

## Supreme Court Affirms Legislative Body's Discretion to Warn Advisory Articles

Each year, VLCT members are faced with the issue of whether to include petitioned advisory articles on their annual town meeting warnings. At issue in each case is the interpretation of 17 V.S.A. § 2642(a). This statute provides that the warning for a special or annual town meeting must contain any article or articles requested by a petition signed by at least five percent of the voters of the municipality and filed with the municipal clerk not less than 40 days before the day of the meeting.

The Vermont Supreme Court has on several occasions addressed predecessor statutes and other laws substantially similar to 17 V.S.A. § 2642(a). It has concluded that local legislative bodies have significant discretion in deciding whether to include a requested article in the annual town meeting warning. City councilors, selectboard members and village trustees use this discretion to balance the efficient transaction of essential town business with the preservation of the Vermont town meeting as a forum for public discourse on state and national issues.

In a recent decision, the Vermont Supreme Court affirmed that local legislative bodies have significant discretion to determine which, if any, advisory articles will be included in the warning for a special or annual town meeting. *Clift et al. v. City of South Burlington*, 2007 VT 3 (January 18, 2007). At issue was a petitioned article directing the South Burlington City Council to ask state legislators to enact legislation concerning abortions. In affirming the South Burlington City Council's authority to refuse to warn this article, the Court stated:

While the City could have warned the advisory article and presented it to the voters, it was under no obligation to do so. To decide otherwise would be to subject the town meeting – a forum primarily for conducting municipal business – to debate on every social issue of interest to voters. Allowing the City discretion to warn advisory articles, such as the one presented by petitioners, furthers the Council's ability to balance the efficient transaction of city business with the provision of a local forum for discussing state and national issues. *Id.* at paragraph 7.

The Court found that the petitioned article was outside the purview of the City and its voters. Therefore, while the South Burlington City Council could have warned the advisory article, it could not be legally compelled to do so.

The *Clift* decision furthers a long line of Vermont Supreme Court cases interpreting 17 V.S.A. § 2642(a) and its predecessor statutes. Since 1969, the Supreme Court has interpreted these statutes to compel legislative bodies to present petitioned articles to voters only when the purpose stated in the petition "set forth a clear right which is within the province of the town meeting to grant or refuse through its vote." *Royalton Taxpayers' Protective Assn. v. Wassmansdorf*, 128 Vt. 153, 160 (1969).

While arguments have been made that all (or most) advisory articles must be warned, the League has consistently advised members that legislative bodies have discretion under the law to warn advisory articles. At the same time, we have reminded members that voters unhappy with a

legislative body's decision not to warn an advisory article could refuse to re-elect those members whom they are unhappy with. Accordingly, a legislative body must always proceed with due caution when considering the decision not to warn a petitioned advisory article.

It should also be noted that at least two municipalities (Bennington and Brattleboro) have specific charter provisions addressing advisory articles. These should also be consulted and followed.

*- Jim Barlow, Staff Attorney, VLCT Municipal Assistance Center*

*VLCT News, March 2007*