

Moderator's Role at the Deliberative Session of Town Meeting

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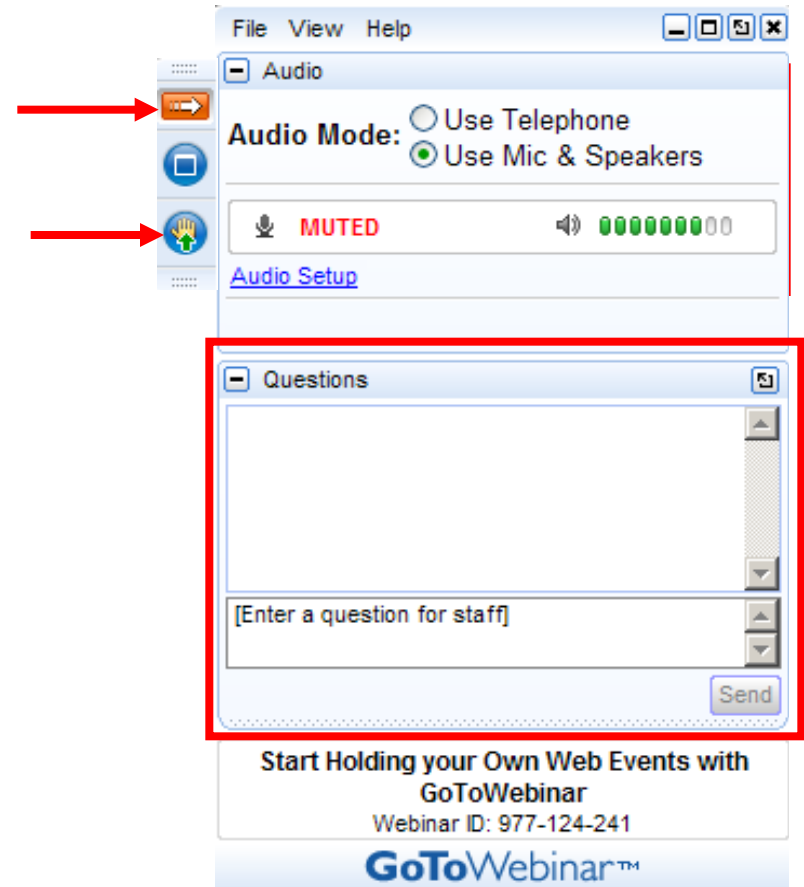
How to Participate Today

Open and close your Panel

- Submit text questions

- Q&A's addressed at the discretion of the presenters

- Several “scenarios” will be discussed today



The screenshot displays the GoToWebinar interface. At the top, there is a menu bar with 'File', 'View', and 'Help'. Below this, the 'Audio' panel is visible, featuring a 'File View Help' sub-menu, a 'Close' button, and 'Audio Mode' options: 'Use Telephone' (unselected) and 'Use Mic & Speakers' (selected). A 'MUTED' status indicator and a volume level bar are also present. A red arrow points to the 'Open Panel' icon (a right-pointing arrow) and another red arrow points to the 'Close Panel' icon (a hand with a green arrow pointing up). Below the Audio panel, the 'Questions' panel is highlighted with a red box. It contains a large text input area, a placeholder text '[Enter a question for staff]', and a 'Send' button. At the bottom of the interface, there is a promotional banner for 'GoToWebinar' with the text 'Start Holding your Own Web Events with GoToWebinar' and 'Webinar ID: 977-124-241'.



Election of Moderator

- A moderator is chosen every two years, in even-numbered years, by ballot.
- The moderator assumes office when the regular town business meeting held that year has adjourned and upon his or her “qualification” for office, which means upon taking of the oath of office in accordance with RSA Chapter 42.
- The moderator serves through the adjournment of the regular town business meeting for two years following election until the qualification of a successor.
- Compensation is set by the annual meeting, in accordance with RSA 31:9-b.



Vacancy in Office of Town Moderator or Absence of Town Moderator

- Vacancies in the office of town moderator are filled by appointment made by the supervisors of the checklist in accordance with RSA 669:62.
- If the moderator will be absent or is unable to perform her duties, the moderator must appoint a moderator pro tempore. RSA 40:3; RSA 658:19.



Assistant Moderators

- The moderator may appoint an assistant moderator, who must take the oath of office in the same manner as the moderator.
- The assistant holds office at the pleasure of the moderator and has all the powers and duties of the moderator, subject to the moderator's control. RSA 40:3-a.
- An assistant moderator may be, and usually is, appointed as moderator pro tempore if the moderator will be absent.
- Assistant moderator subject to control of moderator, where the moderator pro tempore serves as a substitute moderator.



Basic Authority of Moderator

- RSA 40:4 requires the moderator “to preside at town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed.”
- RSA 40:4 provides that the moderator “may prescribe rules of proceeding but such rules may be altered by the town.”
- The moderator has full control over procedure used at town meetings.

