

**The State of New Hampshire
Superior Court**

Rockingham S.S.

HARRIET E. CADY

V.

TOWN OF DEERFIELD

NO. 218-2016-CV-133

ORDER

The petitioner, Harriet E. Cady, filed a petition for injunctive relief requesting an immediate hearing against the respondent, the Town of Deerfield. The petitioner alleges that at a deliberative session held on January 30, 2016, two warrant articles, which had been submitted for the town vote at the Town Meeting on March 8, 2016, were unlawfully amended. The respondent objects and moves to dismiss. The Court held an evidentiary hearing on the matter on February 5, 2016. For the following reasons the petitioner's request for injunctive relief is DENIED.

Background

The parties do not dispute the following facts. The Town of Deerfield is a so-called SB 2 municipality. See RSA 40:14, V. SB 2 municipalities conduct their Town Meetings in two sessions. RSA 40:13. The first session is a deliberative session and "shall consist of explanation, discussion, and debate of each warrant article." RSA 40:13, IV.

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.

RSA 40:13, IV(a)–(c). At the second session, final voting by official ballot takes place.

RSA 40:13, VI.

At the Town's January 30th deliberative session, two petitioned warrant articles given the numbers Article 16 and Article 17 were considered and amended as follows:

Article 16 as drafted stated:

We the undersigned registered voters of Deerfield petition the Deerfield Welfare Director be an elected position as of March, 2016 to be paid no more than \$5,000 per year with no raises to be given if voted by the taxpayers by a warrant article.

Article 16 as amended stated:

Shall we express an advisory view that the position of Deerfield Welfare Director be an appointed position as it is at the present time.

Article 17 as drafted stated:

We the undersigned registered voters of Deerfield petition the Deerfield Police Chief be an elected position as of March, 2017 to be paid \$65,000 per year with cost of living increases each year if voted by the Taxpayers.

Article 17 as amended stated:

Shall we express an advisory view that the position of the Deerfield Police Chief be an appointed position as it is at the present time.

Resp't's Mot. Dismiss ¶ 3.

The petitioner argues the amendments to Articles 16 and 17 violate RSA 40:13, IV(c) because they change the subject matter of the article. In particular, the petitioner asserts that the subject matter of both Articles 16 and 17 is the election of the Town's Welfare Director and Police Chief, respectively. The petitioner contends that amending these articles to eliminate the term "elected" and replacing it with "appointed" renders the article moot because both the Welfare Director and Police Chief positions are currently appointed positions. Because the articles as amended are moot, the petitioner argues the subject matter of these articles has been eliminated.

The respondents argue that the amendments to articles 16 and 17 are lawful and valid under RSA 40:13, IV(c). The respondents contend that RSA 40:13, IV(c) only prohibits the elimination of the subject matter of a warrant article, and does not curtail the deliberative session's ability to amend these articles. The respondent asserts that the subject matters of Articles 16 and 17 are the positions of Welfare Director and Police Chief, and how "those positions might be filled." Resp't's Mem. Law. Supp. Mot. Dismiss 5. The respondent, therefore, claims that the subject matter of Articles 16 and 17 remained the same as drafted and as amended. Accordingly, the respondent argues the amendments adopted by the deliberative session were proper.

Analysis

Resolution of the parties' arguments requires the Court to interpret the language of RSA 40:13, IV(c). In matters of statutory interpretation, the Court is "the final arbiter[] of the legislature's intent as expressed in the words of the statute considered as a whole." Lamb v. Shaker Reg'l Sch. Dist., ___ N.H. ___, 120 A.3d 919, 921 (2015). The

Court first looks “to the statute’s language, and, if possible, construe[s] that language according to its plain and ordinary meaning.” Id.

Here, there is no plain or ordinary meaning of the term “subject matter.” This is evidenced by the parties’ distinctly different yet plausible interpretations of the term. Therefore, the scope of RSA 40:13, IV(c) is somewhat ambiguous as to the meaning of “subject matter.” Where statutes are ambiguous, the Court turns to the legislative history “as a valuable aid in ascertaining the meaning of statutes.” Petition of Pub. Serv. Co. of New Hampshire, 130 N.H. 265, 273 (1988).

RSA 40:13, IV(c) was enacted in direct response to the New Hampshire Supreme Court decision in Grant v. Town of Barrington, 156 N.H. 807 (2008). In Grant, the Town of Barrington, an SB 2 municipality, considered the following warrant article at its deliberative session:

To see if the Town of Barrington will vote that infrastructure and landscape development (i.e. road, streets, water, sewer, storm drains, utilities, etc.) of said town center/village district shall be by means of private investors and private developers and not by the Town of Barrington at taxpayer's expense.

