

HJR

61

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

March 23, 1984

BILL SHEFFIELD, GOVERNOR

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

225 CORDOVA STREET - BLDG B
ANCHORAGE, ALASKA 99501
PHONE: (907) 264-2294

POSITION PAPER

RE: HJR 61
SPONSOR: Representative Koponen

Program Effects:

HJR 61 proposes an amendment to the Alaska Constitution which would allow municipalities to govern themselves as direct democracies instead of by elected representative councils or assemblies.

If approved, this amendment would pave the way for legislative revisions to Title 29, the State Municipal Code, sanctioning the creation or reorganization of municipalities in Alaska along the lines of New England-type towns.

Comments:

There are about fourteen hundred such towns in New England; others are also found in the states of New York, Wisconsin, and Minnesota. The form of government of a New England-type town has been described as a pure or direct democracy as distinguished from a representative democracy. The powers of a town are exercised by the vote of all adult residents at a town meeting rather than by an elected council or assembly.

HB 615 would carry out the intent of the constitutional amendment, if adopted. This bill would amend statutes found in the State Municipal Code (Title 29) and elsewhere to authorize the incorporation of "town meeting home rule cities", set forth some standards for their organization and operation, and define their powers.

The Department finds both pieces of legislation intriguing, but cannot support either at this time without further study. It is not clear at this point whether the New England-type town model of local government can be adapted to Alaska's unique conditions or that the idea is attractive to municipalities or communities.

Town meetings work in New England because they have been enshrined in that region's political tradition since before the Declaration of Independence was signed in 1776. In Alaska and

Position Paper
HJR 61
March 23, 1984

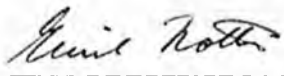
most other states, this form of local government is unknown and might be confusing or difficult to manage. Also, it might not be adaptable to the political culture of Alaskan Native villages where there is a tradition of deference to tribal or village elders.

A town meeting-type government can only work if there is mass participation coupled with political maturity. People must obey basic rules of conduct and respect each others rights or else total anarchy can ensue at town meetings. Since Alaska is not familiar with town meetings, there might be a tendency for them to degenerate into chaos and confusion with a resulting deadlock in decision-making that now can be broken by an elected council or assembly.

There are some positive aspects of a town meeting government which are worth investigating in Alaska, possibly with some modifications. For example, there are many communities in Alaska which are not interested in or ready to incorporate as second or first class cities, but already have in place community associations which tend to act as de facto or informal town meetings, though they are not recognized by the State as such. Organizing these communities as New England-type towns rather than representative cities might be an acceptable and effective way of dealing with the need for some kind of organized and recognized decision-making in the absence of elected councils or assemblies. Timing of town meetings could be a crucial matter because many communities are subject to drastic seasonal changes in population, which means residents present at the summer meeting might undo what was approved at the winter meeting and vice versa.

However, the Department cannot now support either HJR 61 or its companion legislation - HB 615 - without further investigation to determine whether town meeting local governments are needed, desired or practical in Alaska. This would involve consultation with a wide range of affected parties including, among others, the Alaska Municipal League.

APPROVED:



Emil Notti, Commissioner

Alaska State Legislature

Representative Niilo Koponen

FAIRBANKS
Box 252
Fairbanks, Alaska 99707
479-6782

JUNEAU
Pouch V
Juneau, Alaska 99811
465-4992

MEMORANDUM

TO: Representative Koponen

FROM: Deborah Niedermeyer, Legislative Aide *DN*

RE: HB 615 and HJR 61, Direct Democracies

DATE: March 24, 1984

HISTORY

Although most Alaskans may consider the Town Meeting a traditional form of government for New England, the Town Meeting also has deep roots in Alaskan history in the form of Miners' Meetings.

According to a 1898 special mining edition of the Alaska Morning Record, Alaska's first Miners' Meeting was held in Juneau in 1881 at the Flag of All Nations for the purpose of framing mining laws for the Juneau district. The laws which came out of this and similar Miners' Meetings in Juneau and the Interior were known as the Miners' Code. The code dealt not only with matters of claim staking and recording, but also with criminal law and sentencing, marriage and divorce and anything else of common concern to the diverse people living in Alaska's young and growing communities at the turn of the century.

Miners' Meetings were organized at each camp or diggings and had only one elected official, the recorder. They had certified legal jurisdiction, but in the days when law enforcement was essentially non-existent in the Territory, before Alaska even had a non-voting representative to Washington, the only official legal power over marriages, criminal activity, or mining laws was the U.S. Congress. In light of the impracticality of depending on Congress for what amounted to municipal ordinances, Miners' Meetings were the de facto government of Alaska's early white settlements.

THE PRESENT

Town meetings remain the de facto form of government in most of Alaska's unincorporated communities. The meetings may be organized by community residents simply to deal with community issues. In other cases, the Department of Community and Regional Affairs has required these communities to set up non-profit membership corporations in order to establish some legal body to accept state funds. The town meeting then becomes a shareholders' meeting. To some extent, town meetings take the place of municipal government in these communities, but, as was the case for the earlier Miners' Meetings, the decisions made do not

have the certified force of law. This has created problems in present day Alaska that did not occur for the earlier Miners' Meetings. Dissenters to a community decision sometimes threaten to sue.

Although there are various barriers to incorporation, a law providing the option for a town meeting style of government would maintain the existing decision-making system rather than requiring the election of a representative city council. This simplification might well help small communities to incorporate in order to solve the problem of no one but the State itself having any real legal jurisdiction.

PRACTICAL CONSIDERATIONS

The Town Meeting works best in communities of less than 6,000. It is altogether impractical if the population reaches 25,000. However, 92% of Alaska's incorporated municipalities do have populations of under 6,000. All of the many unincorporated communities are much smaller than that. A persistent problem for Town Meeting governments in New England has been lack of a quorum. Alaska's small communities, however, have consistently better voter turn-out than its cities. To the extent that voter turn-out is an indicator of willingness to be involved in community affairs, participation level could be expected to be a strength rather than a weakness in Alaskan Town Meetings.

HB 615 would not require small communities to use the Town Meeting form of Government, but it does provide it as one option. Both Alaska's history and its present situation indicate that Town Meetings would be a practical and, in many cases, highly desirable form of municipal government.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

March 13, 1984

SUBJECT: Constitutional amendment authorizing the legislature to provide for direct democracies (HJR 61)

TO: Representative Mike W. Miller
Chairman, House Community and Regional Affairs

FROM: Tamara Brandt Cook
Deputy Director *TBC*
Division of Legal Services

Here is the section by section analysis that you requested of HJR 61.

