
TO: Peter Lombardi, Town Administrator (*By Electronic Mail Only*)

FROM: Lauren F. Goldberg, Esq.

RE: Effect of Vote under Article 1 of 2019 Annual Town Meeting and Relationship to Ballot Question

DATE: April 9, 2019

Question

You have requested an opinion concerning the effect of the vote under Article 1 of the April 6, 2019 Annual Town Meeting (2019 Annual Town Meeting) and the ballot question found on the warrant for the Town Election.

Short Answer

The April 6, 2019 Annual Town Meeting voted to amend the main motion under Article 1 to appropriate an additional \$499,145 for the budget of the Regional School District, subject to an override. An override question for that exact amount and for that exact purpose appears on the April 11 election warrant. The question does not reference Article 1 or Article 3 on the Town Meeting warrant, and instead, as is required by law, refers only to the purpose and the amount of the override. If the voters at that election approve the question, then, in my opinion, there will be an additional \$499,145 raised and appropriated for FY20 Regional School District purposes. If that question fails, in my further opinion, then the main motion under Article 1 will have been approved without the supplemental amount for the school district.

Facts

At the 2019 Annual Town Meeting, the Board of Selectmen included three articles related to the Regional School District budget, which, together, included the full amount of the Regional School District FY20 budget assessment to the Town. The Town's "levy limit budget", presented under Article 1, included the funding for the District that the Town could afford within the levy. Article 3 proposed a supplemental appropriation for the operating budget of the District of \$499,145, subject to an override. Article 4 proposed another supplemental appropriation for the District of \$116,119, for OPEB and a School Resource Officer. Subsequent to approval of the warrant, the Town of Hamilton agreed to solely fund the School Resource Officer, meaning that the amount to be appropriated under Article 4 would likely be reduced by approximately \$26,000, the Town's "share" of the cost of the resource officer.

The amounts to be appropriated under Articles 3 and 4 on the Annual Town Meeting warrant, for the same purposes, were also placed on the Annual Town Election warrant by the Board of Selectmen in separate Proposition 2½ override ballot questions.

At Town Meeting, during discussion of Article 1, the Chair of the School Committee “held” the line for the Regional School District appropriation, and later made a motion to increase that line by \$499,145. He did not propose a reduction in any other line in the budget, however, meaning that the Town would exceed its levy limit if the motion to amend was approved. Therefore, while that motion was pending, the Chair of the Board of Selectmen made a further motion to amend to make such increase in the appropriation for the Regional School District appropriation, the \$499,145, subject to a Proposition 2 ½ override. The Chair’s motion, being last in time, was voted first and approved. Thereafter, the amendment to Article 1 to increase the Regional School District budget line, with the condition that such increase be subject to an override, was also approved. Article 1 was then approved, as amended. The amounts proposed to be raised and appropriated under Article 1, other than the \$499,145 for the regional school district, were not appropriated on a contingent basis, and, therefore, are immediately available as of July 1. The contingent appropriation portion (\$499,145), however, must also be approved at an election before it will take effect.

Analysis

Applicable Law

As with access to the ballot for candidates, there is no access to the ballot for questions other than as authorized by law, including a special act or charter. In most cases, the law also dictates the form of the question. Proposition 2 ½, G.L. c.59, §21C is one such statute. It provides that the Board of Selectmen is the “local appropriating authority” for purposes of the statute, and authorizes the local appropriating body to place certain questions on the ballot (overrides, underrides, debt exclusions, capital outlays). The information that is not addressed by statute for an override question, the amount of the override and the purpose of the override, is completed by the local appropriating authority for purposes of the law, the Board of Selectmen. There is no other mechanism to force a Proposition 2 ½ question on the ballot or to dictate the amount or the purposes stated in the question (other than with respect to an underride question in municipalities that have a “local initiative procedure, which Wenham does not).