Prepare Yourself to Serve

- Study the law, local issues and create your own rules of procedure.
- Prepare to act with:
 - Neutrality
 - Calm and organized demeanor
 - Willingness to react immediately to unexpected developments



Preparation For the Issues

- Meet with governing body, budget committee, election officials, town counsel.
- Plan the meeting with governing body.
 - Who will make motion, enter a second, and speak to the issue(s)?
- Who will respond to legal and other questions about substance of the articles?
- Contact author(s) of petitioned articles.

Preparation For the Session

- Assure the Meeting Place is Ready
 - Seats, podium, public address
 - Projection equipment/PowerPoint
 - A method to separate voters and nonvoters
 - Sufficient voting supplies for secret ballots
- Security issues:
 - Police presence?
 - Video cameras to record actions and to improve security?



Town Meeting Rules of Procedure

- Strict adherence to any set of rules for parliamentary procedure is neither required nor recommended.
- The moderator may not override existing state law. Pierce v. Langdon, 110 N.H. 170 (1970).
- Town meeting may overrule the moderator.
- Moderator must abide by rules for town meeting found in RSA Chapter 40; moderator who fails to do so would be guilty of a misdemeanor.



Postpone Meeting; RSA 40:4

- Bad weather, Moderator's decision
 - Reasonable belief roads are hazardous
 - At least 2 hours before start of meeting
 - Be practical: arrange in advance with the police to get their advice
- Reschedule to time, date & place certain
 - Not more than 72 hours later for SB 2 first session
 - Later on same day?
 - Inform citizens by whatever means available
 - Have notices typed in advance



Use of the Secret Ballot

- If requested on any vote RSA 40:4-a, I (a)
 - By 5 voters in writing (3 in town < 500)
 - Who are present, prior to a voice vote
 - No limits on requests
- Required in event of a challenge to a vote taken by a different method, RSA 40:4-b
 - By 7 voters, orally or in writing
 - Before other business begins



Recount of Secret Ballot

- Recount of secret ballot votes, conducted immediately during deliberative session if:
 - 5 voters who are present request recount (3 voters for towns < 500); and
 - Vote margin is less than 10%.
- RSA 40:4-a, I (b)

Restricting Reconsideration

- RSA 40:10, I and RSA 40:13, IV
 - General rule: any vote can be reconsidered until the deliberative session adjourns, unless reconsideration has been restricted by vote of the meeting.
- SB2 differences:
 - No meeting 7 days later
 - No reconsideration after ballot session

Moderator's Role in Preventing Disorder

- The moderator may command a police officer to remove and detain any person from the meeting conducting him or herself in a disorderly manner. RSA 40:8.
- No person may speak during the meeting without permission of the moderator, nor may anyone speak when any person already speaking. Everyone must be silent at the desire of the moderator, or s/he will be guilty of a violation. RSA 40:7.



Firearms and Town Meeting

- RSA 159:26 prohibits Towns from regulating the “sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearms components, ammunition, or firearms supplies.”
- Can the Moderator prohibit firearm possession at a town meeting held at a school?



Firearms and Town Meeting

- Answer: a *qualified* yes.
- The Safe School Zone Gun Act of 1990 prohibits the possession of a firearm within 1000 feet of a school unless the individual possessing the firearm is licensed to do so by a political subdivision of the State, and the law of the State requires that the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license. 18 USC Section 922 (q).



Warrant Article Amendments At Traditional Town Meeting

- The issue: voters may decide not to decide, by “passing over” an article.
- The voters may also amend an article freely:
 - Add words, remove words
 - Change the intent of the article
 - Change amounts of appropriations
 - Cannot change the purpose of an article
 - Cannot add appropriations that have not been discussed at the budgetary public hearing
- The rules change when in the SB2 format



Warrant Article Amendments at SB 2 Deliberative Session

- Meeting cannot “decide not to decide”; all articles go to the ballot in some form. RSA 40:13, VI.
- Power to amend is limited, RSA 40:13,IV.
 - Wording prescribed by law can’t be changed
 - The ballot uses the language as amended
 - Cannot “eliminate the subject matter of the article” (eff. 2/4/2011)
 - Can change the dollar amount of an appropriation, all the way to zero

Warrant Article Amendments at SB 2 Deliberative Session - “Changing the Subject Matter”

- “To see...” is now prohibited by law.
- Add the word “not”... If the impact is to remove the choice on the issue from the voters, the change violates the statute.
 - Bailey v. Town of Exeter, No. 218-2011-CV-00203, Rockingham Superior Court, 5/31/2011 (making the question a “nullity”)



Scenario #1

- The following article is submitted by petition of voters:
Shall the town adopt an ordinance under RSA 31:39, I(I) as follows: “AN ORDINANCE regarding firearms. The Town of Reactionary, New Hampshire hereby prohibits the manufacture, repair, sale or other transfer of all firearms within the borders of the Town. All currently-operating such businesses shall have one year to cease operation from the passage of this ordinance. No business licenses or zoning approvals shall be issued for any business or use of property which would violate this ordinance. The select board shall have the authority to enforce this ordinance, violation of which shall be punishable by a fine of \$1,000 per day per offense.”

