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CASE NO. 2017-0137

TOWN OF GOSHEN

V.

CARL N. CASAGRANDE

APPEAL FROM AN ORDER OF THE
SULLIVAN COUNTY SUPERIOR COURT

APPELLANT'S REPLY BRIEF

William B. Pribis, Esq.
(NH Bar #11348) (Orally)
CLEVELAND, WATERS AND BASS, P.A.
Two Capital Plaza, P.O. Box 1137
Concord, NH 03302-1137
(603) 224-7761

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STATUTES AND ORDINANCES INVOLVED

RSA 40:13, Use of Official Ballot.

I. Notwithstanding RSA 39:3-d, RSA 40:4-e, or any other provision of law, any local political subdivision as defined in RSA 40:12 which has adopted this subdivision shall utilize the official ballot for voting on all issues before the voters.

II. The warrant for any annual meeting shall prescribe the place, day and hour for each of 2 separate sessions of the meeting, and notice shall be given as otherwise provided in this section. Final budgets and ballot questions shall be printed in the annual report made available to the legislative body at least one week before the date of the second session of the annual meeting.

II-a. Notwithstanding any other provision of law, all local political subdivisions which adopt this subdivision, who have not adopted an April or May election date under RSA 40:14, X, shall comply with the following schedule pertaining to notice, petitioned articles, hearings, and warrants for the annual meeting:

(a) The final date for posting notice of budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8-a shall be the second Tuesday in January.

(b) The "budget submission date" as defined in RSA 273-A:1, III and the final date for submission of petitioned articles under RSA 39:3 and RSA 197:6 shall be the second Tuesday in January, provided however, that if a petitioned article proposes a bond governed by RSA 33:8-a, the deadline shall be the preceding Friday.

(c) Budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8-a shall be held on or before the third Tuesday in January. One or more supplemental budget hearings may be held at any time before the first session of the annual meeting, subject to the 7-day notice requirement in RSA 32:5. If the first hearing or any supplemental hearing is recessed to a later date or time, additional notice shall not be required for a supplemental session if the date, time, and place of the supplemental session are made known at the original hearing. In a political subdivision that has adopted a municipal budget committee pursuant to RSA 32:14, the last day for the budget committee to deliver copies of the final budget and recommendations to the governing body pursuant to RSA 32:16, IV shall be the Thursday before the last Monday in January.

(d) Warrants under RSA 39:5 and RSA 197:7 and budgets shall be posted and copies available to the general public on or before the last Monday in January.

II-b. Notwithstanding any other provision of law, all political subdivisions which hold their annual meetings in April shall comply with the following schedule pertaining to notice, petitioned articles, hearings, and warrants for the annual meeting.

(a) The final date for posting notice of budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8-a shall be the second Tuesday in February.

(b) The "budget submission date" as defined in RSA 273-A:1, III and the final date for submission of petitioned articles under RSA 39:3 and RSA 197:6 shall be the second Tuesday in February, provided however, that if a petitioned article proposes a bond governed by RSA 33:8-a, the deadline shall be the preceding Friday.

(c) Budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8-a shall be held on or before the third Tuesday in February. One or more supplemental budget hearings may be held at any time before the first session of the annual meeting, subject to the 7-day notice requirement in RSA 32:5. If the first hearing or any supplemental hearing is recessed to a later date or time, additional notice shall not be required for a supplemental session if the date, time, and place of the supplemental session are made known at the original hearing. In a political subdivision that has adopted a municipal budget committee pursuant to RSA 32:14, the last day for the budget committee to deliver copies of the final budget and recommendations to the governing body pursuant to RSA 32:16, IV shall be the Thursday before the last Monday in February.

(d) Warrants under RSA 39:5 and RSA 197:7 and budgets shall be posted and copies available to the general public on or before the last Monday in February.

II-c. Notwithstanding any other provision of law, all political subdivisions which hold their annual meetings in May shall comply with the following schedule pertaining to notice, petitioned articles, hearings, and warrants for the annual meeting:

(a) The final date for posting notice of budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8-a shall be the second Tuesday in March.

(b) The "budget submission date" as defined in RSA 273-A:1, III and the final date for submission of petitioned articles under RSA 39:3 and RSA 197:6 shall be the second Tuesday in March, provided however, that if a petitioned article proposes a bond governed by RSA 33:8-a, the deadline shall be the preceding Friday.

(c) Budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8-a shall be held on or before the third Tuesday in March. One or more supplemental budget hearings may be held at any time before the first session of the annual meeting, subject to the 7-day notice requirement in RSA 32:5. If the first hearing or any supplemental hearing is recessed to a later date or time, additional notice shall not be required for a supplemental session if the date, time, and place of the supplemental session are made known at the original hearing. In a political subdivision that has adopted a municipal budget committee pursuant to RSA 32:14, the last day for the budget committee to deliver copies of the final budget and recommendations to the governing body pursuant to RSA 32:16, IV shall be the Thursday before the last Monday in March.

(d) Warrants under RSA 39:5 and RSA 197:7 and budgets shall be posted and copies available to the general public on or before the last Monday in March.

II-d. The voter checklist shall be updated in accordance with RSA 669:5 for each session of the annual meeting.

III. The first session of the annual meeting, which shall be for the transaction of all business other than voting by official ballot, shall be held between the first and second Saturdays following the last Monday in January, inclusive of those Saturdays; between the first and second Saturdays following the last Monday in February, inclusive of those Saturdays; or between the first and second Saturdays following the last Monday in March, inclusive of those Saturdays at a time prescribed by the local political subdivision's governing body.

IV. The first session of the meeting, governed by the provisions of RSA 40:4, 40:4-a, 40:4-b, 40:4-f, and 40:6-40:10, shall consist of explanation, discussion, and debate of each warrant article. A vote to restrict reconsideration shall be deemed to prohibit any further action on the restricted article until the second session, and RSA 40:10, II shall not apply. Warrant articles may be amended at the first session, subject to the following limitations:

(a) Warrant articles whose wording is prescribed by law shall not be amended.

(b) Warrant articles that are amended shall be placed on the official ballot for a final vote on the main motion, as amended.

