown et al.*, 128 Vt. 549, 554 (1970)

The rule. On the basis of these cases, we can at least conclude that an amendment which changes the subject of a main motion (“I move to amend ‘fire truck’ to read ‘road grader’”) or an amendment which changes the method of completing some business (“I move to amend

If the main motion is general, amendments may make it more specific, but specific articles probably will not be valid if amended into general motions.

‘raise by borrowing’ to ‘raise by a tax on the grand list’”) should be ruled out of order. If the main motion is general, amendments may make it more specific, but specific articles probably will not be valid if amended into general motions (as when a

motion “to buy a 1985 four wheel drive long body one ton Ford pickup” is amended to read “to buy a big truck”). No town needs to be told by a court that the vote it took at the annual meeting is invalid. Vigilance by the moderator to germaneness and reasonableness is the best protection.

Main motions. Amendments alone, of course, are not the only problem. Occasionally a voter will move a main motion that is different than the article as warned. If the main motion as moved is not germane to the article as warned, the main motion itself will be flawed. Ideally, the article should become the main motion, with the amendment process proceeding accordingly, but this is

impossible in some cases, where the article is written, “To see what sum...” Sticking as close to the article as warned, even if some information needs to be filled in by the voter who makes the main motion, is in every instance the better policy.

Motion to study. An amendment is offered: “I move to amend the article to appropriate \$15,000 and to provide for a study by the selectboard and the prudential committee of the needs of the town fire department and to report back to the voters.”

Many moderators, recognizing the softness of a request for a study, would find the amendment not germane, but encourage that the motion wait until the time the meeting reaches the article entitled, “Other Business,” and would allow it at that time.

Recognizing that it would not amount to binding municipal business, they still feel the selectboard/prudential committee would respect the wishes of the voters in this context and complete the study.

Amendments. In another community, the warning included an article asking, “Shall the town vote pursuant to 32 V.S.A. § 1224 to pay the town clerk an annual salary which shall be in lieu of fees collected by the clerk? If so voted, this salary shall be paid commencing July 1, 1988” (remember, this is from the 1987 town meeting).

A voter moved to amend the start of the new compensation from July 1, 1988, to July 1, 1987. The moderator ruled this to be a “major change” in the warning and “out of order.” On the surface, the ruling seems unduly restrictive, since a number can always be changed by amendment, unless the change raises other concerns, such as whether the proposal of amendment is frivolous or absurd. But here the clerk has been elected to a three year term that ends on June 30, 1988. By the amendment, the moderator concluded that the town would be interfering with the clerk’s expectations of

compensation when she first took office, and held that it was a major change in the warning. This one was a close call, but close calls are no longer close if no one appeals; no one did, so the ruling held and the main motion was adopted as originally moved.

How about this situation? The minutes report the following action on an article: “ To see if the town will authorize the Selectboard to borrow an amount not to exceed \$125,000.00 for a period not to exceed 10 years for the purpose of making improvements to certain sections of the Pond Road. Motion made and seconded. Joe Malone moved to amend the main motion and borrow \$200,000.00 for other roads. The motion was ruled out of order on the grounds of germaneness.”

And the moderator was correct.

A motion to increase the amount is not the problem; it's the change from Pond Road to “other roads” that offends the rules requiring germane amendments and that all subject be warned before they become adopted as decisions of the voters.

Chapter 8

Convening the meeting

The moderator gavels the meeting to order. Next come whatever traditional ceremonies are proper, such as the *Pledge of Allegiance*, perhaps a song, a welcome to new residents and new voters and then the moderator usually takes a few minutes to explain the rules that will govern the meeting. What the moderator says at this point may vary from town to town and moderator to moderator. (See sidebar on next page.)

The moderator might ask those who are not voters to stand at this point, and explain to them that they may not vote or speak on articles, if some other method of distinguishing voters from nonvoters has not otherwise been adopted. The principal may not be a resident of the school district, but the school board may want her to speak on the proposed budget. This is best handled by the moderator saying, “If there is no objection, the principal may speak.” If one voter objects then the principal may not speak, since allowing a nonvoter to speak requires a suspension of the rules and a vote of two-thirds.