Section 1 amends the state constitution so that the legislature may provide for a city to be governed as a direct democracy. Now a city is required to be governed by a representative body, the council. Under a direct democracy from of government the voters would not elect representatives, but, rather, would govern the city themselves through majority action.

Section 2 requires that the amendment be placed before the voters at the next general election.

TBC:ojb
J4/078

FYI

**YOUR
MASSACHUSETTS
GOVERNMENT**

Seventh Edition

BY

ELWYN E. MARINER, M.E., M.P.A.

**Former Research Director
Massachusetts Taxpayers Foundation, Inc.**

**MARINER BOOKS
Box 22, Arlington Heights
Massachusetts 02175**

TOWN MEETINGS

... Each qualified inhabitant of the town has an indisputable right to vote upon every question presented, as well as to discuss it, or there is no town meeting. This is universally understood as the vital feature of the town system of government as practiced from a long time before the Declaration of Independence until the present.

— Opinion of the Justices, 229 Mass. 601, 1918

Although today there are more people living in cities than in towns, the form that still sets local government in Massachusetts apart from that in all other sections of the country outside New England is the *Town Meeting*. The following is primarily a description of the traditional town meeting, but most of the details apply equally to representative town meetings.

What is a Town Meeting?

A *town meeting* is a gathering of all the people in the town who are eligible to vote. Of course they don't all come, but those who stay away must abide by the decisions of those who attend.

It isn't just an ordinary meeting but a very special kind of meeting. Since its decisions affect the lives and the pocketbooks of all the citizens, there are very special requirements which must be followed in calling and conducting the meeting. Any failure to meet the requirements may invalidate the action of the meeting.

Here is a brief list of the most important items of business of the town meeting which come up from year to year.

1. The town meeting decides what officers the town shall have, what salary it will pay for each office, and in some cases the length of term.
2. The town meeting elects citizens to fill certain town offices.
3. The town meeting decides for what purposes the town will spend money and how much may be spent for each purpose.
4. The town meeting adopts and changes by-laws to govern the conduct of the inhabitants of the town in local affairs.

The Common Pattern

No matter how large or small, in *every town** the town meeting follows the *same* pattern, and

*Agawam and Methuen, still retaining the name of *Town*, have abandoned the town meeting and have created *town councils* of 15 and 21 members respectively. The councils have all the legislative power of a town meeting and are required to meet at least once a month.

is conducted under the *same* laws. But within that common pattern there are allowances for variations. There is flexibility. That is why it is sometimes hard to realize that the all-day community get-together in the small farm town has anything in common with the protracted evening meetings in some of the large metropolitan towns near Boston. Let us see what some of the common factors are.

The Day. With but few exceptions, annual town meetings are held in February or March, but they may be held as late as May.

In most towns, the election of officers is held on a different day than the meeting for the conduct of other business. There is a decided preference for holding the election first and the business meeting a week or more later.

In a few towns, the election of officers is held in November, December, or January under the provisions of special Acts.

Special meetings may be called by the selectmen at any time, and must be called by them upon receipt of a request signed by 200 voters. If there



Danvers Town Seal

YOUR MASSACHUSETTS GOVERNMENT

are less than 1000 voters, only 20 percent of them need sign.

The Hour for calling the town meeting may be established in the by-laws.

The Warrant. Every town meeting is called by the issuing of a warrant. This is usually done by the selectmen, but the law authorizes other officers to do it if there are no selectmen remaining in office or if the selectmen refuse. The *warrant* is a document which states (1) the time of the meeting, (2) the place of the meeting, and (3) the business to be taken up at the meeting.

Traditionally, the warrant is addressed to the constables, who are required thereby to give notice of the meeting to the inhabitants. The law specifies only that the warrant is to be issued at least seven days before the meeting. It does not say how the constables shall notify the people. That is left to the town to prescribe in a by-law or by vote. In some towns the warrant is merely posted in a few public places. In others, a copy of the warrant is published in the local paper. In still others, a copy is delivered to every residence.

The warrant for the annual meeting usually states that the first item of business, *Article 1*, is to elect officers for the year. Then it lists every office to be filled.

Article 2 may be to hear the reports of town officers. Then follow other articles, each one naming a single subject to come before the meeting. Sometimes there are seventy or more. Different towns have different customs. In some towns there may be a separate article for the appropriation for each town department. In other towns there is a single article such as to "appropriate money for all necessary town expenses or act in any matter relating thereto."

The preparation and the wording of the warrant are important because a town meeting cannot take valid action on any subject unless it is contained in the warrant.

Any voter who gets the signatures of nine others may have any subject included in the warrant for the annual meeting by filing his request with the selectmen. To require the selectmen to include a subject in the warrant for a special meeting is more difficult. Such a request must have 100 signatures. If there are less than 1000 voters, the signatures of only ten percent of them are needed.

The Moderator is the person who presides over the town meeting. His is one of the most important positions in the town because he has great authority to direct and regulate the conduct of the meeting. In some of the smaller towns, each meeting is called to order by the town clerk. The selection of a moderator for that meeting is then the first item of business, and the clerk presides until a moderator is selected. Years ago this was

the usual practice. Today, however, most towns elect a moderator to preside at all town meetings during his term of office. The term is either one or three years.

The Conduct of the Meeting is largely under the control of the moderator. He is governed by a few basic provisions in the law, and there may be by-laws regulating some aspects of the meeting. Some of the most common rules established in town by-laws regulate admission to the meeting and fix the number of voters which will constitute a *quorum*, i.e., the minimum number of voters who may legally conduct business. Some towns, including the larger ones and particularly the towns with representative town meetings, have fairly detailed rules of procedure, while the majority of small towns leave details of parliamentary procedure to the moderator.

The Town Clerk serves as clerk of the town meeting, takes the minutes, records the votes, and assists the moderator.

Voting. Although most matters are settled with simple voice votes, there are times when a voice vote is not sufficient. If the vote is questioned, the moderator may appoint tellers and then ask for a rising vote or a show of hands to be counted by the tellers. On matters which require an unusual majority — such as a two-thirds vote to borrow money — the vote must be counted unless it is unanimous.

Some towns — like Marblehead — have in their by-laws a provision that upon request of a specified number of voters the vote shall be taken by ballots collected by the tellers. Other towns — like Provincetown — go one step further and provide a formal balloting if 25 percent of the voters present and voting so request. The voting list is used and each voter is checked as he casts his ballot.