(c) No warrant article shall be amended to eliminate the subject matter of the article. An amendment that changes the dollar amount of an appropriation in a warrant article shall not be deemed to violate this subparagraph.

V. [Repealed.]

V-a. The legislative body of any town, school district, or village district may vote to require that all votes by an advisory budget committee, a town, school district, or village district budget committee, and the governing body or, in towns, school districts, or village districts without a budget committee, all votes of the governing body relative to budget items or any warrant articles or ballot questions shall be recorded votes and the numerical tally of any such vote shall be printed in the town, school district, or village district warrant next to the affected warrant article or on the ballot next to the affected ballot question. Unless the legislative body has voted otherwise, if a town or school district has not voted to require such tallies to be printed in the town or school district warrant next to the affected warrant article or on the ballot next to the affected ballot question, the governing body may do so on its own initiative.

VI. All warrant articles shall be placed on the official ballot for a final vote, including warrant articles as amended by the first session. All special warrant articles shall be accompanied on the ballot by recommendations as required by RSA 32:5, V, concerning any appropriation or appropriation as amended. For any article that proposes the adoption or amendment of an ordinance, a topical description of the substance of the ordinance or amendment, which shall be neutral in its language, may be placed on the official ballot instead of the full text of the ordinance or amendment, subject to the provisions of paragraphs VII-a and VIII-a. With respect to the adoption or amendment of a zoning ordinance, historic district ordinance, or building code, the provisions of RSA 675:3 shall govern to the extent they are inconsistent with anything contained in this paragraph or in paragraph VII-a or VIII-a.

VII. The second session of the annual meeting, to elect officers of the local political subdivision by official ballot, to vote on questions required by law to be inserted on said official ballot, and to vote on all warrant articles from the first session

on official ballot, shall be held on the second Tuesday in March, the second Tuesday in April, or the second Tuesday in May, as applicable. Notwithstanding RSA 669:1, 670:1, or 671:2, the second session shall be deemed the annual election date for purposes of all applicable election statutes including, but not limited to, RSA 669:5, 669:19, 669:30, 670:3, 670:4, 670:11, 671:15, 671:19, and 671:30 through 32; and votes on zoning ordinances, historic district ordinances, and building codes under RSA 675.

VII-a. When a topical description of the substance of a proposed ordinance or amendment to an ordinance is to be placed on the official ballot, an official copy of the proposed ordinance or amendment, including any amendment to the proposal adopted the first session, shall be placed on file and made available to the public at the office of the clerk of the political subdivision not later than one week prior to the date of the second session of the annual meeting. An official copy of the proposed ordinance or amendment shall be on display for the voters at the meeting place on the date of the meeting.

VIII. The clerk of the local political subdivision shall prepare an official ballot, which may be separate from the official ballot used to elect officers, for all warrant articles. Wording shall be substantively the same as the main motion, as it was made or amended at the first session, with only such minor textual changes as may be required to cast the motion in the form of a question to the voters.

VIII-a. A question as to the adoption or amendment of an ordinance shall be in substantially the following form:

"Are you in favor of the adoption of (amendment to) the ordinance as proposed by the selectmen as follows: (here insert text or topical description of proposed ordinance or amendment)?" In the event that there shall be more than a single proposed amendment to an ordinance to be submitted to the voters at any given meeting, the issue as to the several amendments shall be put in the following manner: "Are you in favor of the adoption of Amendment No. ___ to the ordinance as proposed by the selectmen as follows: (here insert text or topical description of proposed amendment)?"

IX. (a) "Operating budget" as used in this subdivision means "budget," as defined in RSA 32:3, III, exclusive of "special warrant articles," as defined in RSA 32:3, VI, and exclusive of other appropriations voted separately.

(b) "Default budget" as used in this subdivision means the amount of the same appropriations as contained in the operating

budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and reduced by one-time expenditures contained in the operating budget. For the purposes of this paragraph, one-time expenditures shall be appropriations not likely to recur in the succeeding budget, as determined by the governing body, unless the provisions of RSA 40:14-b are adopted, of the local political subdivision.

X. If no operating budget article is adopted, the local political subdivision either shall be deemed to have approved the default budget or the governing body may hold a special meeting pursuant to paragraph XVI to take up the issue of a revised operating budget only; provided that RSA 31:5 and RSA 197:3 shall not apply to such a special meeting. If no operating budget article is adopted the estimated revenues shall nevertheless be deemed to have been approved.

XI. (a) The default budget shall be disclosed at the first budget hearing held pursuant to RSA 32:5 or RSA 197:6. The governing body, unless the provisions of RSA 40:14-b are adopted, shall complete a default budget form created by the department of revenue administration to demonstrate how the default budget amount was calculated. The form and associated calculations shall, at a minimum, include the following:

(1) Appropriations contained in the previous year's operating budget;

(2) Reductions and increases to the previous year's operating budget; and

(3) One-time expenditures as defined under subparagraph IX(b).

(b) This amount shall not be amended by the legislative body. However, this amount may be adjusted by the governing body, unless the provisions of RSA 40:14-b are adopted, acting on relevant new information at any time before the ballots are printed, provided the governing body, unless the provisions of RSA 40:14-b are adopted, completes an amended default budget form.

(c) The wording of the second session ballot question concerning the operating budget shall be as follows:

"Shall the (local political subdivision) raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the

warrant or as amended by vote of the first session, for the purposes set forth therein, totaling \$ _____? Should this article be defeated, the default budget shall be \$ _____, which is the same as last year, with certain adjustments required by previous action of the (local political subdivision) or by law; or the governing body may hold one special meeting, in accordance with RSA 40:13, X and XVI, to take up the issue of a revised operating budget only."

XI-a. If a political subdivision maintains a separate fund for the revenues and expenditures related to the operation, maintenance, and improvement of a water or sewer system, and if any appropriation for such fund is to be raised through user fees or charges and is included in a warrant article separate from the operating budget, the warrant article may include a default amount for such appropriation, which shall be deemed to have been approved if the proposed appropriation is not approved. The default amount shall be determined by the governing body, or by the budget committee if the political subdivision has adopted the provisions of RSA 40:14-b, and shall equal the amount of the same appropriation for the preceding fiscal year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and reduced by one-time expenditures contained in the previous year's appropriation. The warrant article shall state the default amount for the appropriation and shall state that if the appropriation proposed in the article is not approved, the default amount shall be deemed to have been approved.