Proposition 2 ½ also specifically allows appropriations in towns to be made contingent upon approval of such a question. The relevant portion of the law, G.L. c.59, §21C(m), provides that if a contingent appropriation is made, it will not take effect until approved at the ballot at an election held no later than September 15 following an Annual Town Election. Further, the law makes clear that in order to “trigger” the effectiveness of the contingent appropriation, the “the statement of the purpose of the appropriation shall be substantially the same as the statement of purpose in the ballot question”.

Thus, in summary, whether and when to place a Proposition 2 ½ question on the ballot, the purpose stated in the question, and for an override, the amount listed in the question, is at the sole discretion of the Board of Selectmen in accordance with G.L. c.59, §21C. The Department of Revenue has given significant guidance on this topic and the law has been interpreted in this way for decades.

Note further that in accordance with the basic principles of election law requiring notice and predictability with respect to elections, once the deadlines pass for notifying the Town Clerk about any changes to the ballot (either to withdraw from nomination or to place or remove a question from the ballot) however, no changes can be made. See G.L. c.39, §10; G.L. c.54, §§42C, 64. This is particularly true once absentee ballots have been mailed and returned, as such action is the equivalent of voting.

Application of Law to Facts

As noted above, only the Board of Selectmen can decide whether to place a Proposition 2½ override question on the ballot, and, similarly, only the Board of Selectmen may determine what purpose and dollar amount appear in such question. G.L. c.59, §21C. Here, the Board placed two such questions on the ballot – one for an override of \$499,145 for the FY20 Regional School District operating budget, and another for \$116,119, also for the FY20 operating budget, intended to address funding for OPEB and a school resources officer. Following the 35th day prior to the date of the Town Election, the Board was prohibited by law from making any changes to the ballot question language. G.L. c.54, §42C. At this time, only two days from the Annual Town Election, there is no statutory process to remove those questions from the ballot or make any other changes to the form of such questions, or to the ballot generally. See, e.g., G.L. c.54, §64 (questions must appear on the election warrant in the exact form in which they will appear on the ballot); G.L. c.53, §13 (process and timing for withdrawal of candidates).

Therefore, even though Town Meeting voted not to approve funding for OPEB under Article 4 of the Annual Town Meeting warrant, the override question will appear on the ballot at the Annual Town Election. Similarly, regardless of whether Town Meeting voted to approve a supplemental appropriation for the Regional School District at all, or did so under Article 3, as was originally contemplated, or under Article 1, as occurred, the question of whether to approve an override in the amount of \$499,145 for the FY20 Regional School District operating budget would have appeared on the ballot on Thursday at the Annual Election.

Finally, as it turns out, even though Article 1 was generally explained as, and understood to be, a “within the levy budget”, the motion made by the School Committee Chair to increase the line item for the Regional School District operating budget, if approved in that form, would have created an “unbalanced budget”. That would have led directly to one of two results. First, Town Meeting, acting on a motion or motions, could have reduced other line items by the total

amount of the increase to the Regional School District budget, or, if that did not occur because no particular reductions were contemplated or proposed, a Special Town Meeting would have had to be held to reduce appropriations by the same amount. For that reason, the Chair of the Board of Selectmen moved further, and Town Meeting approved, that the additional amount set forth in the School Committee Chair's motion be subject to an override. That action, in turn, when approved as an amendment to the main motion under Article 1, was the legal and substantial equivalent of voting Article 1 as originally presented (without any amendment) and then Article 3 as originally contemplated.

For all these reasons, in my opinion, if the \$499,145 override is approved on Thursday, the Town will have appropriated that supplemental amount for the Regional School District FY20 operating budget. If the override fails, however, the contingent appropriation for that amount under Article 1 will not take effect; and, further, if not approved at an election held on or before September 15, 2019, such supplemental appropriation will become a nullity. However, in my further opinion, the remainder of the vote under Article 1 is not "contingent" and will be available for expenditure on July 1.