In towns with representative town meetings the procedure is similar to that in the open town meetings. The Watertown by-law section quoted here describes the general pattern.

When a question is put, the sense of the meeting shall be determined by the voices of the Town Meeting members and the Moderator shall declare the vote as it appears to him. If the Moderator is unable to decide the vote by the sound of the voices, or if his decision is immediately questioned by seven or more Town meeting members rising in their places for that purpose, he shall determine the vote by ordering a show of hands or standing vote and he may appoint tellers to make and return the count. A roll call of the Town meeting members shall be ordered by the Moderator if thirty members shall by a showing of hands favor such motion.

A few of the towns with representative town meetings — Amherst, Fairhaven, and Swampscott for example — have provisions for the use of

TOWN MEETINGS

secret ballots. In other towns, as in Stoughton, the use of secret ballots is prohibited.

The Legislature has prohibited the use of a secret ballot in any representative town meeting "unless two-thirds of the town meeting members present and voting thereon" vote for it.

Variations and Adaptations

The separation of the elections from other business is but one of several variations or adaptations which have been developed to meet changing conditions and the problems of larger populations. The most striking variation has been the development of the *Representative Town Meeting*. The most recent, made possible by modern electronics, is the conduct of the same meeting in two or more separate halls in some large towns still holding open town meetings. This is done by using a public address system and having an assistant moderator appointed by the moderator to preside in each meeting place where the moderator is not present.

Brewster is authorized by special legislation to hold town meetings in a regional school building in neighboring Orleans for all business except elections. Elections must still be held within the town.

Separation of Elections and Other Business. In these days, when most towns hold their elections separate from the annual business meeting, it is easy to lose sight of the fact that they are both parts of the annual town meeting.

Instead of an annual town meeting, some towns have now provided in their by-laws or charters for two regular business meetings each year. The meeting held at the usual time in the early part of the year is devoted primarily to financial matters. The second meeting, in October, is devoted primarily to zoning, subdivision control, and other by-laws. Any urgent matter can of course be included in the warrant for either meeting.

Representative Town Meetings

Towns have a way of outgrowing the old-fashioned town meeting. As population increases, the number of voters increases, and it is no longer possible for them all to get into the largest hall in town. For many years the only alternative was to give up the town meeting and organize as a city. To change to a city meant that citizens would elect a few men to a city council to exercise most of the power which the town meeting had held. It has been with great reluctance that townspeople have made this major change.

The idea of keeping the town form of government and having a representative town meeting was discussed in the years when the Town of Boston was considering a change prior to 1820. It was first tried in Newport, Rhode Island, in

1906, but it was not until 1915 that Brookline became the first town to adopt it in Massachusetts. Methuen followed in 1916.

The first representative town meetings were created by the Legislature utilizing the authority of the Amendment of 1820 which authorized the creation of "municipal or city governments" in any towns with 12,000 or more inhabitants. In 1926 the voters adopted an amendment of the 1820 Article to authorize the Legislature to establish a representative town meeting in any town with a population over 6,000. The 1966 Home Rule Amendment repealed the earlier language but retained the same population minimum to prohibit the establishment of a representative town meeting by a town with a population of less than 6,000.

There is only one major difference between the government in a town with the town meeting open to every voter and the government in a town with a representative (or limited) town meeting. The difference is just what the name implies. In the towns with representative town meetings the only people who may vote on town business other than the election of officers are the members of the town meeting who have been elected by the inhabitants to represent them.

The men and women who vote in the representative town meeting are elected by their fellow voters in the precincts where they live. Each plan creating a town meeting sets up a procedure for establishing and changing the geographical areas, called *precincts*, and each fixes the number of town meeting members to be elected by each precinct. The number of precincts depends on the area of the town, geographic features, and population. There may be as few as three, but some towns are divided into ten or more.

The number of elected town meeting members varies from 45 to more than 250. The number, 240, which is the number of members in the Massachusetts House of Representatives, is a popular one. In all towns the members are elected for three-year terms, and the terms are arranged so that one-third of the members are elected each year. In addition, most of the plans name certain town officials to be members-at-large.

In setting up representative town meetings, townspeople have been careful not to vote away all their rights to have the final say on important items of town business. In every case they have stipulated that the representative town meeting will have no power to "commit the town to any measure affecting its municipal existence or substantially changing its form of government" without giving all the voters an opportunity to vote on it with ballots. In all these towns, there is also a provision for the voters to override the representative town meeting. If a specified number of voters sign and file a petition, there must be a

special election and a ballot vote on certain actions to see whether the town will support the action of the town meeting members. Such an election is called a *referendum*.

Business of the Town Meeting

We have already listed the most important types of business that come before town meetings. Some of them are treated in detail in later chapters on elections, organization for town administration, and budgeting. We need to discuss here mainly the *law-making* power of the town meeting and its broad *policy-making* function.

By-laws. The Legislature has enumerated about seventy different subjects upon which towns may adopt by-laws. These cover a wide range. At one extreme there is the simple provision specifying how the notice of town meetings shall be given. At the other extreme there are zoning by-laws often published as separate books. As a result of the Home Rule Amendment of our State Constitution, it appears that towns have more latitude in enacting by-laws and are not limited to the subjects specifically authorized by the Legislature.

The different kinds of by-laws may be arranged in five groups according to subject as follows:

1. Regulating the government of the town, i.e., the conduct of town meetings
2. Regulating the organization and procedures for administration of town business
3. Regulating the conduct of citizens
4. Regulating the use of land.
5. Regulating certain occupations.

Most by-laws must be submitted to the Attorney-General of the state for his approval but take effect after 90 days if he has not disapproved them. By-laws are also required to be published, but several alternative means of meeting the publication requirement are provided.

Town Votes. Should the chief of police be under civil service? Should the police have one day off in eight? or seven? or should they work a forty-hour week? Should the town treasurer act as tax collector? Should the town accept an established private way as a public way? Should town offices be closed on Saturdays? These are just a few of the many questions which the Legislature has authorized town meetings to decide. Sometimes all that is needed is a simple vote. In other cases, such as the acceptance of a street, a detailed and carefully written description is required in the motion and vote.

Town Committees. "Let's have a special committee to study the matter and report back to the

next meeting." Just as a small neighborhood club sets up *special committees*, so do town meetings when some special problem arises which cannot be settled in the meeting. It may be to select the location for a new school, or to draft a special by-law on a new subject, or to revise an old by-law, or to study whether the town should have centralized purchasing, or a public works department, or an aerial map or to consider any one of the hundreds of questions with which town meetings are faced at one time or another. Voters realize that they cannot decide some of these questions when first brought up, so they do the sensible thing: authorize the moderator to appoint a committee.