Grant, 156 N.H. at 808. The warrant article was then amended “by deleting all of the language except the introductory phrase, “To see.” Id. “The petitioners sought an injunction to require the town to place the article as originally worded on the ballot for the second session.” Id. The trial court denied the petitioners request for injunctive relief and the supreme court affirmed the trial court’s decision. Id. The supreme court explained that it found “nothing in RSA 40:13, IV or RSA 39:3 that prevent[ed] voters at the deliberative session from effectively removing a subject from consideration at the second session by amending an article to delete the entire subject thereof.” Id. at 811.

As a result of the decision in Grant, both the House and the Senate introduced bills for the purpose of “requir[ing] a town that has adopted official ballot voting to retain the substance of the subject matter of a warrant article when it is amended.” H.B. 77, 2011 Sess. (N.H. 2011); S.B. 16, 2011 Sess. (N.H. 2011). Ultimately, House Bill (HB) 77 was passed by both the House and Senate and was codified as RSA 40:13, IV(c).

The testimony surrounding HB 77 suggests that the legislature enacted RSA 40:13, IV(c) to protect the integrity of the official ballot process in SB 2 municipalities. *H. Comm. on Mun. and Cty. Gov’t Pub. Hearing on HB 77, 2011 Sess. (N.H. 2011); N.H.S. Jour., 55–56 (2011)*. The legislature noted that amendments like the “To see” amendments in Grant rendered the article moot and left voters feeling confused and disenfranchised. *Id.* “Accordingly, it was the consensus of the entire committee that it is important for voters in towns operating under SB 2 form of government to be able to vote on each article that contains the intent as originally proposed. To eliminate all subject matter creates confusion and often discourages citizen’s participation.” *N.H.H.R. Jour. 80 (2011)*.

It appears from the legislative history that the mischief the legislature was aiming to address by enacting RSA 40:13, IV(c) was the “To see” problem presented in Grant. That is, the primary concern of the legislature was to prevent the deliberative session from being able to amend warrant articles to such an extent that the articles would literally be gutted of all subject matter. This is evidenced by the language chosen by the legislature in RSA 40:13, IV(c). The legislature deliberately chose the word “eliminate,” and not any other term such as change or alter. Although “eliminate” is not defined by statute, the plain and ordinary meaning of this word is to “remove,” or “eradicate.” *Webster’s Collegiate Dictionary 375 (10th ed. 1993)*. This language is unambiguous.

This interpretation of RSA 40:13, IV(c) is in line with the legislative intent of protecting the integrity of official ballot voting in SB 2 municipalities. If the Court were to adopt the petitioner's position, the result could wreak havoc on the deliberative session process. Under the petitioner's interpretation of RSA 40:13, IV(c), any amendment to the form or procedure could "eliminate the subject matter of the article." This is clearly not what the legislature intended when enacting RSA 40:13, IV(c). Therefore, RSA 40:13, IV(c) prohibits only those amendments of a warrant article that removes or eradicates the subject matter as originally proposed.

Here, unlike the "To see" amendments in Grant, the amendments to Articles 16 and 17 do not remove or eradicate the originally proposed subject matter. Rather, the amended articles reflect the same intent of determining how the Welfare Director and Police Chief positions are filled. Thus, because the amendments to Articles 16 and 17 do not effectively strip the original articles of their entire subject matter, the original articles are not moot. In fact, voters are still afforded the ability to vote down the amended Articles 16 and 17, without confusion or the threat of disenfranchisement. Such a vote would send a message to the Town's Board of Selectmen that the voters no longer approve of the appointments of the Welfare Director and Police Chief. The Board of Selectmen would then be alerted to the issue and prompted to address it accordingly. The amended Articles 16 and 17, therefore, still have potentially the same effect as they would have had as originally drafted.

Conclusion

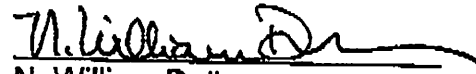
Accordingly, the applicable law does not prohibit the deliberative session from substantially amending the language of a warrant article so long as that amendment does not effectively eliminate the subject matter of the original article. Because the

amendments to Articles 16 and 17 do not remove or eradicate the subject matter of the original articles, they are lawful and may be placed on the official ballot as written.

Therefore, the petitioner's petition for an injunction is DENIED.

SO ORDERED.

2/10/2016
DATE


N. William Delker
Presiding Justice

FAX FORM

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(224-0320)

TO: DATE February 10, 2016

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