The following items might be included in the moderator's opening remarks:

- ♦ *Robert's Rules* is the basic rules of order for this meeting;
- ♦ All motions and remarks should be addressed to the moderator;
- ♦ Articles must be moved, seconded, and restated by the chair before debate may begin;
- ♦ Articles may be amended, and amendments amended once, with voting to proceed from the last proposal of amendment in reverse order to the sequence of their proposal;
- ♦ Debate may be cut off by a motion and a two-thirds vote;
- ♦ The role of the moderator is to explain procedural questions, but that no voter should hesitate to ask substantive questions on articles to understand what is being vote;
- ♦ Voters should stand up and give their name and speak in a loud voice; and
- ♦ A voter will not be recognized a second time on a particular article or amendment until all other voters who wish to speak on the issue for the first time are given a chance to do so.

Elections

Election of Moderator. The first order of business at an annual meeting in municipalities not using the Australian ballot system for election of officers is usually the election of a moderator. In some cases, the present moderator will gavel the meeting to order and then step aside to permit a selectboard member to conduct the election of moderator. The Vermont Supreme Court has ruled, however, that there is no conflict of interest in a moderator presiding over the election of a moderator, even though the moderator is one of the candidates. *State ex rel. Ballard v. Greene*, 87 Vt. 515, 517 (1914)

Election of Officers. The election of other officers in open session is uniform, except for the election of listers, auditors, selectboard, and elective road commissioners and water commissioners. For these offices, the law requires a ballot vote. When there is only one candidate for a position, the moderator may entertain a motion for the clerk to cast one ballot to elect this individual to the office and fulfill the law's requirement of a ballot vote. 17 V.S.A. § 2660(b). In contested elections, paper ballots must be handed out to the voters to elect these officers. While state law is silent on the issue, *Robert's* does say that no second is required for nominations.

Speeches. Whether candidates may speak on their own behalf or have others speak on their behalf before a vote to fill a particular office is a matter for the moderator first, and the voters finally (if necessary) to decide. *Robert's* does not mention the practice explicitly, but it is not uncommon in many towns. In municipalities that use Australian ballot system for electing officers, speeches by candidates and their supporters are not permitted at an open

session of the meeting held on the same day as Australian balloting. 17 V.S.A. § 2640 (c).

Eligibility for office. Vermont law requires that all elective local offices be filled by legally qualified voters in most cases. Since the checklist is available in the room, it should be no trouble to ask a member of the board of civil authority whether a particular

Vermont law requires that all elective local offices be filled by legally qualified voters in most cases. Since the checklist is available in the room, it should be no trouble to ask a member of the board of civil authority whether a particular nominee is a voter.

nominee is a voter. If not, the moderator may rule the nomination of a non-voter out of order, since that person could never be elected to a local office.

Incompatible offices.

Incompatible offices present a more complex problem. If an auditor is nominated for the office of selectboard, 17 V.S.A. § 2647 would appear to prevent her from serving in both capacities. It is not, however, necessary for her to resign her position as auditor

prior to the election in open session, since she may lose the election. The better practice is to insist on her resignation from one of the positions after the vote and before she takes her oath of office.

Majority vote. State law explains that when no candidate has received a majority of votes by the end of the third vote, the moderator must announce that the person receiving the least number of votes in the last vote and in each succeeding vote shall no longer be a candidate. Eventually, one candidate will receive a majority of the votes by this process of elimination. 17 V.S.A. § 2653.

Reports of Officers

Most municipal meetings traditionally provide an opportunity for the voters to accept the annual report of the officers. This article is first moved, and then gives way to an informal process in which various officers offer corrections and elucidations on their reports, as they appear in the Town Report. Voters may cross-examine town officers under the cover of this article and request explanations for actions taken during the year that may not have met with popular support.

Eventually the article must come to a vote. In some towns, the voters have rejected this article, and voted not to accept the reports of the officers. The effect of the failure of this article is unknown. Presumably, the censure implied by such a vote is sufficient to communicate the dissatisfaction or frustration of voters, but the unwillingness of a majority of voters to accept the report of the officers has no other measurable effect on town business, unless it leads to a similar attitude on more binding articles.

Most municipal meetings traditionally provide an opportunity for the voters to accept the annual report of the officers.

Money

Money is the source of most of the controversy that fuels municipal meetings. How much we should raise to pay for highways, schools, personnel, and other agencies are questions which inevitably create the greatest tensions in a meeting, as the voters decide how much discretion there is in a municipal budget. How the articles on money are warned is critical in determining how the voters will reach consensus.