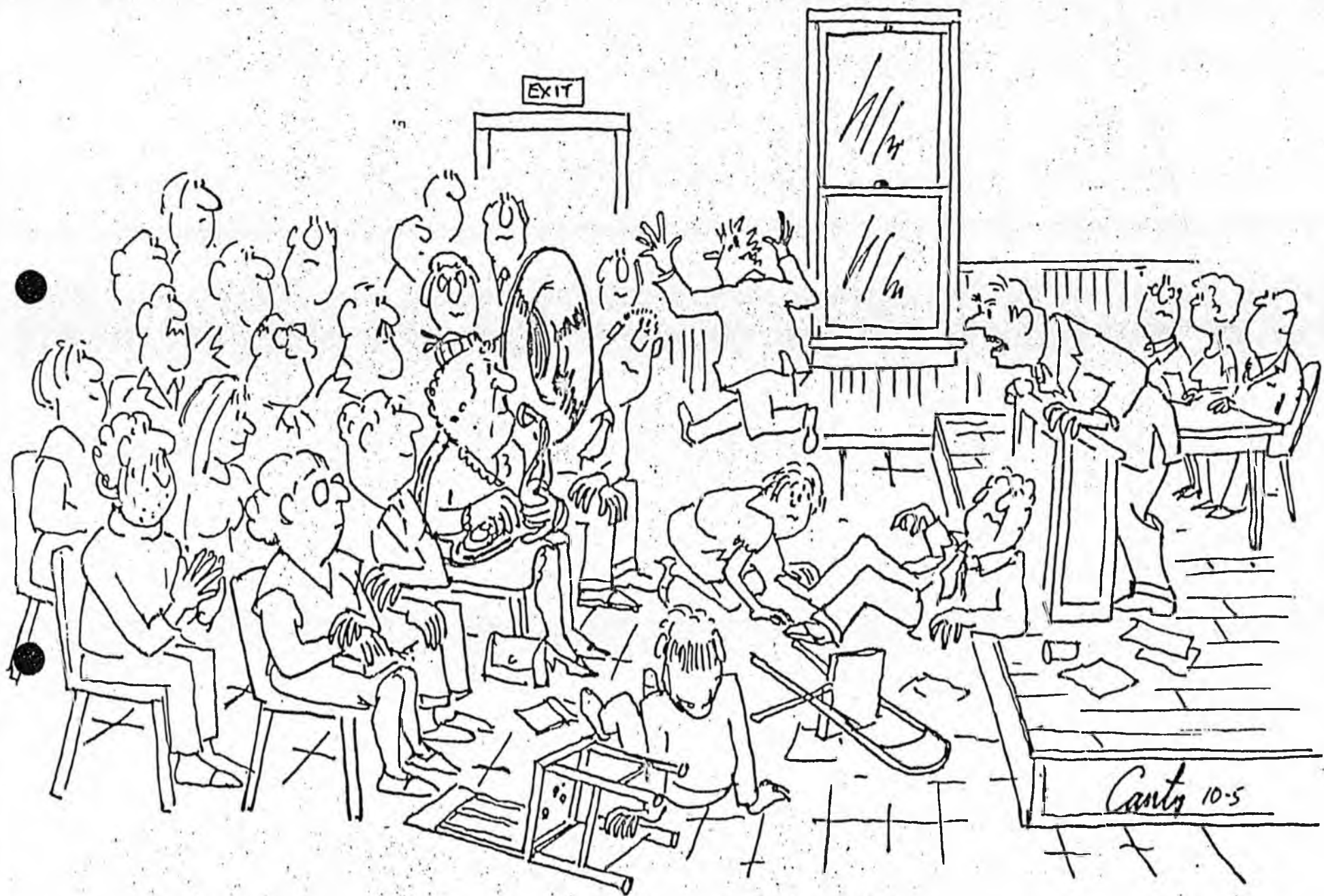
Standing Committees. To improve its functioning, the representative town meeting in Framingham has adopted a practice common among legislative bodies. It has created standing committees. There are five: public works, planning and zoning, recreation, personnel, and ways and means. Each committee is composed of ten members, each representing one of the ten precincts. Each member is elected by a majority vote of the representative town meeting members in his precinct.

The Town Finance Committee

The one move which has contributed more than any other to make the town form of government practicable in the present day is the development of the town finance (or advisory, or warrant) committee as a budgeting agency. All but the smallest towns are required by law to have such a committee, and many of the small ones do. All that the law says is that some towns shall and others may have a by-law which provides for the appointment or election and sets forth the duties of such a committee, that such committees shall study any or all municipal questions and make reports and recommendations to the town.

Because the law leaves the way open for towns to experiment, the finance committees vary in size and composition. Most by-laws provide for appointment by the moderator.