Scenario #1: Q&A

- What issues are presented by this proposed ordinance?
 - **Preemption 159:26; possible unconstitutional taking of property**
- What actions can or should the moderator take regarding this article before the deliberative session?
 - **Preparation: talk with town counsel, meet or talk with petitioners; article must go on warrant as presented**
- If it is determined that the ordinance would not be legal, can the select board refuse to place it on the warrant?
 - **No, must go on warrant. RSA 39:3.**
- The article is taken up at the deliberative session, and an amendment is offered to change it into a “sense of the meeting resolution.” What does that mean? Is it legal?
 - **Legal to make amendment, but ordinance as adopted has no legal effect**

Scenario #2



An individual school district warrant article, placed there by the School Board, reads as follows:

To see if the school district will vote to raise and appropriate the sum of \$120,000 to renovate the existing athletic department building and snackbar near the playing fields at the school. [The school board approves, 3-0. The budget committee disapproves, 6-5.]

[The estimated property tax rate impact is \$ 0.23 per \$1,000]

Scenario #2: Q&A

Consider the following scenarios and determine how the moderator should handle them.

- A voter moves to amend by substituting the figure of \$ 0.34 per \$1,000 in the estimated tax impact based on his personal investigation of falling real estate values.
 - **32:5, V-b: only select board provides tax rate impact note**
- A voter moves to strike the tax-impact clause as illegal.
 - **Tax rate impact allowed on special warrant articles only; this is a separate not special article. 32:3, VI.**

Scenario #2: Q&A (cont'd)

- A school board member moves to amend by adding: “This will be a non-lapsing appropriation per RSA 32:7, VII and will not lapse until the project is complete or May 30, 2016, whichever is later.”
 - **Illegal change of content; adding non-lapsing clause will be disallowed by DRA**
- Assume that at the beginning of the deliberative session, a motion passed to restrict reconsideration of all warrant articles. Before the session is over, a motion is made to reconsider the article to renovate the athletic building and snackbar.
 - **Cannot move to restrict reconsideration before article is addressed at meeting**



Scenario #3

The following article is taken up at the deliberative session:

“To see if the town will vote to raise and appropriate the sum of \$50,000 to be added to the Fire Department Vehicle and Equipment Capital Reserve Fund, established by the town meeting in 2006.”

Consider the following scenarios and determine how the moderator should address them.

Scenario #3: Q&A

- An amendment is offered and seconded to discontinue the capital reserve fund. Can the meeting pass this amendment?
 - **No: discontinuance not warned, impermissible amendment**
- An amendment is offered and seconded to change the purpose of the fund to the “Town Hall Proximity Land Acquisition Fund.” Because there are rumors that a parcel adjacent to the existing fire station will soon come on the market, it would make a good home for a new fire station, and with the addition of the \$50,000, the fund would have enough money to buy the land. Many people speak in favor, and the motion to change purpose appears to pass easily by a voice vote. Will DRA have a problem with this? What should the moderator say, if anything, to the voters?
 - **Change of purpose amendment, “stay-at-home rule”: amendment will be disallowed by DRA**

Scenario #3: Q&A (cont'd)

- A motion is made and seconded to delete all words except “to see.” Is this permissible?
 - For SB 2, See, 40:13, IV(c)
 - For Traditional, amendment is allowed
- A motion is made and seconded to appoint agents to expend to the fund. If the votes are in favor, is this amendment valid?
 - No, cannot appoint agents unless warned in the posted warrant
- A motion is made and seconded to spend \$50,000 to purchase needed fire department equipment rather than place the money into the capital reserve fund. Should this amendment be allowed?
 - No, DRA will disallow an article that changes appropriation to CRF to an appropriation to expend in that fiscal year

Scenario #4



A voter comes to the deliberative session and sets up a video camera on the side of the room. Two voters demand he remove it, but he does not. He says: “***This is a public meeting, and I have every right to record!***”

Scenario #4: Q&A

- Does he have the right to record?
 - **Yes, this is a public meeting under RTK and recording is permitted**
- The moderator enlists a police officer to take the camera and remove the voter from the room for being disruptive. Is this proper?
 - **No, the voter can record, no police action warranted or permitted**

Scenario #5



At the deliberative session, a motion is made to discuss a proposed zoning amendment.

Scenario #5: Q&A

- How should the moderator handle this request?
 - **No discussion of zoning amendments; they were addressed at public hearing before planning board**
- Discussion does ensue, and then a motion is made to amend the zoning amendment. What do you do? Would such an amendment be valid?
 - **Cannot amend zoning articles, and this applies to both SB2 and Traditional Town Meeting.**



Conclusion

Thank you for attending today's webinar!

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January 14, 2015