XII. Voting at the second session shall conform to the procedures for the nonpartisan ballot system as set forth in RSA 669:19-29, RSA 670:5-7 and RSA 671:20-30, including all requirements pertaining to absentee voting, polling place, and polling hours.

XIII. Approval of all warrant articles shall be by simple majority except for questions which require a 2/3 vote by law, contract, or written agreement.

XIV. Votes taken at the second session shall be subject to recount under RSA 669:30-33 and RSA 40:4-c.

XV. Votes taken at the second session shall not be reconsidered.

XVI. The warrant for any special meeting shall prescribe the date, place and hour for both a first and second session. The second session shall be warned for a date not fewer than 28 days nor more than 60 days following the first session. The first and

second sessions shall conform to the provisions of this subdivision pertaining to the first and second sessions of annual meetings. Special meetings shall be subject to RSA 31:5, 39:3, 195:13, 197:2, and 197:3, provided that no more than one special meeting may be held to raise and appropriate money for the same question or issue in any one calendar year or fiscal year, whichever applies, and further provided that any special meeting held pursuant to paragraphs X and XI shall not be subject to RSA 31:5 and RSA 197:3 and shall not be counted toward the number of special meetings which may be held in a given calendar or fiscal year.

XVII. Notwithstanding any other provision of law, if the sole purpose of a special meeting is to consider the adoption, amendment, or repeal of a zoning ordinance, historic district ordinance, or building code pursuant to RSA 675, including the adoption of an emergency zoning and planning ordinance pursuant to RSA 675:4-a, the meeting shall consist of only one session, which shall be for voting by official ballot on the proposed ordinance, code, amendment, or repeal. The warrant for the meeting shall be posted in accordance with RSA 39:5.

STATEMENT OF FACTS AND OF THE CASE

The Town claims, in its Statement of the Facts and of the Case, that "[t]he Town's claim in this case that the disputed section of Page Hill Road is a public highway is based on two alternative theories: (a) That the 1891 town meeting vote at issue in this appeal did not constitute a discontinuance (the issue now on appeal); and (b) that the highway has been re-established since that time by prescription." See Town's Brief at 1 (Statement of Facts and of the Case).

This statement is puzzling, to say the least. The Town has never, in its lawsuit or any other pleading, claimed that Page Hill Road has been reestablished by prescription. If the Trial Court's decision is overturned, under no circumstances should this case be remanded for a trial on an issue that has never been pled.

The Trial Court erroneously determined that Page Hill Road was never discontinued because a condition precedent - one not contained in the record of the 1891 vote - had not occurred. If this Court reverses the Trial Court's decision, the implicit determination is that Page Hill Road was discontinued. Unless there is evidence that the Town laid out Page Hill Road a second time subsequent to the 1891 meeting (upon information and belief, no such evidence exists) then this litigation should be resolved with a judgment in Mr. Casagrande's favor. It seems almost as though the Town has realized that the Trial Court's decision was

erroneous and is resorting to disingenuously claiming it has raised an alternative theory below in an attempt to keep its claims against Mr. Casagrande alive. The Town should not be permitted to proceed on a theory it raises for the first time in an appellate brief.

ARGUMENT

A. Because the Town Failed to Demonstrate That, as a Matter of Law, Page Hill Road Was Not Discontinued, No Counter-Affidavit Was Necessary.

The Town's brief takes a critical tone over the fact that Mr. Casagrande did not submit an affidavit in support of his objection to the Town's motion for summary judgment. See Town's Brief at 3. However, in summary judgment proceedings it is the moving party's (here, the Town's) burden to show it is entitled to judgment as a matter of law. Here, the Town has failed to do this. Accordingly, it was not necessary for Mr. Casagrande to submit some type of rebuttal affidavit. See Hopkins v. Fleet Bank-NH, 143 N.H. 385, 390 (1999) (no counter-affidavit necessary where moving party fails to carry its burden on summary judgment).

B. If Deciding This Case is a Matter of Legislative Interpretation, Then Well-Established Rules of Construction Support Mr. Casagrande's Position.

The Town focuses on its position that ". . . interpretation of local legislation is a matter of law, not fact." Town's Brief at 4. Assuming for the sake of argument that this is correct, if the Trial Court erroneously interpreted the "local legislation" at issue here then its decision should nonetheless be reversed.

Reversible error is reversible error whether it is an error made in interpreting legislation or an error made in failing to recognize the existence of disputed facts.

Assuming (again for the sake of argument) that the Trial Court's decision was strictly a matter of legislative interpretation, the following is worth noting. This Court has repeatedly instructed that, in matters of statutory interpretation, "the starting point is the language of the statute." Hughes v. NH Div. of Aeronautics, 152 N.H. 30, 38 (2005). "One should examine the language of the statute and ascribe the plain and ordinary meanings to the words the legislature used." Franklin v. Town of Newport, 151 N.H. 508, 509 (2004). "When the language of a statute is plain and unambiguous, [the Court will] not look beyond it for further indications of legislative intent." Id.

There is nothing ambiguous with respect to the language memorializing the Town of Goshen's vote to discontinue Page Hill Road: "Voted to throw up the road mentioned in this article." That language is unconditional. In matters of statutory interpretation and construction, a Court should not add words that the legislative body did not see fit to include. In re Town of Seabrook, 163 N.H. 635, 653 (2012). Here, the Trial Court added language to the record of the 1891 Town vote that does not exist: a condition that the Town of Newport discontinue their section of Page Hill Road. Rules of statutory construction dictate that the

Trial Court should not have considered what the record of the vote might have said. The Trial Court should not have added a condition that was not included in the record of the vote. Cloutier v. City of Berlin, 154 N.H. 13, 16 (2006).

C. Well-Established Legal Principles with Respect to Unambiguous Language Support Mr. Casagrande's Position

The Town raises the argument that the parol evidence rule is not applicable here and the Trial Court correctly considered the warrant article to determine voter intent. The Town argues that adoption of an "arbitrary rule preventing a court from examining indications of voter intent" would be "nonsensical." Town's Brief at 6.