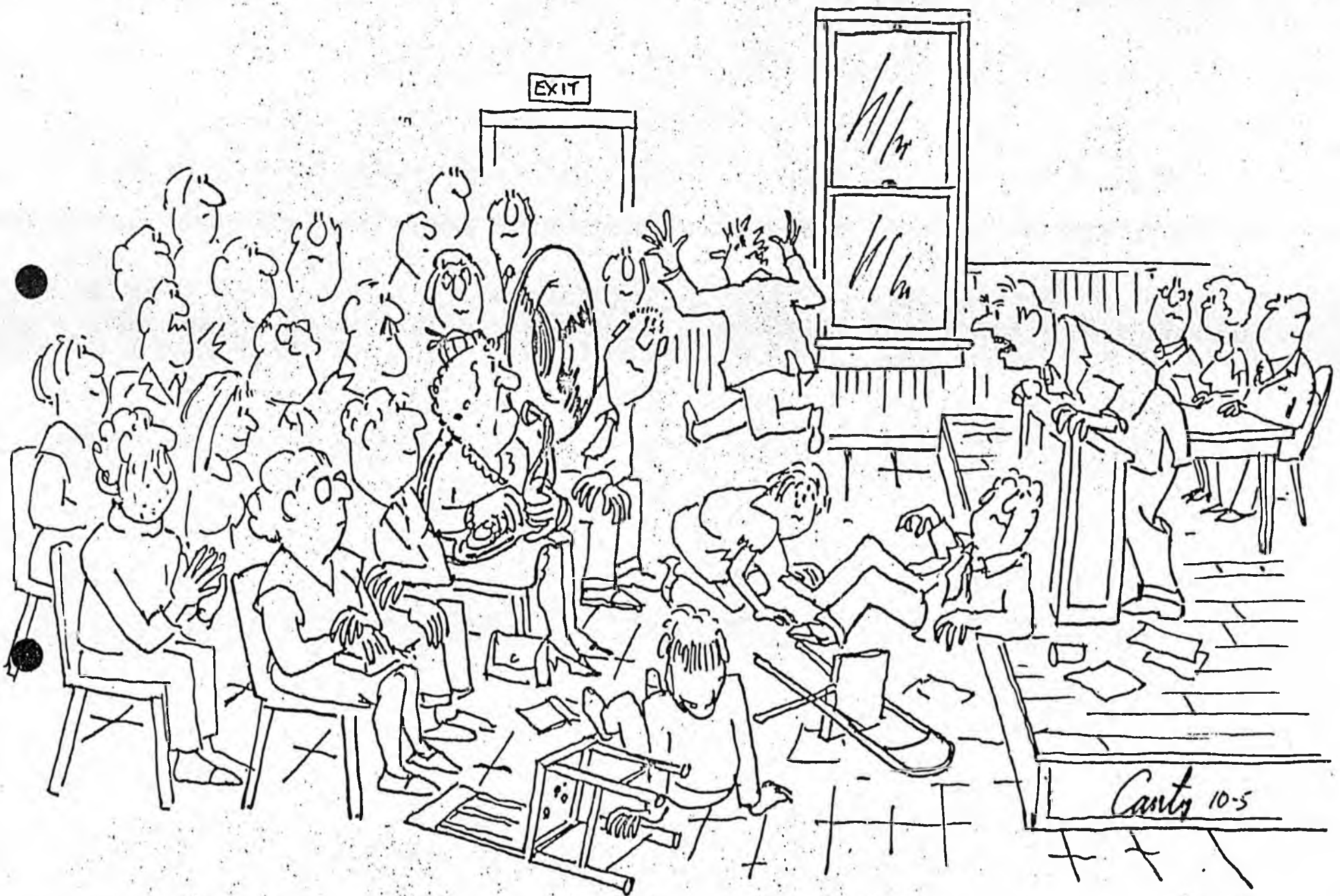
Except in those towns with by-laws or special Acts giving responsibility for preparation of the annual budget to the selectmen, the primary job of the finance committee in all towns today is the preparation of the town budget. This is described in some detail in the chapter on budgeting. Citizens in Massachusetts towns owe more than they know to the public-spirited men who give most of their spare time for three or four months in the winter to a study of the financial needs and problems of their towns.



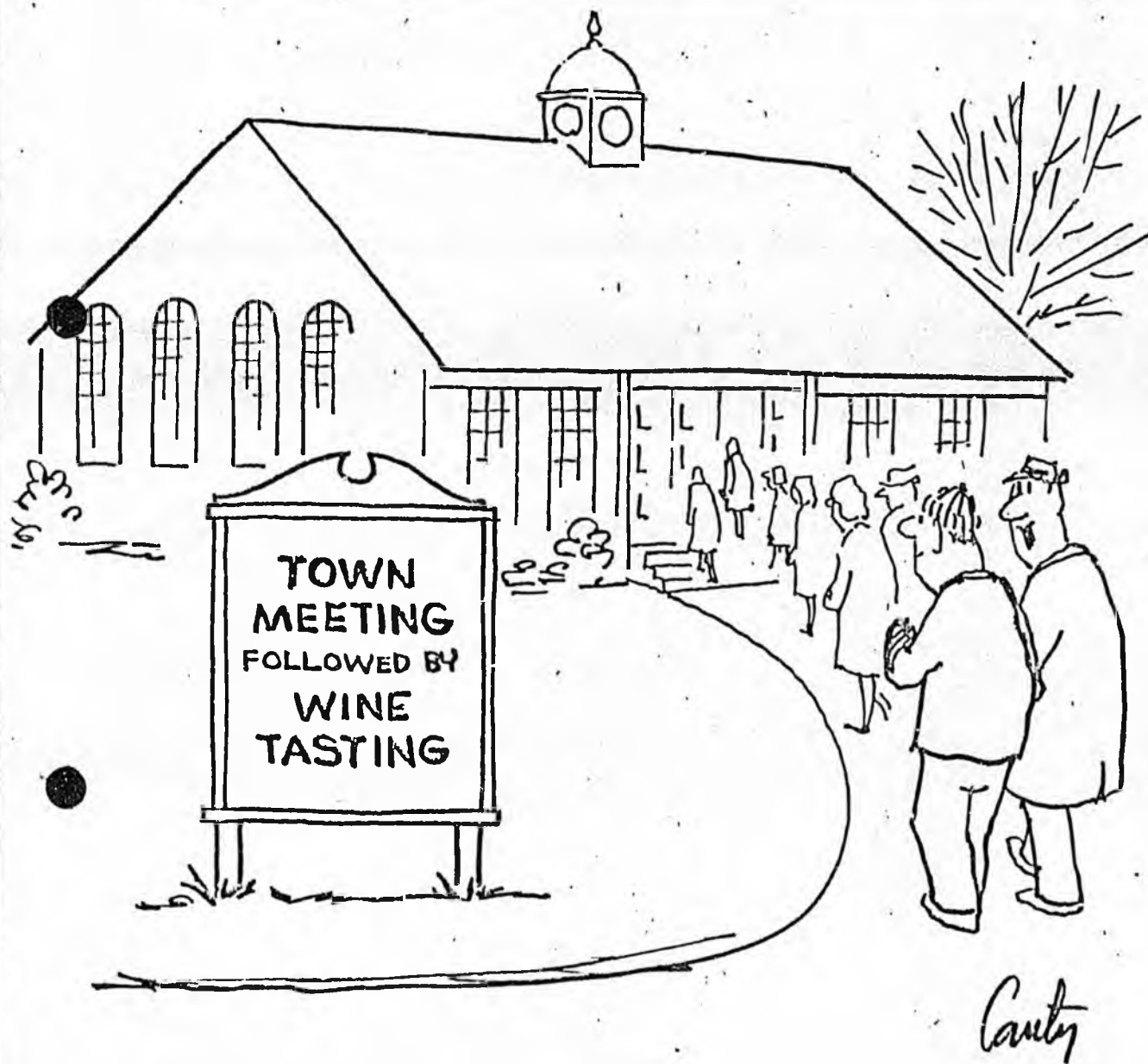
"Mrs. Bakerman, at Town Meeting we can tolerate an occasional 'boo' or 'hiss' but one more blast from your damn tuba will warrant your dismissal!"



