

TO: Brigitte Codling, Haverhill Town Manager

FROM: C. Christine Fillmore

DATE: March 12, 2022

RE: Petitioned Warrant Articles

As requested, this memo addresses legal aspects of Articles 27-32 on the 2022 Haverhill Town Meeting Warrant. Please note: I express no opinion on the underlying policy issues of any article because that is not my role.

Articles 27 and 28:

- These propose that the Town appropriate money to fully fund the 2022 budget of the Woodsville Highway Department and Fire Department.
- If the articles are approved, these amounts would be raised through general taxation assessed on all property in Haverhill, whether it is located within the boundaries of the Woodsville District or outside of the District.
- You have asked for an explanation of the legal structure of village districts in relation to towns and cities and how that ordinarily works in New Hampshire.
- All of the land in the state of New Hampshire is divided into various towns, cities, and a few small special unincorporated areas. All property is within the boundaries of one of those areas. Village districts are each a separate layer of government overlaid on top of whatever town or city already exists. (Some village districts are located partially in one town and partially in another, but are still a separate and distinct political entity from either town.) All property in New Hampshire is located in a town or city, but not all property is located in a village district.
- All New Hampshire towns and village districts are separate and independent municipal entities. A village district is created (whether under RSA 52 or by special legislation) to perform one or more specific municipal purposes for the benefit of the properties located within its boundaries, such as running a municipal water or sewer system, maintaining public roads, or operating a fire or ambulance service. In effect, a village district peels off one or more of the functions that a town could perform and decides to perform that function itself, for the benefit of the property located within its borders.
- To pay for those functions, each village district in New Hampshire, at its annual meeting, has authority to vote to create its own budget to be raised by taxation of the property located within its borders. Village districts do not ordinarily have the authority to tax any property outside their borders, just as no town has the authority to tax any property located in a different town.
- As a result, any property located in a village district is automatically subject to two separate layers of government (town and village district) and automatically subject to taxation to support two separate sets of municipal operations (town and village district).
- It is extremely unusual for a town to raise money at its annual meeting to completely fund the functions of a village district located within the town. A town has no legal authority to direct how the money of a village district is used, because the essential idea of a village district is that its voters have decided they want to govern and pay for those functions themselves, independently of the town.

Article 29:

This would direct the Selectmen to petition the Legislature to remove the District's authority to operate a highway and fire department. If passed, it would require the Selectmen to do that. The Legislature does have the authority to change the special legislation that created the District to remove the authority for the District to carry out any particular municipal function, because a village district is a special purpose entity that only exists to perform specific functions that would otherwise be performed by the town in which the district is located. The Selectmen would not have any ability to force the Legislature to pass such legislation, only the ability to ask.

Articles 30 and 31:

These articles would direct the Selectmen to petition the Legislature to change the District's special governing legislation to provide that funding for the District's fire operations (Article 30) and highway operations (Article 31) would be raised by taxation of the property located within its borders, and that funding for the Town's fire and highway operations would be raised by taxation of the property located outside of the District borders. If either article passed, it would require the Selectmen to make that request of the Legislature.

However, while the Legislature can change the District's special governing legislation, a change of this nature would almost certainly violate the New Hampshire Constitution and be unenforceable. Part 2, Article 5 of the NH Constitution requires that all taxes must be assessed in a way that is "proportional" among all of the taxpayers within the political entity that is assessing the tax.

The NH Supreme Court has consistently interpreted this to mean that any taxing district (the State, or a school district, or a town or city, or a village district) is required to tax all of the property within its borders proportionally in relation to the value of that property.¹ In other words, if a town is raising money by taxing the property within its borders, it must assess that tax in an equal way on all of the property within the town. It cannot tax some property for a particular municipal function and not tax other property for that function, because that would not be "proportional".

This makes sense given the legal structure of towns v. village districts. All property is located in a town or city in New Hampshire. Some property is also located in a village district that sits on top of that town. The property in the village district is automatically subject to taxation for both the town budget and the village district budget. The Legislature does not have the constitutional authority to change this.

Article 32:

This article would require the Selectmen to petition the Legislature to dissolve the District. If this article passes, the Selectmen would be required to do that. The Legislature has authority to dissolve the District, but the Selectmen have no ability to force the Legislature to do so.

¹ Opinion of the Justices, 144 NH 374 (1999).