Mr. Casagrande is in no manner urging this Court to adopt a nonsensical, arbitrary rule. He is not urging the Court to adopt a blanket prohibition on consideration of the language of a warrant article as an aid to interpreting an ambiguous or unclear record of a vote. Instead, Mr. Casagrande is arguing that a Court should not alter a clear and unambiguous record - in this case, adding a condition not contained in that record - by referring to the language of the warrant article.

Mr. Casagrande's position combines two well established New Hampshire legal principles. First, the principle that a warrant article and the vote thereon are distinct and separate from one another, and what the citizens of a Town actually approve with their vote can be something different than what is stated in the

original warrant article. See Cady v. Town of Deerfield, 169 N.H. 575, 578-79 (2017) (discussing changes to warrant articles); Sawyer v. Manchester & Keene Railroad, 62 N.H. 135, 158 (1882).¹ Second, in matters of both contract interpretation and legislative interpretation, there is no need to look beyond the four corners of a document (or, in this case, the record of the vote) to ascertain meaning or intent when the relevant language is clear and unambiguous. That is the case here. Mr. Casagrande's position is not "nonsensical". It is based upon the application of well-established and recognized legal principles.

D. The Record of the 1891 Actual Vote to Discontinue Page Hill Road Contained No Conditions and is Not Ambiguous.

The Town claims that the record of the vote is ambiguous. Town's Brief at 7. The major flaw in this argument is that, in order to create an ambiguity, the Town impermissibly looks beyond the actual record of the vote. Where the record of that vote is clear, one cannot look beyond that record to create an ambiguity that otherwise does not exist. See, Cohan v. Thurston, 223 Va. 523, 525 (1982) (extrinsic evidence may not be used to create an ambiguity and then remove it); Whitehill v. Whitehill, 128 S.W.2d 579, 584-85 (Mo. App. 2007) (extrinsic evidence cannot be used to create an ambiguity).

¹Interestingly, the modern process for changing a warrant article prior to a vote is somewhat formal. See RSA 40:13. Those formalities did not exist in 1891. See *infra* at 11-20.

E. Goshen's Actions on Other Warrant Articles at the 1891 Town Meeting Record Support Mr. Casagrande's Position.

Contrary to the Town's argument (Town's Brief at 7-8), the record of the vote on Warrant Article 9 in fact supports Mr. Casagrande's position. The fact that there were multiple votes on Article 9 is irrelevant - the first two were strictly procedural and did not address the substance of the Article 9. The third vote did - and the record states "Then voted that the Selectmen be instructed to hire one man to run the road machine through the town." The record is clear as to what the voters approved with respect to Article 9.

Yet following the Trial Court and Town's logic, one could ignore the clear record of this vote and instead rely upon the language of Warrant Article 9 to get a different result. Using the Trial Court's and Town's logic one could argue that, because the language of Article 9 contains no mention of limiting the number of men to be hired to run the road machine, then the selectmen could hire ten men instead of one. Such an argument would surely fail. Yet this is exactly what the Trial Court and Town are doing when they look to the language of Warrant Article 11 to add a condition that is simply not stated in the actual record of the vote on Article 11.

The Town's argument concerning Warrant Article 14 is also misplaced. The record of the vote on Article 14 does not reflect that the Town voted to amend Article 14. Instead, the Town voted

to provide further instructions to the selectmen. Again, under the Trial Court's and Town's logic, one could argue that because the language of Warrant Article 14 said nothing about instructions to the selectmen then the selectmen need not follow those instructions. Of course, that is not the case.

The overall record shows that in 1891, as often happened and as was allowed under New Hampshire law, voters at the Goshen town meeting approved items that were within the subject matter of the various Warrant Articles, but in a fashion that was different from what was set out in the original Warrant Articles. That is what happened with Warrant Article 11. The Trial Court erred in relying on the language of Warrant Article 11 to find that the discontinuance of Page Hill Road was conditional just as surely as the Trial Court would have erred had it used the language of Articles 9 or 14 to reach a different result than that reflected in the unambiguous record of the vote on those articles.

F. If Meeting Votes are Legislation, Then the Trial Court Should Not Have Looked Beyond the Unambiguous Record of the Vote to Discontinue Page Hill Road.

The Town argues that, because "meeting votes are legislation" the Trial Court "correctly considered the minutes as a whole to determine the intent of the voters." Assuming for the sake of argument that this is true, and as discussed above, this is only true when "plain and unambiguous language is not available to discern intent." Here, the plain and unambiguous language of the record of the vote on Article 11 is that the Town voted to

discontinue Page Hill Road without conditions. Looking outside the record of the vote to add conditions not mentioned in that record is a slippery slope that can lead to all manners of speculation to get to a different result than what is stated in the record of the vote - as exemplified by the Town's incredibly speculative argument that it was ". . . likely due to haste" that the conditions put forward in Warrant Article 11 were omitted from the record of the vote thereon.

G. Sawyer and Davis are Highly Applicable to This Case.

The Town incorrectly argues that Mr. Casagrande's reliance upon Sawyer v. Manchester & Keene Railroad is misplaced. It is true that one of the issues the Sawyer case dealt with was the admissibility of eyewitness testimony to obtain a different result than that which was set forth in the town meeting minutes. However, Sawyer also dealt with a party who was trying to convince a court that if something was stated in the warrant article, then it must have been part of what the town voted for - even if the record of the vote does not reflect as much. The Sawyer court was clear - the fact that the record of a vote omits a provision contained in the warrant article does not warrant an inference that it was erroneously omitted. Sawyer, 62 N.H. at 158.

Yet this is exactly what the Trial Court did and what the Town is urging this Court to do. The Town goes as far as to argue, in essence, "Well, they must have left out the condition in the

record of the vote because they were in too much of a hurry." This is what Sawyer specifically says should not be done and the Sawyer case is absolutely applicable to the case before this Court.

The Town's argument regarding the Davis case is similarly misplaced. In Davis, the record specifically incorporated the conditions or provisions of the warrant article in the record of the vote (" . . . as per Article 2 of the Warrant"). New London v. Davis, 73 N.H. at 78. No such thing occurred here. The record of the vote merely references Article 11 as a means of identifying the road in question.