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"Mrs. Bakerman, at Town Meeting we can tolerate an occasional 'boo' or 'hiss' but one more blast from your damn tuba will warrant your dismissal!"



'The way I look at it, a quorum's a quorum.'

Punchlines

Do not ask for whom the bell tolls, ... and you'll only have to pay station-to-station. —Atlanta Journal.

Our society is becoming almost totally electronic. Soon you'll have to use a computer to count on your fingers.

When push comes to shove, be sure you're not leaning out a window.

It's good to have healthy teeth, they'll fill you with content. If you don't realize it now, you will when they have went.

Now that TV is very much a part of our information system, we throw in one caveat: "One picture may be more misunderstood than a thousand words."

Another view of the election is that it's really heartless to deprive Billy Carter of his means of livelihood.

Don't get stuck with a new form of group insurance. You can't collect until the entire group gets sick.

Are there too many bowl games? Of course there are — but science hasn't come up with a workable vaccine.

Limrix

By LES MOORE

LOVELY SIGHT

Of course, our quadrennial crux
Brought some disappointment, but
shucks!

New hope fairly blooms
As the newest of brooms
Intermingle with lamest of ducks!



"I think it's perfectly legal. There's no mention of huddles in the open-meeting law."



Canty ©

"We appreciate your concern, Miss Anson, but we must re-

mind you that the town dump is supposed to be full of garbage."

Opinion



"Since the town sees fit to cut the library funds in half, I therefore, as head librarian, am obliged to make public the

names of certain town officials who are in possession of overdue books."

In Our View

The secrecy bill

the Legislature's Judiciary Committee
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'I still say it's no place to bring a girl on a first date!'

March 7, 1984

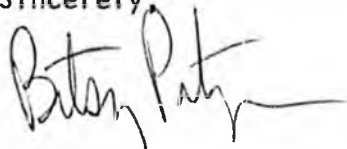
House Committee on Community
and Regional Affairs
Pouch V, Capitol Building
Juneau, Alaska 99811

Dear Committee Members:

I am particularly interested in House Bill HJR61, introduced by Representative Niilo Koponen. As I understand it, this bill would put before the Alaska voters a constitutional amendment that would allow each municipality to consider an alternative form of government that might allow for increased public participation in the democratic process.

Kindly send me a copy of this bill for review and consider me a supporter of placing this issue before voters of our state.

Sincerely,

A handwritten signature in cursive script, appearing to read "Betsy Pitzman", with a long horizontal flourish extending to the right.

Betsy Pitzman
Box 1188
Homer, Alaska 99603

What is Town Meeting all about?

Functions — The annual town meeting is the yearly meeting of the inhabitants of a town to elect the town's officers and to conduct the town's business. It is important to remember the two distinct functions of the annual meeting: 1) to elect town officers; and, 2) to conduct the town's business.

Although some of the town's business may be conducted by ballot during the election of officers, the two functions are distinct.

The town meeting is the legal body for conducting a town's legislative affairs unless a different form of government has been adopted under the Home Rule statute (RSA 49-B). A town meeting may be held whenever necessary to conduct the affairs of the town, but the annual meeting is held to adopt annual operating and capital budgets, enact ordinances and take other actions required or authorized by law.

When and Where — The annual meeting is held on the second Tuesday of March; this year the date is March 8. Some towns operating on the optional July-June fiscal year hold their annual meeting on the second Tuesday of May.

The town meeting ought to be held in a reasonably central and accessible place in the town. (RSA 39:1-b, though, allows a town belonging to a cooperative school district to hold its meeting outside the boundaries of the town in a building owned by the district. If there is voting on prepared, preprinted ballots, that portion of the meeting must be held at the usual polling place in the town and only that business which does not involve use of these ballots can be conducted outside the town.) The place in which town meeting is held should comply with any applicable fire or safety codes. RSA 155:47 requires designation of a non-smoking area in public buildings. In places where it is not possible to effectively segregate smoking, smoking must be totally prohibited. If food will be served for consumption on the premises where town meeting will be held, a poster depicting an anti-choking maneuver, such as the "Heimlich" maneuver, must be posted.

Officers elected — Selectmen, moderator, treasurer, town clerk, supervisors of the checklist and trustees of trust funds are elected at the annual meeting. One selectman is elected each year unless the town has a 5-member board. The moderator is elected every even-numbered year and holds office from the close of the meeting at which elected until the close of the meeting at which a successor is chosen. Town clerks and treasurers are elected annually unless the town has adopted 3-year terms for these positions. One checklist supervisor is elected every even-numbered year to a 6-year term. One trustee is elected each year to a 3-year term, but a town may also choose to annually elect a single trustee or to increase its board of trustees to 5.

Towns have the option of establishing a number of

other elective positions including: tax collector, combined town clerk-tax collector, police officers, sewer commissioner, board of auditors, library trustees, highway agents, overseers of welfare, planning board members and fire wards or engineers. In fact, towns can choose such officers as they deem necessary for managing their affairs.

What takes place at Town Meeting?

Moderator's role — The Moderator is the presiding officer at town meeting. RSA 40:4 requires the moderator to "preside in the town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed." Although there are few general statutory requirements for specific procedures, a town meeting may adopt rules of procedure governing its operation. If formal rules have not been adopted by the town meeting, it would be wise for the moderator to have standards by which to operate. In fact, RSA 40:4 states that a moderator may prescribe rules of procedures, which may be altered by the town.

Regardless of whether formal rules are adopted or not, it is imperative to remember that neither the town nor the moderator may act contrary to state law. For example, if state law requires that an action be taken by specified officers or in a particular manner, town meeting votes inconsistent with those requirements will likely be invalid. Failure to follow state law may lead to court challenges and possible invalidation of town meeting action.

If rules of procedure have been adopted by the moderator or town meeting, motions should conform to these rules. If the town meeting has not adopted rules of procedure, the following procedure could serve as a guide to take action on an article:

- (1) Read the article in full as printed in warrant;
- (2) Always try to secure a main motion and a second on the article;
- (3) Recognize the selectman or person responsible for giving the town meeting the necessary background on the article under consideration;
- (4) Open general discussion from the floor;
- (5) After the conclusion of discussion, the motion should be restated as printed or amended (it is wise to reduce all motions and subsequent amendments to writing before taking action);
- (6) The vote should be taken and the outcome announced. If the vote is to be challenged, this is the appropriate time for action.