The legislative body prepares the warning. Except for articles petitioned for inclusion on the warning and articles for which state law provides a form, the selectboard, school board, prudential committee or trustees have the authority to decide how articles are worded.

While the moderator's job of responding to main motions and amendments may differ in each case, the voters' decision on an appropriate sum should not change because of the form of the question. "Not to exceed" is an amendable element of the article; voters cannot be bound by an artificial limitation on the decision to appropriate funds for a particular purpose.

Money articles generally take one of three forms:

1. "To see what sums the municipality will raise for the purpose of ..."
2. "To see if the municipality will vote a sum of money not to exceed \$3000 for the purpose of ..."
3. To see if the municipality will vote to raise \$133,000 for the purpose of ..."

Money articles should be freely amendable, up or down, in any amount, to the limits of what the moderator will regard as reasonable. A motion to raise \$1.00 for highways is probably frivolous and out of order, but is a ruling nevertheless still subject to challenge and overruling if the voters insist.

Not all moderators agree with this position. They feel that warnings are written for those who decide not to attend town meeting as well as those who participate and that the expectation of those who do not attend should bind those who do. Some moderators will rule amendments of money articles warned for precise sums out of order altogether, insisting on a “yes” or “no” vote in those cases; others will rule amendments of sums exceeding the “not to exceed” amount out of order as violating the warning. In this most critical matter, authority fails us. State law and *Robert’s* are silent; only tradition and common sense suggests an answer—that short of frivolous amendments, the amount in money articles should be amendable in any direction.

May the amounts of a line item in the selectboard’s budget be amended to a higher or lower figure?

The subject of line item vetoes is the rage in Washington D.C., but it’s been a feature of Vermont town meetings throughout our history. School districts escape some of the onus of a cut because of the school board’s statutory authority to “determine how the voted funds shall be expended,” after the voters have set the budget total. 16 V.S.A. § 562 (8). But selectboards have only as much latitude in fiscal affairs as the voters allow them.

If the voters approve the highway budget without amendment, the selectboard may spend the money on highways in any manner they choose, in order to fulfill their statutory authority. 19 V.S.A. § 303. But we’d argue that by amending or deleting a line item, the voters effectively restrict the selectboard’s discretion in these

areas. But that is a substantive point of law, and here we are dealing with procedure. The motion to amend a line item in a budget is proper, and can be accepted by the moderator.

The traditional rules about the need for warning of subjects to be voted breaks down when you discuss a budget. The article, “To see what sums the town will vote for the interest of the inhabitants and for the prosecution and defense of the common rights,” doesn’t tell you very much about how the big dollars the selectboard have asked for is to be spent. The town report usually contains the selectboard’s proposed budget, and that will help, but the report is seldom ready by the time the warning is posted.

Selectboards have been known to make changes in a budget up to and sometimes after the publication deadline for the town report. It’s difficult then to link the proposed budget and the warning, except by implication.

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Suppose, then, under the general fund budget, a voter moves to include funds for a service agency which does not appear in the selectboard’s budget. Is the amendment out of order because it isn’t germane? We think not, especially if the selectboard has included other service organization stipends in the budget. Is it out of order because it hasn’t been warned? How could this be when nothing in the proposed budget has been warned, in the sense that it was available to the voters at least 30 days before the day of the vote.

We’re not sure we have a good answer to this puzzle, except to say that each case must be taken on its own. If the selectboard has decided to pull all service organization requests into separate arti-

cles, then a new one does violate the rules against adequate warning and germaneness. But if the selectboard includes service organization requests in the budget, we'd be hard pressed to argue against the motion to include funding for another organization. Let's agree to keep thinking about this one.

There is an easier way to handle a debate involving what number ought to be included in a motion on a budget. When the main motion or amendment has a variable, such as a dollar figure or a date, which is likely to be the subject of continuing motions to amend in search of a number that is acceptable to a majority of voters, rather than insisting on the formal primary and secondary amendment process, remember filling the blanks.

Robert's cites a chairman saying, in true unanimous consent fashion, "If there is no objection, the chair suggests that the number in a motion be decided upon by the method of filling blanks." Pause. "It has been suggested the committee be composed of seven and also three members. Are there additional suggestions? The scene continues as the chair gets another recommendation, asks if there are any others, and then provides for a vote on each number from the largest to the smallest until one is adopted, without a lot of shifting gears, as you would do with the more traditional amendment process.

