

April 25, 2022

Mark R. Reich
mreich@k-plaw.com

Mr. Matthew Coogan
Town Administrator
Boxford Town Hall
7A Spofford Road
Boxford, MA 01921

Re: Petitioned Warrant Articles

Dear Mr. Coogan:

You have requested an opinion regarding the impact of two petitioned warrant articles which appear on the Annual Town Meeting Warrant for May 10, 2022 as Articles 25 and 26. It is my understanding that the two articles in question were submitted by the petition process pursuant to G.L. c. 39, sec. 10, which states in pertinent part, “The selectmen shall insert in the warrant for the annual meeting all subjects the insertion of which shall be requested of them in writing by ten or more registered voters of the town”. Thus, the articles, if petitioned properly, must appear on the warrant as submitted. Article 25 seeks a resolution on the construction of traffic-controlling infrastructure, with a limitation on planning and expenditures by the Select Board. Article 26 seeks to prohibit the Select Board from expending funds on certain roadway improvements without Town Meeting approval. The two articles in their entirety are as follows:

ARTICLE 25. Be it resolved that the Town of Boxford does not support, nor does it approve the planning and construction of a circular intersection control structure, including but not limited to a roundabout, rotary, or traffic circle, at the intersection of Washington Street and Main Street in West Boxford. The Boxford Select Board is instructed by tis [sic] decision to cease all planning and expenditure of any Town funds, including MGL Chapter 90 funds, for any such a circular intersection structure. Any future proposal for traffic control at the Washington and Main intersection shall be brought before an Annual Town Meeting for approval before any funds are expended for its planning or construction.

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ARTICLE 26. The Town directs the Boxford Select Board that Town or Chapter 90 Funds (MGL Chapter 90 §34) intended for improvement of roads and byways in Boxford, shall not be expended for new structures or projects, such as planning and construction of circular intersection controls including roundabouts, rotaries, and traffic circles; signal controlled intersections such as traffic lights; widening of existing roadways by more than 15%; installation of curbs and sidewalks; or any other new changes, without approval at an Annual Town Meeting. Annual Town Meeting approval shall be required prior to any further action on or expenditure for the Route 133 ‘Rehabilitation’, MassDOT project Boxford #606721. Expenditure of Chapter 90 funds for the repair or replacement

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of existing roadways and supporting structures such as culverts and bridges may be made by vote of the Select Board without Town Meeting approval.

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You request an opinion as to the impact of these warrant articles should they be approved by the voters at Town Meeting.

In my opinion, the two petitioned articles seek to have the Town's legislative body, Town Meeting, direct the action of the Town's executive body, the Select Board, in matters beyond the authority of Town Meeting. The decision whether to study, plan, and contract for infrastructure improvements in the Town is an executive function. While funding of contracts for such improvements may be subject to approval by Town Meeting, Town Meeting may not direct the executive and administrative actions of the Select Board, in my opinion. Further, in my opinion Town Meeting may not require that future projects be subject to Town Meeting approval, apart from the approval of appropriations for such projects, absent a specific statutory requirement for such approval. Please note further that so-called Chapter 90 funds, received from the Commonwealth, are not subject to specific appropriation by Town Meeting and so may be expended by the Select Board at its discretion. Therefore, in my opinion, action on the two petitioned articles would constitute a "sense of the meeting" only, as such action exceeds the authority of Town Meeting and so could not direct or bind the Select Board.

There is a long line of case law holding, as a general principle, that a legislative body has no ability to exercise direction or control over a board or officer whose duties are defined by state and local law. See, e.g., Anderson v. Board of Selectmen of Wrentham, et al, 406 Mass. 508 (1990); Russell v. Canton, 361 Mass. 727 (1972); and Breault v. Auburn, 303 Mass. 424 (1939). The distinction between executive and legislative action is important for many reasons, including that interference by the legislative body in executive matters would result in significant negative impacts on the "efficiency and economy in the business administration" of a municipality. See Dooling v. City Council of Fitchburg, 242 Mass. 599, 602 (1922) (considering whether the action of authorizing the execution of a contract was subject to a referendum).

Be advised that Massachusetts appellate courts definitively and consistently hold that the local legislature lacks any executive authority, and therefore, no action may be taken that could dictate the action of the executive in any respect. For example, it is well established that "[t]he power of appointment is, by its nature, an executive power." City Council of Boston v. Mayor of Boston, 383 Mass. 716, 721 (1981). While a "sweeping determination of municipal policy as to the scale of salaries to be paid to all municipal employees... is a legislative function, [] the appointment of single officers or employees is reserved to the executive." City Council, 383 Mass. at 722. This conclusion is echoed in a long line of case law holding, as a general principal, that a legislative body has no ability to exercise direction or control over a board or officer whose duties are defined by the statute (G.L. c. 4, sec. 7) and the Town's bylaws (Chapter 32, sec. 32-1). See, e.g., City of Boston v.

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Boston Police Superior Officers Federation, 29 Mass. App. Ct. 907 (1990); Anderson v. Board of Selectmen of Wrentham, et al, 406 Mass. 508 (1990); Russell v. Canton, 361 Mass. 727 (1972); Breault v. Auburn, 303 Mass. 424 (1939); Daddario v. Pittsfield, 301 Mass. 552 (1938); and Lead Lined Iron Pipe Co. v. Wakefield, 223 Mass. 485 (1916).

The Town's Bylaws, at Chapter 32, sec. 32-1, state with respect to the authority of the Select Board, "The Board shall exercise general supervision over all matters affecting the interest or welfare of the town. The Select Board shall have all the powers and duties of a board of selectmen under the General Laws and any special laws applicable to the Town of Boxford as well as such other powers and duties as are provided in these bylaws." The statutory role of the Select Board is defined in G.L. c. 4, sec. 7 as follows:

Fifth B, "Chief executive officer", when used in connection with the operation of municipal governments shall include the mayor in a city and the board of selectmen in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.

The statute further defines the role of Town Meeting, as the legislative branch, as follows:

Eighteenth B, "Legislative body", when used in connection with the operation of municipal governments shall include that agency of the municipal government which is empowered to enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan orders, bond authorizations and other financial matters and whether styled a city council, board of aldermen, town council, town meeting or by any other title.

Thus, by operation of bylaw and statute, the Select Board acts as the Town's executive body. Town Meeting is the Town's legislative body and may enact bylaws and take financial actions within the scope of legislative authority. The legislative body is not charged with executive authority, as determined in the case law cited above.

Here, the articles submitted by petition do not propose a new law or an appropriation of funds. Instead, they seek input on a matter of policy, being whether the Select Board should consider and undertake construction of certain infrastructure improvements, and whether the Board may utilize Chapter 90 state funds to undertake such improvements. Further, the petitioned articles require Town Meeting approval prior to consideration of these infrastructure projects, thus seeking to imbue Town Meeting with executive authority.

In my opinion, the directives contained in petitioned Articles 25 and 26 are beyond the scope of Town Meeting authority as stated above. As noted above, the properly petitioned articles must appear on the warrant in the form as petitioned. The Moderator may determine the extent of consideration of the articles by Town Meeting. However, in my opinion, while the Moderator may allow a motion to be made under each article and allow debate and a vote on each article, the result



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will be a “sense of the meeting” and will not function to direct or bind the actions of the Select Board as the Town’s executive body.

Please contact me with any further questions regarding this matter.

Very truly yours,

A handwritten signature in blue ink that reads 'Mark R. Reich'.

Mark R. Reich

MRR/kes
cc: Select Board
811330/BOXF/0275