A passing reference to Article 11 in the record of the vote as a means of identifying Page Hill Road should in no manner be deemed a reflection of an intent to include Article 11's substantive condition - a condition that Newport discontinue its portion of Page Hill Road - in the record of the actual vote. Had the record of the vote on Article 11 stated "Voted to throw up the road mentioned in this article and subject to the condition mentioned in this article" the Town's argument would have merit. However, that is not the case and a passing reference to Article 11 as a way to identify Page Hill Road cannot be read to incorporate the Article's substantive condition into the vote.

CONCLUSION

For all the foregoing reasons, as well as those set forth in the defendant's opening brief, the Trial Court's decision should be reversed.

ORAL ARGUMENT

William B. Pribis will argue the case for the appellant and fifteen minutes are requested for this purpose.

Respectfully submitted,
CARL N. CASAGRANDE

By and through its Attorneys,
CLEVELAND, WATERS AND BASS, P.A.

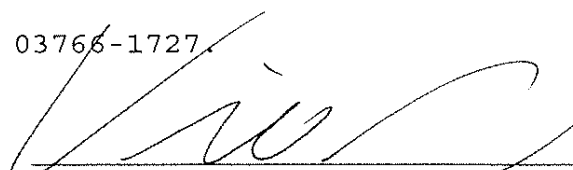
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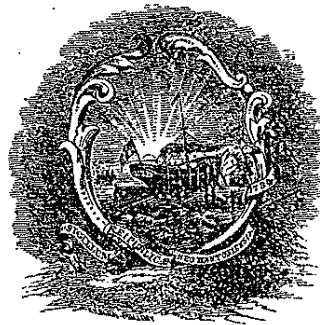
William B. Pribis, Esq.
NH Bar No. 11348
Two Capital Plaza, 5th Floor
P.O. Box 1137
Concord, NH 03302-1137
(603) 224-7761
pribisw@cwbp.com

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Appellant Reply Brief have been furnished via first-class mail, postage prepaid to C. Christine Fillmore, Esq., Gardner Fulton & Waugh PLLC, 78 Bank Street, Lebanon, NH 03766-1727.


William B. Pribis, Esq.

THE
PUBLIC STATUTES
OF THE
STATE OF NEW HAMPSHIRE,
TO WHICH ARE PREFIXED
THE CONSTITUTIONS
OF THE
UNITED STATES AND STATE OF NEW HAMPSHIRE
WITH A
GLOSSARY AND DIGESTED INDEX.



MANCHESTER, N. H.:
JOHN B. CLARKE, PUBLIC PRINTER.

1891.

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same, in an action on the the case, against any one, or against two or more jointly, who shall have injured or destroyed the property.

SECT. 16. The mayor of any city and the selectmen of any town are authorized, at the expense of the city or town, to call out sufficient military force to suppress or prevent a mob or riot within its limits.

SECT. 17. Any town may fund its indebtedness by issuing bonds of such kinds and denominations, payable at such time and place, with interest annually or semi-annually at a rate not exceeding six per cent per annum, in gold or other lawful currency, as by vote it may authorize; and may provide a sinking fund for the payment thereof, which shall not be used for any other purpose.

SECT. 18. The selectmen of any town holding stock in any railroad as trustee or otherwise are authorized to vote thereon at all meetings of such corporation, and may appoint, in writing, an agent for that purpose.

CHAPTER 41.

WARNING TOWN MEETINGS.

SECTION

1. Annual meeting, when holden, etc.
2. Warrant, how drawn, what to contain, etc.
3. Articles to be inserted on written request of voters.
4. Warrant addressed to inhabitants, how posted.
5. Addressed to constable, how served.
6. Towns may prescribe other modes of warning.
7. Return of warrants.

SECTION

8. Meeting, how warned, if vacancy in board of selectmen.
9. If selectmen neglect or refuse, how meeting warned.
10. If no legal meeting, nor any selectmen, how meeting may be warned.
11. Requisites of warrant by justice of the peace.
12. Neglect of selectmen in warning meetings, how punished.

Annual meet-
 ing, when
 holden.
 R. S. 32: 1.
 C. S. 34: 1.
 G. S. 35: 1.
 1878, 60: 1.
 G. L. 38: 1.

SECTION 1. A meeting of every town shall be holden annually on the second Tuesday of March for the choice of town officers and the transaction of all other town business. A town meeting may be warned by the selectmen, when, in their opinion, there shall be occasion therefor.

Warrant, how
 drawn, what
 to contain,
 etc.
 R. S. 32: 2.
 C. S. 34: 2.
 G. S. 35: 2.
 G. L. 38: 2.
 1885, 45: 1.
 vii, 113.
 xxiv, 208.
 xlvi, 411. liv, 71.
 Articles to be
 inserted on
 written re-
 quest of
 voters.
 R. S. 32: 3.
 C. S. 34: 3.
 G. S. 35: 3.
 G. L. 38: 3.

SECT. 2. The warrant for any town meeting shall be under the hands of the selectmen, and shall prescribe the place, day, and hour of the meeting. The subject-matter of all business to be there acted upon shall be distinctly stated in the warrant, and nothing done at any meeting, except the election of any town officer required by law to be made at such meeting, shall be valid unless the subject thereof is so stated.

SECT. 3. The selectmen, upon the written application of ten or more voters, or one sixth of the voters in town, shall insert in their warrant for the biennial, annual, or any other meeting, any subject specified in such application, or shall warn a meeting therefor, if requested in such application.

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SECT. 4. The selectmen may address their warrant to the inhabitants of the town qualified to vote in town affairs, in which case they shall post an attested copy of such warrant at the place of meeting, and a like copy at one other public place in the town, fourteen days before the day of meeting.

Warrant addressed to voters, how posted. R. S. 32: 4. C. S. 34: 4. G. S. 35: 4. G. L. 38: 4. iii, 178. xxviii, 419. xl, 173. iii, 512. vii, 206, 284.

SECT. 5. Warrants for town meetings may be directed to a constable of the town, requiring him to notify the inhabitants; and such constable shall post an attested copy of such warrant, as provided in the preceding section.