Recognition of a motion to "pass over" a warrant article can create confusion and may raise procedural questions. If no governing rules are applicable, the moderator may require motions to be stated in an unambiguous manner so that the intent of the motion is clear. For example, compare these 2 motions: "I move town meeting pass over article X"; "I move town meet-

ing postpone consideration of article X until after consideration of article Y". The exact intent of the latter motion is obviously clearer. If the intent of a motion is to postpone action on the article indefinitely, the motion should be so stated: "I move that consideration of article X be postponed indefinitely".

Actions by the moderator under his extensive traditional and statutory powers may not be reversed except by vote at the town meeting at which the ruling is made. Any qualified voter may appeal to the meeting to overrule the moderator's ruling. The voter should clearly state his objection. The moderator is then obliged to call for a vote of the meeting to see whether his ruling is sustained.

Voting — RSA 654:1 defines a legal voter as an "inhabitant of the state, having a fixed and permanent established domicile, being a citizen of the United States, of the age (of 18)..." Domicile is a "question of factual physical presence incorporating an intention to reside for an indefinite period" and is the "voter's residence" and the "place in which he dwells on a continuing basis for a significant portion of each year." Any person domiciled in the town and on the voter checklist may vote in town elections.

Methods — Most articles are adopted by a majority vote of those voters present and voting. State law may require more than a majority to pass an article, so the laws concerned with each article should be consulted to determine the required vote. Those requiring a $\frac{2}{3}$ vote include: (1) to approve all bond and note issues except tax anticipation notes; (2) to accept and expend federal or state grants of aid in connection with any project for which the municipality will incur indebtedness in accordance with RSA 33:7-b; (3) to alter town lines; (4) to acquire or establish a municipal utility plant or ratify a contract of the selectmen for an electric utility; (5) to change the purpose of a capital reserve fund; (6) to approve amendment to a zoning ordinance if a protest petition signed by the required number of affected property owners is filed under RSA 31:64.

There are five usual methods of voting utilized by the town meeting: (1) Voice Vote; (2) Show of Hands; (3) Standing Vote; (4) Division of the House; (5) Written Ballot.

Ballot Votes — Some statutes require or authorize certain types of town business to be decided by ballot votes. If the town uses the official ballot, the procedures for such balloting are employed and the voting is conducted at the same time the election is held. Ballot questions can be placed on the same ballot as that used for the election of officers or may be put on separate ballots. Examples of items which are voted by ballot include zoning, local-option tax exemptions, and alteration in the term or composition of some local boards or officials. The official ballot cannot be used for submitting questions to voters unless use of the official ballot for that article or type of article is specifically required or authorized by law. Any other articles may be taken up only at the business session, although secret balloting is allowed at that time.

Unofficial Ballots — When secrecy of the ballot is desired and the official ballot is not used, a written bal-

lot may be taken. This type of balloting is done when tellers pass out slips of paper on which the voter indicates his decision in writing. The votes are then delivered to the moderator and counted. This type of balloting can be used with the checkliist to guarantee that only eligible voters will participate, but can be time consuming.

The moderator must conduct a secret "yes-no" ballot when five voters (three voters in a town of a population of 500 or less) make a written request prior to a voice or division vote on the article. (RSA 40:4-a). If seven or more voters question in writing or orally any non-ballot vote, immediately and before any other business is begun, the moderator must retake the vote by a secret "yes-no" ballot. (RSA 40:40b).

Whether the moderator votes or not is subject to local traditions and personal preference. If it is local tradition that the moderator does not customarily vote, two instances in which he might choose to vote are to break a tie or, if a motion he opposes would otherwise pass by one vote, to cast his vote against it, which would mean defeat of the motion.

Absentee Voting — If the town has adopted the official ballot for town elections, opportunity for absentee voting on all items which will be included on the official ballot must be provided for any registered voter who: 1) will be absent from the town on the day of the election; 2) cannot appear in public on election day due to religious commitment; or, 3) is unable to vote in person by reason of physical disability.

Election of Officers — Towns may elect officers by use of an official ballot, unofficial ballot or other means, such a voice vote, as determined by the town meeting. The official ballot is used when adopted by a previous meeting and is either partisan (Australian) or non-partisan (RSA 669:11-13). All officers required to be elected at the annual meeting must be elected by use of the official ballot if it is used in the town, otherwise by use of the unofficial ballot. Ballot votes must also be used for election of the following optional officers: town clerk-tax collector, full-time police officers, sewer commissioners, tax collectors with 3-year terms, boards of auditors, and library trustees. Other officers which a town may choose to create and fill by election can be voted for by ballot or by other means as the voters determine. When optional officers are first created, initial officers can be elected at the same meeting by any appropriate means or interim appointments can be authorized. (RSA 669:16 and 17).

Requirements of Office — RSA 669:6 states that unless otherwise provided by law, an elective town office can be filled only by a person who has a domicile in the town. A number of town offices are incompatible under RSA 669:7: (1) No one may at the same time serve as selectman, treasurer, moderator, trustee of trust funds, tax collector, auditor or highway agent; (2) nor may one person simultaneously hold the office of treasurer, moderator, trustee of trust funds, selectman or head of a police department of full-time duty; (3) the same person could not be both treasurer and town clerk; (4) no person handling town funds may also be auditor;

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(5) no selectman, moderator, town clerk or election inspector can simultaneously serve as supervisor of the checklist; and (6) no selectman, town manager, school board member, village district commissioner or full time employee of the town, village district, school district or other associated agency may also be an at-large budget committee member under RSA 31:95 and 32. Under RSA 669:8, a town manager may also be manager of a district or precinct wholly or mainly within the town and may be elected or appointed to municipal offices under his supervision, but can hold no other public office except notary public or justice of the peace or tax collector when authorized under RSA 37:16.

Disqualifications — Under RSA 658:24 (which governs state elections but also applies to local elections conducted by official ballot), an election official whose name is on the ballot for a position other than election official is disqualified from performing the duties of election officials for that election. Likewise, RSA 659:58 prohibits an election official, other than the moderator, who is also a candidate from remaining within the guardrail during the counting of votes for the office for which he is a candidate.

The moderator oversees the counting of official ballots by other election officials, including the selectmen and the town clerk (RSA 659:60). Unofficial ballots are counted by the moderator with the assistance of the selectmen and town clerk (RSA 669:58). Officers chosen by unofficial ballot must receive a majority of votes cast to be elected. For offices filled by election by one of the official ballot systems, a plurality vote is sufficient to elect.