Here's another example. After the moderator reads the article, "to see what appropriation by tax the town will vote for general funds, town, county and extension service, highways," the first voter recognized says, "I move to keep the tax rate the same as last year's, 0.3678, and any increase in revenue over the budgeted figure be applied to reduce indebtedness."

The setting of a tax rate is okay (see 17 V.S.A. § 2664,) but the issue of additional sums to reduce indebtedness raises a subject which has not been warned by this article. Voting budgets by set-

ting a rate on the tax rate, however, is patently unworkable in any town that takes its appraisal system seriously, since you will never know what amount you have raised on Town Meeting Day until the grand list book is lodged and the selectboard applies the voted needs of the town and school district to it.

Voting a highway fund budget in the same article as general fund is also inadvisable. The better practice, when the selectboard designs the warning, is to use separate articles.

Voting a highway fund budget in the same article as general fund is also inadvisable. The better practice, when the selectboard designs the warning, is to use separate articles.

Occasionally, the warning will have been written by splitting out various appropriations from the general fund budget. This may lead to confusion when the general fund budget includes amounts for these appropriations, even though the articles duplicate those appropriations. Once, a moderator

faced this main motion: “I move to raise \$1,500,000 to defray the town’s ordinary expenses, contingent upon the passing of article 7; otherwise the figure to be raised by taxes shall be \$1,300,000.”

What is this? It is a motion contingent on another vote; it is a motion that defies definition—how much money will be voted when you cast your ballot?

The moderator could, under these circumstances, rule the motion out of order and instruct the voter how to do it correctly. As an alternative, the moderator might recommend that the voter move to suspend the rules, move the assembly to consider article 7 right now, and then move forward to the general fund article, knowing how much the town has voted for that purpose by the time the votes has been called.

Other Public Questions

The presentation, debate, and resolution of critical issues is the purpose of municipal meetings. State law says that the warning shall contain any article or articles requested by a petition signed by at least five percent of the voters of the municipality and filed with the municipal clerk not less than 40 days before the day of the meeting. 17 V.S.A. § 2642(b). This is the door through which articles involving global, national, regional, or political issues reach the warning. While the moderator is not responsible for deciding which articles appear on the warning, moderators do have to deal with the controversy that attends these questions.

Objectively, an article on C.I.A. involvement in South America is no different than the purchase of a municipal forest. Both are public questions; both are amendable, within certain limits; both must be voted or dismissed by formal procedure. The difference is apt to be found in the quality of debate over these articles. Debate can take a variety of forms. It can be used to clarify an issue for an individual voter or to persuade a majority of voters. Debate can be and traditionally has been used to allow the hard or strong feelings of voters to find expression, if not acceptance, before the community.

A moderator ought to allow full debate on all articles that appear in the warning. A moderator who rules an article out of order on the grounds that the article as written is not “business to be transacted” oversteps the traditional reserve and impartiality of a moderator and runs the risk, not only of being overruled, but of being accused of stifling free debate on an article. Political speeches will be given the respect they deserve by the voters, but the voters should be left free to make their own mistakes if they choose.

Other Business

The rule against consideration of issues not appearing on the warning becomes most critical when the article entitled “other business” is before the voters. Some school districts in 1984, believing they had authority to do so, voted to change their annual meeting date under this article, without proper warning.

State law directs the moderator to rule any motion proposing binding action under other business out of order. 17 V.S.A § 2260(d). Other business should be used for opinion, comment, acknowledgement of individuals and agencies, and other non-binding matters which do not otherwise find their place on the warning.

Of course, no matter how often this is said or written, it happens. It happens a lot, usually with the support or acquiescence of the moderator. In these cases, believing that no binding action may be taken may be little consolation.

To be fair, we understand why people want to take binding action under Other Business. Few remember the deadline for public questions, and many voters have no clear idea about the seriousness of the warning for determining what can happen at town meeting. They may feel that the selectboard has made town meeting their own by writing the warning and that there is no other time but the article, Other Business, for them to act. Nevertheless, the state statute applies, and nothing that the voters do, including overruling the moderator, can change a vote under Other Business into binding action.