Addressed to constable; how served. R. S. 32: 5. C. S. 34: 5. G. S. 35: 5. G. L. 38: 5. vii, 206, 284.

SECT. 6. Any town may, by vote, prescribe a different method of warning meetings; and the meetings warned in pursuance of such vote shall be legal and valid.

Towns may prescribe other modes of warning. R. S. 32: 6. C. S. 34: 6. G. S. 35: 6. G. L. 38: 6.

SECT. 7. The selectmen or the constable serving any warrant shall return the same, at the time and place of meeting, with a certificate of the service thereof, to the town clerk; or, in his absence, to one of the supervisors.

Return of warrants. R. S. 32: 7. C. S. 34: 7. G. S. 35: 7. G. L. 38: 7. vi, 182, 194. xix, 290. iii, 512.

SECT. 8. In case of the death or removal of any of the selectmen of a town, the major part of those who remain in office shall have power to warn meetings.

Meeting, how warned, if vacancy in board of selectmen. R. S. 32: 8. C. S. 34: 8. G. S. 35: 8. G. L. 38: 8.

SECT. 9. If the selectmen unreasonably neglect or refuse to warn a meeting, or to insert any article in their warrant, a justice of the peace, upon application in writing of ten or more voters, or of one sixth part of the voters of such town, may issue a warrant for such meeting.

If selectmen refuse, how meeting warned. R. S. 32: 9. C. S. 34: 9. G. S. 35: 9. G. L. 38: 9.

SECT. 10. If the biennial or annual meeting in any town shall not have been held, or if there has never been any legal meeting of the town, or if, by reason of death, removal from the town, disability, or resignation of the board of selectmen, no member of the board remains in office, a justice of the peace, on application of ten voters, or of one sixth part of the voters of the town, may issue a warrant for such meeting.

If no legal meeting held, how meeting may be warned. R. S. 32: 10. C. S. 34: 10. G. S. 35: 10. 1875, 2: 1. G. L. 38: 10.

SECT. 11. The warrant of a justice of the peace for a town meeting shall be under his hand, directed to a constable of the town, if any there be, otherwise to one of the voters applying; shall specify the time, place, and object of such meeting, and shall be served and returned in the same manner as warrants issued by selectmen.

Requisites of warrant by justice of the peace. R. S. 32: 11. C. S. 34: 11. G. S. 35: 11. G. L. 38: 11.

SECT. 12. If selectmen neglect to issue a warrant for the holding of any meeting for the choice of state, county, or town officers, electors of president and vice-president of the United States, and representatives in congress, or neglect to cause copies of such warrant, if not directed to a constable, to be duly posted, or notice of such meeting to be given, agreeably to any vote of the town, they shall for each offense be fined fifty dollars, for the use of the town.

Neglect of selectmen in warning meetings, how punished. R. S. 32: 12. C. S. 34: 12. G. S. 35: 12. G. L. 38: 12.

CHAPTER 42.

GOVERNMENT OF TOWN MEETINGS.

SECTION

1. Moderator, when chosen, term of office.
2. Vacancy in office, how filled.
3. Moderator *pro tempore*.
4. Who to preside till moderator chosen.
5. Duties of moderator.
6. Poll of voters, when to be had.

SECTION

7. Misconduct of moderator, how punished.
8. Debate in town meeting, regulation of, etc.
9. Disorder and disturbance, how punished.
10. Duty and authority of constables; penalty for neglect of duty.

Moderator, when chosen and term of office.

R. S. 33: 3.
1847, 490: 2.
C. S. 35: 3.
G. S. 36: 3.
G. L. 39: 3.

Vacancy in office, how filled.

1847, 494: 2.
C. S. 35: 5.
G. S. 36: 6.
G. L. 39: 5.

Moderator *pro tempore*.

Who to preside till moderator chosen.

R. S. 33: 1.
C. S. 35: 1.
G. S. 36: 1.
1878, 60: 8.
G. L. 30: 9; 39: 1.

Duties of moderator.

Const. Art. 31.
R. S. 33: 3.
1847, 490: 1.
C. S. 35: 3.
G. S. 36: 3.
1, 88. 1vi, 441.

Poll of voters, when to be had.

R. S. 33: 4.
1847, 494: 1.
C. S. 35: 4.
G. S. 36: 4.
G. L. 39: 4.

Penalty for misconduct of moderator.

1847, 494: 1.
C. S. 35: 4.
G. S. 36: 4.
G. L. 39: 4.

SECTION 1. At the biennial election to be holden in November, eighteen hundred and ninety-two, and at every biennial election thereafter, a moderator shall be chosen by ballot, by a plurality of votes, who shall hold office from the close of the meeting at which he is chosen until the close of the meeting at the next succeeding biennial election.

SECT. 2. In case of vacancy in the office, a moderator shall be chosen by ballot, by a plurality of votes, at any town meeting, who shall hold office for the unexpired term. At every town meeting holden prior to the close of the meeting to be holden in November, eighteen hundred and ninety-two, a moderator shall be chosen in like manner.

SECT. 3. If the moderator is absent from any meeting, or is unable to perform his duties, a moderator *pro tempore* shall be chosen by a plurality of votes.

SECT. 4. Whenever there is a vacancy in the office, or the moderator is absent from a meeting, or is unable to perform his duties, the chairman of the board of supervisors, or, in his absence, one of the other members of the board, in the order of their election, or, if no supervisor is present, the town clerk shall preside until a moderator is chosen and shall have the powers and perform the duties of moderator.

SECT. 5. The moderator shall preside in the town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed, and may prescribe rules of proceeding, but such rules may be altered by the town.

SECT. 6. When any vote, other than by ballot, declared by the moderator or other officer presiding, shall immediately, and before any other business is begun, be questioned by seven or more of the voters present, the moderator or other officer presiding shall make the vote certain by a poll of the voters.

SECT. 7. If any moderator or other officer presiding shall willfully neglect or refuse to make any vote certain by a poll of the voters, when required as aforesaid, or shall willfully violate or neglect to enforce any rule of proceeding which shall have been established by vote of the town or otherwise, he shall, for each offense, be fined not exceeding five hundred dollars, or be imprisoned not exceeding six months.

