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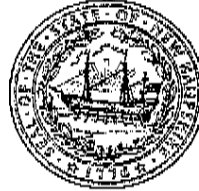
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August 2, 2010

Honorable William M. Gardner  
Secretary of State  
State House, Room 204  
Concord, New Hampshire 03301

Re: Printing Tax Rate Impact in Articles on Ballots and Warrants

Dear Secretary Gardner:

Your Office has asked whether it is proper for a municipality to include a statement of the estimated tax rate impact of adopting a warrant article on a ballot or on the warrant. For the reasons described below it is our opinion that tax rate impact estimates may not be included on an official ballot or warrant. New Hampshire's statutes explicitly describe the mandatory and optional contents of a warrant article. Anything not explicitly authorized is prohibited.

Analysis

The following sections of statute describe the information that shall or may be printed as part of a warrant article on the warrant or on an official ballot:

The subject matter of all business to be acted upon at the town meeting shall be distinctly stated in the warrant, .

....

RSA 39:2 (emphasis added).

Upon the written application of 25 or more registered voters or 2 percent of the registered voters in town, whichever is less, although in no event shall fewer than 10 registered voters be sufficient, presented to the selectmen or one of them not later than the fifth Tuesday before the day prescribed for an annual meeting, the

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**selectmen shall insert in their warrant for such meeting the petitioned article with only such minor textual changes as may be required.**

RSA 39:3 (emphasis added).

V. When any purpose of appropriation, submitted by a governing body or by petition, appears in the warrant as part of a special warrant article:

(a) **The article shall contain a notation of whether or not that appropriation is recommended by the governing body, and, if there is a budget committee, a notation of whether or not it is recommended by the budget committee;**

(b) **If the article is amended at the first session of the meeting in an official ballot referendum municipality, the governing body and the budget committee, if one exists, may revise its recommendation on the amended version of the special warrant article and the revised recommendation shall appear on the ballot for the second session of the meeting . . . ;**

(c) **Defects or deficiencies in these notations shall not affect the legal validity of any appropriation otherwise lawfully made; and**

V-a. **Any town may vote to require that all votes by an advisory budget committee, a town budget committee, and the governing body or, in towns without a budget committee, all votes of the governing body relative to budget items or any warrant articles shall be recorded votes and the numerical tally of any such vote shall be printed in the town warrant next to the affected warrant article. If a town has not voted to require such tallies to be printed in the town warrant next to the affected warrant article, the governing body may do so on its own initiative.**

RSA 32:5 (emphasis added).

V-a. **Any town may vote to require that all votes by an advisory budget committee, a town budget committee,**

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and the governing body or, in towns without a budget committee, all votes of the governing body relative to budget items or any warrant articles shall be recorded votes and **the numerical tally of any such vote shall be printed in the town warrant next to the affected warrant article.** If a town has not voted to require such tallies to be printed in the town warrant next to the affected warrant article, the governing body may do so on its own initiative.

RSA 40:13 (emphasis added).

If an amendment is submitted by the selectmen or village district commissioners, the ballot shall so indicate. **A notation on the ballot stating the planning board's approval or disapproval shall immediately follow the question's description.**

RSXA 675:3, VIII (emphasis added).

Each petitioned amendment shall be placed on a ballot which may be separate from the ballot used to elect town or village district officers. **A notation on the ballot stating the planning board's approval or disapproval shall immediately follow the question's description.**

RSA 675:4, III (emphasis added).

These statutes are evidence that when the Legislature intends that particular information must be or may be printed on the warrant or ballot, that an explicit provision requiring or authorizing that information is enacted. The widely accepted rule of statutory construction, "*expressio unius est exclusio alterius*", which translates to "the expression of one thing in a statute normally implies the exclusion of another" dictates here that only those things specified in law may be printed on the warrant or ballot. *State v. Simone*, 151 N.H. 328, 330 (2004); *St. Joseph Hosp. v. Rizzo*, 141 N.H. 9, 12 (1996) (citing *In re Guardianship of Raymond E.*, 135 N.H. 688, 691 (1992)).

The general prohibitions on electioneering in the polling place established by RSA 659:43 and RSA 659:44 further support a general rule that efforts to provide

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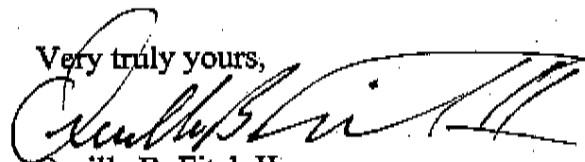
voters with information that is intended to influence the decision on how to vote on offices or questions is restricted to outside the polling place at an election<sup>1</sup>.

In reaching this conclusion we recognize that public policy arguments exist for including official estimates of the impact of adoption of a warrant article on the tax rate. We are also mindful of arguments regarding the reliability of such estimates and the belief of some that they are properly addressed in the public debate, but not properly permitted into the voting booth, which is meant to be a sanctuary from electioneering. It is, however, for the Legislature to determine what information may be included on the official warrant and printed as part of the text of warrant articles on official ballots. Recognizing that it has become common practice in some jurisdictions in the State for officials to include tax rate impact estimates on the warrant and on official ballots, this letter will be provided to the legislative policy committees which address laws related to elections and annual meetings. We encourage anyone who believes that printing tax impact statements on the warrant and official ballots should be required or authorized to seek a Legislative amendment of these statutes to permit that practice.

### Conclusion

Based on the existence of explicit provisions of law describing what shall and what may be included in warrant articles printed on the warrant and on official ballots and the general rules against electioneering in the polling place, we conclude that all information not authorized is prohibited. The Legislature has not authorized placing estimates of the impact on the tax rate of adoption of a warrant article on the warrant or on official ballots. Please feel free to contact me if you have further questions or this Office can otherwise be of assistance.

Very truly yours,



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<sup>1</sup> Note, these restrictions apply only to the polling place when in use for voting by official ballot. Debate for or against a question before a traditional annual meeting or SB2 deliberative session of an annual meeting, while falling within the meaning of "electioneering," is entirely proper. Specifically, the presentation of an estimate of the effect on the tax rate of an article under consideration by municipal officials, or anyone else entitled to address the meeting, is entirely proper.