Adjournment

The motion to adjourn always takes precedence over every other motion, according to *Robert's*. State law, however, seems to consider the duty of a municipality to meet subject to a proper warning as preempting this privileged motion. You have responsibilities you must meet; to elect officers, to decide public questions. Premature adjournment should not artificially prevent a municipality from concluding the business to be transacted. The Vermont Supreme Court has ruled that such an adjournment before the warning is completed will not be respected, and that voters who remain in the room after this motion is adopted to complete the business of the meeting will be supported by the court. *Jenny v. Alden, Oliver and Lennert, 79 Vt. 156, 160 (1906)*

Whether a municipality may adjourn the meeting to another date is another matter. “Circumstances might exist,” the court has written, “that would not only render it proper but necessary to adjourn to a named time, day and place in order to complete the business for which the meeting is called; as the importance, amount of business contemplated to be done, and the time required to accomplish it.” *Hickok v. Shelburne, 41 Vt. 409, 416 (1868)*. State law also accommodates an adjournment to another date for a town meeting that begins on the first Tuesday of March. 17 V.S.A. § 2640(a).

Problems abound, however, with adjournment to another day, when that day comes more than a few days later. An adjourned session of a meeting is a continuation of a meeting, so the same checklist used at the first meeting must govern the second. If your checklist has been updated in the interim, it may not include the same voters it did in the earlier session and new voters, while they have constitutional right to participate in decisions which affect

their lives, really ought not be allowed to vote in an adjourned session. Adequate warning is another problem. Even those voters who are present in a meeting as it adjourns to another day might not attend the reconvened meeting when no other notice is required. For these reasons, a moderator should try to avoid adjournments to later dates if possible and, if not, should at least try to ensure that the meeting reconvenes within a few days of the original session, rather than waiting weeks or months to reconvene.

When a municipality is using the Australian ballot for some articles in combination with an open meeting, there should be no problem adjourning the open session in advance of the closing of the polls. The presiding officers are different for each type of meeting, and each officer is responsible for a separate adjournment process.

Minutes

Minutes should be kept by the moderator and by the clerk. The clerk is responsible for preparing the official minutes and filing the true and official record of all action taken at the meeting. 24 V.S.A. § 1152.

Moderators who leave town meeting without looking back leave themselves wide open for criticism and controversy if they fail to follow up on how the minutes read. Town clerks tell us that making up the minutes is the most difficult job they have to do all year, and they seem to have a tough time getting any other official to approve the minutes. State law requires that minutes be approved by two town officials, from a group which include the moderator, justices or select-board. Moderators who leave approval to others risk leaving this important work to those who may not know or care what history thinks about your town meeting (and your performance).

Good minutes stand alone.

Don't strand the clerk with this vital task. Insist on the use of a tape recorder. As moderator, take your own notes, especially on the wording of motions, to check the clerk's notes. And please, take the time to review and approve the minutes the clerk puts together, to ensure that they reflect what happened at the meeting.

Good minutes stand alone. Minutes should include the article as warned in its entirety, and each of the motions including the main motion, all amendments and subsidiary and incidental motions. The minutes should give the name of the person who made the motion; names of seconders are not required. The minutes should

indicate the vote where the numbers are known or list what the moderator concluded if the numbers are not known. For instance, if the moderator declared that the necessary two-thirds vote had been obtained, say so in the minutes. Give the names of those who speak on a motion, and summarize what they have said. Good minutes should help the reader re-create the drama and substance of each article in its turn. Other than land records, town meeting minutes are probably the most important public record in town, and they deserve as much attention to detail as you can give them.

**For more information on
Vermont town meeting, go to
<http://www.sec.state.vt.us/townmeeting/>**

Publications

Most publications are online at
www.sec.state.vt.us

About Abatement a guide for local officials

Digging Deep a guide to cemetery and burial law

Disability Etiquette: A Guide to Respectful Communication

Drawing Clear Lines: Adopting Conflict of Interest Ordinances for Local Officials

Equal Access to Voting in Vermont: It's the Law

Getting on the Ballot: A Practical Guide for Social Service Agencies

Guide to Vermont's Town Clerks, Treasurers and County Clerks

Handbook on Property Tax Appeals

Justice of the Peace Guide

Law of Public Libraries

Matter of Public Record: A Guide to Vermont's Public Records Law

Pocket Guide to Open Meetings

Rules on School Governance

Short Guide for Vermont Public Notaries

Town Meeting Day: A Vermont Tradition Booklet and Teacher's Guide for Grades 5-8

Town Mouse and Country Mouse Go To Town Meeting Booklet and Teacher's Guide for Grades PreK-8

Tune Up For Towns

Who's Who in Local Government

Vermont Town Meeting: Coloring /Activity Book for Grades PreK-4



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