SECT. 8. No person shall speak in any meeting without leave of the moderator, nor when any person speaking is in order; and all persons shall be silent at the desire of the moderator, on pain of forfeiting one dollar for each offense, for the use of the town.

Debate in town meeting, regulation of, etc. R. S. 33: 5. C. S. 35: 6. G. S. 36: 6. G. L. 39: 6.

SECT. 9. If any person shall conduct in a disorderly manner, and, after notice from the moderator, persist therein, or shall in any way disturb the meeting, or willfully violate any rule of proceeding, the moderator may command any constable or police officer, or any legal voter of the town, to remove such disorderly person from the meeting and detain him until the business is finished.

Disorder and disturbance, how punished. R. S. 33: 6. C. S. 35: 7. G. S. 36: 7. G. L. 39: 7.

SECT. 10. Every constable or police officer shall obey the orders and commands of the moderator for the preservation of order, and may command such assistance as is necessary; and if any constable or police officer neglects to perform any of the duties imposed by this or the preceding chapter, he shall forfeit forty dollars for the use of the town.

Duty and authority of constables; penalty for neglect of duty. R. S. 33: 7. C. S. 35: 8. G. S. 36: 8. G. L. 39: 8.

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CHAPTER 43.

CHOICE AND DUTIES OF TOWN OFFICERS; FILLING OF VACANCIES IN TOWN OFFICES; TOWN RECORDS.

TOWN CLERK.

SECTION

- 1. Town clerk, choice and duties of.
- 2. Town clerk *pro tempore*, when chosen.
- 3. To report names and post-office addresses of local officers to state officers; penalty.
- 4. To furnish transcript of record of vital statistics to selectmen for publication.

SELECTMEN AND ASSESSORS.

- 5. Selectmen, choice and duties of.
- 6. Assessors, choice and duties of.
- 7. Selectmen to pay money received by them to treasurer, and draw orders for payment of claims allowed, etc.
- 8. Selectmen to manage trust funds held by towns, and how to invest same.
- 9. Selectmen may regulate the use of highways, sidewalks, etc.
- 10. Selectmen may remove collectors and treasurers, for what cause, and mode of procedure.
- 11. Selectmen to make report annually.
- 12. Selectmen to publish town reports annually.
- 13. Selectmen to furnish copy of inventory of polls and estates to secretary of state annually, and to county commissioners every fourth year.

SECTION

- 14. Selectmen and assessors to make enumeration of children in April annually.
- 15. Chairman of selectmen to report financial condition of town to state treasurer.
- 16. To transmit town reports to state librarian.

TOWN TREASURER, ETC.

- 17. Town treasurer to be elected.
- 18. Treasurer to be appointed by selectmen in case of failure to elect.
- 19. Treasurer to give bond in six days, or vacancy.
- 20. Treasurer to receive and disburse town's money, keep a record, and make reports.
- 21. Treasurer to have custody of trust funds, to keep accounts thereof, etc.
- 22. Town notes, how signed and countersigned.

TOWN AUDITORS.

- 23. Auditors, choice and duties of.
- 24. Vacancy in office of town auditors, how filled.

OTHER TOWN OFFICERS.

- 25. Collectors of taxes, agents, overseers of the poor, and other town officers, choice of.

Wm. A. H. Chandler
1862

THE

COMPILED STATUTES

OF THE

STATE OF NEW HAMPSHIRE:

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF NEW HAMPSHIRE.

PUBLISHED BY ORDER OF THE LEGISLATURE.



SECOND EDITION.

CONCORD:
PUBLISHED BY G. PARKER LYON.
1854.

published by authority of the State, for the use of such library; and the secretary of state is hereby authorized and required to furnish the same from year to year to such town or city.

CHAPTER 34.

OF WARNING TOWN MEETINGS.

IDENTICAL WITH

Chapter 32 of the Revised Statutes.

SECTION

1. Meetings, when to be holden.
2. Warrant, how to be drawn.
3. Articles to be inserted on application.
4. Warrant, how posted by selectmen.
5. Warrant, how served by constable.
6. Towns may prescribe other modes.
7. Warrant to be returned.

SECTION

8. Meetings warned in case of death of selectmen.
9. Justice may warn on refusal of selectmen.
10. Justice may warn on failure of meeting.
11. Form of warrant and proceedings.
12. Neglect to warn meeting, penalty.

SECTION 1. The annual meeting of every town shall be holden on the second Tuesday or other day, in March annually, for the choice of town officers and the transaction of all other town business. A town meeting may be warned by the selectmen when in their opinion there shall be occasion therefor.

Sec. 2. The warrant for any town meeting shall be under the hands and seal of the selectmen, and shall prescribe the place, day and hour of the meeting. The subject matter of all business to be there acted upon shall be distinctly stated in the warrant, and nothing done at any meeting shall be valid unless the subject thereof was so stated.

Sec. 3. The selectmen, upon the written application of ten or more voters or of one sixth of the voters in the town, shall insert in their warrant for the annual, or any other meeting, any subject specified in such application, or shall warn a meeting therefor, if requested in such application.

Sec. 4. The selectmen may address their warrant to the inhabitants of the town qualified to vote in town affairs, in which case they shall post up an attested copy of such warrant, at the place of meeting, and a like copy at one other public place in the town fifteen days before the day of meeting.

Sec. 5. Warrants for town meetings may be directed to a constable of such town, requiring him to notify the inhabitants; and such constable shall post up an attested copy of such warrant, as provided in the preceding section.

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SEC. 6. Any town may by vote prescribe a different method of warning meetings; and the meetings warned in pursuance of such vote shall be legal and valid.

SEC. 7. The selectmen, or the constable serving any warrant, shall return the same at the time and place of meeting, with a certificate of the service thereof, to the town clerk, or in his absence to one of the selectmen.

SEC. 8. In case of the death or removal of any of the selectmen of a town, the major part of those who remain in office shall have power to warn meetings.

SEC. 9. If the selectmen shall unreasonably neglect or refuse to warn a meeting, or to insert any article in their warrant, a justice of the peace, upon application in writing of one sixth part of the voters of such town, may issue a warrant for such meeting.

SEC. 10. If the annual meeting in any town shall not have been holden, or if there has never been any legal meeting of such town, a justice of the peace, on application of ten voters or of one sixth part of the voters of the town, may issue a warrant for such meeting.