Two part town meetings — Some towns elect offices on one day, and complete town business on another day. This can be accomplished in one of two ways: (1) adopting a motion to recess the town meeting and to set another time, date and place to resume the meeting; (2) adopting RSA 39:2-a, which authorizes 2 sessions for the annual town meeting: the first to elect offices and transact other business by official ballot, the second to transact all other town business on a day and time chosen by the selectmen. Such a "bifurcated" town meeting takes effect at the next town meeting, with selectmen required to set the place, day and hour of the second session on the town warrant.

Tape recording — There is no prohibition against recording town meeting procedures. It may even prove useful for town officials to tape town meetings to precisely recall proceedings, such as how amendments were made to warrant items or the exact wording of amendments. Officials who utilize tape recording report that it is particularly useful for bond articles. Bond attorneys may ask about the precise wording of how a bond issue article was presented to voters or how amendments were worded. In general, a tape recording is valuable aid to the town clerk who must report on the proceedings of the meeting.

Reconsideration — A town meeting may reconsider actions previously taken in the same manner as other parliamentary bodies. Procedurally, reconsideration will be governed by the procedural rules adopted by the

moderator or town meeting itself. Procedurally, reconsideration will be governed by the procedural rules adopted by the moderator or town meeting itself. A fairly uniform procedure requires that the person proposing reconsideration must have voted with the prevailing side. Sometimes, procedural rules require that reconsideration be made immediately or within a specified period of time. At any rate, reconsideration would be questionable if it were undertaken a substantial length of time after the original action was taken and if the subsequent action was inconsistent with actions taken by others who relied on the original vote and acted reasonably.

Some special considerations are also involved because of the nature of town meeting and the statutes governing town meeting conduct. While no specific statutes govern reconsideration, the distinction between "official ballot" and "deliberative session" actions envisioned by RSA 39 probably means that items required to be voted by official ballot could not be reconsidered at the deliberative session. For example, votes on zoning questions taken by officials ballot could not be revoted at the town meeting after the results of the ballot vote were announced. (In addition, special statutory procedures are called for under RSA 31:74 if someone wishes to obtain a rehearing on a zoning matter decided by town meeting.)

Related to the issue of reconsideration is the matter of attempting to regulate or mandate future town meetings procedures. It is a general rule that rules of procedure adopted by a town meeting expire at the adjournment of that meeting unless readopted at a subsequent meeting, and, in the absence of specific statutory authority, a town may not adopt procedural rules for the governing of future town meetings. That rule, coupled with the doctrine that a town may exercise only those powers granted to it by law, means, for example, that a town meeting could not adopt an ordinance and try to require a $\frac{3}{5}$ vote of a future town meeting to repeal or amend that ordinance.

This limitation upon town meeting powers extends only to the power to bind other town meetings and does not necessarily limit a town meeting's power over the exercise of authority by town officials. Recent court decisions, though, have made it clear that a town meeting's authority over other local officials and bodies is limited by state law: if the law vests authority in an official or board other than the town meeting, it is quite possible that town meeting cannot override or alter that delegation of authority.

Recounts — Different statutes govern recounts for elections for town officials and for questions voted on at town meeting. The former are covered by RSA 669:30-35 which allow a recount if a person for whom a vote was cast applies within 15 days after the election to the town clerk and submits a fee of \$10. The moderator, town clerk and selectmen constitute a board to recount the votes not less than 7 nor more than 10 days after the recount application is received.

RSA 40:4-c allows 10 or more voters to apply to the town clerk within 7 days after a meeting for a recount

of ballots cast on any question appearing on the official ballot. An application fee of \$10 is required. Ballots are recounted in the same manner as an election.

Warrant — Calling a town meeting

Town meetings must be preceded by a warrant, or document, addressed to the voters, which gives notice of, or "warns", the meeting. The warrant must describe the place, day and hour of the town meeting, and specific "articles" or subjects on which the town has the power to act. Articles may be included on the warrant at the initiative of the selectmen. The warrant must include articles presented to the selectmen at least 35 days before the meeting by written petition of 10 or more voters (RSA 39:13).

The selectmen prepare and sign the warrant, and must post an attested copy at the place of meeting and an attested copy in one other public place at least 14 days before town meeting. Under statutory rules for counting, the warrant must be posted this year by February 21 (RSA 39:5). The selectmen would be well advised to have the town counsel check the legality of the warrant articles for form and content. Recent court decisions indicate it is necessary to review enabling legislation to: (1) determine the exact source of authority for town action; and, (2) see what special procedures might be required.

In a town which uses official ballots, the warrant must clearly specify those articles to be voted on by ballot at the election and those which will be considered at the business meeting. The town's annual report, including the proposed budget, must be made available 7 days before the town meeting. (For more information about annual reports, see the November 1980 issue of N.H. Town and City.) Although some warrants contain an article at the end, "To transact any other business which may legally come before the meeting", action taken under this general provision is limited in scope because of the requirement that subjects on which the meeting will act must be specifically included in the warrant.

Reminders

Many statutes were amended by the 1983 legislature. While it is not possible to address the details of all of these changes here, it is appropriate to remind municipalities of new procedures or statutory authorizations which may require consideration by the town meeting.

Deputy Tax Collectors

All towns must now have a deputy tax collector, RSA 41:38, or deputy town clerk/tax collector, RSA 41:45-c. The town should remember this when formulating its budget.

Central Business Service Districts

Municipalities are now authorized to establish central business service districts in high density areas of pre-

dominantly commercial uses. The costs of providing special services, exclusive of capital expenditures, may be an additional charge within the district. RSA 31:120-125.

Incompatible Offices

Selectmen may not be full time employees of the town. RSA 669:7.

Bonds

RSA 33:7-b, :8 and :8-a are amended to make clear that a *ballot* vote of $\frac{2}{3}$ of those present is necessary when issuing bonds.

Fines

RSA 31:39 was amended to increase the maximum fine which may be imposed by a municipality for violation of a local ordinance to \$1,000. A town may wish to increase its fines accordingly.

Libraries

Towns may authorize their library to retain money received from its income generating equipment to be used for general repairs and upgrading and for the purchase of books, supplies and equipment. RSA 202-A:11-a and :11-b.

Road Agents

A town may elect a road agent for a term of up to three years by following the procedures contained in RSA 231:62-a and :62-b.

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