

ADVISORY TOWN MEETING ARTICLES

SUPERIOR COURT UPHOLDS RIGHT TO DECLINE ADVISORY TOWN MEETING ARTICLE

Every year around Town Meeting, selectboards, city councils, and village trustees grapple with how to handle advisory articles received via petition. VLCT has long advised that local legislative bodies have discretion over whether to include advisory articles on the warning (or not). This line of thinking recently survived its latest challenge in Superior Court. For now, selectboards will continue to have discretion over whether to include advisory and non-binding articles on the Town Meeting warning.

In the case, *Agnes Clift, et al. v. City of South Burlington*, petitioners brought suit against the City of South Burlington for refusing to add the following article in its warning for the 2005 annual meeting: Shall the City of South Burlington, on behalf of concerned citizens, advise the City Council to ask our state legislators, in writing, to enact legislation that will protect young girls by requiring clinics to notify at least one parent prior to providing a surgical or chemical abortion to their minor daughter, with special provisions to protect the girls in abusive situations?

In accordance with State law, the petition presented was signed by at least five percent of the voters of the City and filed at least 40 days before the annual town meeting. The South Burlington City Council chose not to include it in the warning.

The plaintiffs filed a complaint and motion for summary judgment in Chittenden County Superior Court arguing that the defendant City was required to include the article in the warning for its 2005 annual meeting under 17 V.S.A. § 2642(a) and, because that meeting had passed, should be compelled to include the article for its 2006 annual meeting. The City countered that it had the discretion to include it or not.

In ruling for the City, the Court reasoned that, while the petition complied with the procedural requirements of the law and despite Vermont's tradition and public policy towards encouraging active citizen participation and providing voters with the means to have their say on public issues, the City was not obligated to include the requested article in the warning. In granting the City's cross-motion for summary judgment, the Court relied upon the rulings and principles expressed by the Vermont Supreme Court in a litany of cases (*Royalton Taxpayers' Protective Association v. Wassmandsdorf*, 128 Vt. 153 (1969); *Whiteman v. Brown, et al.*, 128 Vt. 384 (1970); *Brewster v. City of Rutland*, 128 Vt. 437 (1970); *Kirchner v. Giebink*, 150 Vt. 172 (1988)) that support the "exercise of discretion by the City in deciding whether to include the requested article in the annual meeting because the article related to a matter outside the normal scope of city business over which City voters or City government have legal authority."

This ruling was well received by VLCT, which has consistently advised our members that they are under no obligation to warn an article for an annual or special meeting for a "useless, frivolous, or unlawful purpose" or that is not "within the province of the town meeting to grant or refuse through its vote." *Royalton Taxpayers v. Wassmandsdorf*, 128 Vt. 153 (1969). We anticipate that this case will be appealed to the Vermont Supreme Court and will keep you apprised of any further developments.

- *Garrett Baxter, Senior Associate, VLCT Municipal Assistance Center*

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