SEC. 11. The warrant of a justice of the peace for a town meeting shall be under his hand and seal, directed to a constable of the town, if any there be, otherwise to one of the voters applying; shall specify the time, place and object of such meeting, and shall be served and returned in the same manner as warrants issued by selectmen.

SEC. 12. If any selectmen shall neglect to issue a warrant for the holding of meetings for the choice of state, county or town officers, electors of president and vice-president of the United States, and representatives in Congress; or shall neglect to cause copies of such warrant, if not directed to a constable, to be duly posted up, or notice of such meeting to be given agreeably to any vote of the town, they shall for each offence forfeit the sum of fifty dollars, one half to the use of the town, the other half to any person who may sue for the same.

CHAPTER 35.

OF THE GOVERNMENT OF TOWN MEETINGS.

COMPILED FROM
 Chapter 33 of the Revised Statutes.
 " 490, Laws of 1847.
 " 494, " " 1847.

SECTION

1. Selectmen to preside.
2. When justice to preside.
3. Moderator, his duties.
4. Poll of voters, and penalty for refusing.

SECTION

5. Moderator, choice of, if office vacant.
6. Speaking in town meeting.
7. Disorders, how corrected.
8. Constables to obey moderator.

SECTION 1. At every town meeting the first or senior selectman present, and if no selectman be present, the town clerk shall preside until a moderator is chosen, and shall have the powers and perform the duties of moderator. (*R. S., chap. 33, sec. 1.*)

SEC. 2. When there are no selectmen or town clerk of the town, it shall be the duty of the justice calling such meeting to attend and preside until a moderator is chosen. (*R. S., sec. 2.*)

SEC. 3. At any town meeting in any town or place in this State, the moderator of said meeting shall be chosen by the vote of a plurality of the legal voters present and voting for said officer, [*Laws of 1847, chap. 490,*] who shall be sworn and shall preside in and regulate the business of the meeting; may prescribe rules of proceeding therein, which may be altered by the town; shall decide all questions of order and make a public declaration of all the votes passed. (*Part of R. S., sec. 3.*)

SEC. 4. When any vote declared by any moderator or other officer presiding in town meeting shall immediately, and before any other business is commenced, be questioned by seven or more of the voters present, the moderator or other presiding officers, shall make the vote certain by a *poll of the voters*. And if any moderator or other officer presiding in town meeting, shall wilfully neglect or refuse to make any vote certain by a poll of the voters, when required as aforesaid, or shall wilfully violate or neglect to enforce any rule of proceeding in town meeting which shall have been established by vote of the town or otherwise, he shall for each offence be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months. (*Laws of 1847, chap. 494, sec. 1.*)

SEC. 5. Whenever any moderator of any town meeting shall from any cause resign or leave his place as moderator and cease to preside in the meeting before the adjournment or dissolution thereof, the voters present may proceed forthwith to choose by ballot a

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§ 35.

OF TOWN MEETINGS.

FROM
Revised Statutes.
of 1847.
1847.

SECTION
Moderator, choice of, if office vacant.
Speaking in town meeting.
Disorders, how corrected.
Constables to obey moderator.

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men present, the town clerk shall
and shall have the powers and
R. S., chap. 33, sec. 1.)
selectmen or town clerk of the
office calling such meeting to
order is chosen. (*R. S., sec. 2.*)
in any town or place in this
State shall be chosen by the vote
of the voters present and voting for said officer,
and shall be sworn and shall preside
at the meeting; may prescribe rules
for the meeting; shall be altered by the town; shall
make a public declaration of all
his powers. (*R. S., sec. 3.*)

by any moderator or other
person called to office immediately, and before
being questioned by seven or more
of the voters. And if any
person called to office at a town meeting, shall wilfully
obey a poll of the voters,
and wilfully violate or neglect to
attend a meeting which shall have
been called for, or otherwise, he shall for-
feit the sum of five hundred dol-
lars, to be paid within six months. (*Laws of*

of any town meeting shall
be chosen as moderator and cease to
hold office on the dissolution there-
of, and shall be chosen by ballot a

new moderator, who shall be sworn and proceed in the meeting to
the close thereof, in the same manner as the moderator first chosen
might have done; and the first or senior selectman present, and if
no selectman be present, the town clerk shall preside until such new
moderator shall be chosen. (*Laws of 1847, chap. 494, sec. 2.*)

SEC. 6. No person shall speak in any meeting without leave of
the moderator, nor when any person is orderly speaking; and all
persons shall be silent at the desire of the moderator, on pain of
forfeiting one dollar for each offence, for the use of the town. (*R. S., chap. 33, sec. 5.*)

SEC. 7. If any person shall conduct in a disorderly manner,
and after notice from the moderator shall persist therein, or shall in
any way disturb the meeting or wilfully violate any rule of pro-
ceeding therein, the moderator may command any constable or any
legal voter of such town to carry such disorderly person out of the
meeting and detain him until the business of the meeting is finish-
ed. (*R. S., chap. 33, sec. 6.*)

SEC. 8. Every constable shall obey the orders and commands
of the moderator for the preservation of order, and may command
such assistance as is necessary; and if any constable shall neglect
to perform any of the duties imposed by this or the preceding
chapter, he shall forfeit the sum of forty dollars, one half for the
use of the town, the other half to any person who will sue for the
same. (*R. S., chap. 33, sec. 7.*)

CHAPTER 36.

OF THE CHOICE OF TOWN OFFICERS.

COMPILED FROM

Chapter 34 of the Revised Statutes.
" 993, Laws of 1850.

SECTION

1. Town clerk, choice and duties.
2. Selectmen, " " "
3. Assessors, " " "
4. Agents, overseers, &c.
5. Treasurer to give bonds within six days of election, or office vacant.

SECTION

6. If towns fail to elect treasurer, selectmen may appoint.
7. Constables and other officers.
8. Term of office.

SECTION 1. Every town at the annual meeting shall choose by
ballot and by major vote a town clerk, whose duty it shall be to
record all votes passed by the town while he may remain in office,
and to discharge all the duties of the office according to law.

SEC. 2. At such meeting three or more selectmen, not exceed-