

MUNICIPAL BUDGET COMMITTEE
Wednesday, September 19, 2018
Professional Development Room
Kennett Middle School, Conway, NH

Chairman Jim LeFebvre called the meeting to order at 3:03pm. The following members were present: Eric Dziejczic, Dave Jensen, Doug Swett, Steven Steiner, Sarah Verney, Diane Ryan, Mike Laracy, Ellin Leonard, Terry McCarthy (3:07), John Colbath (3:07), Mike Fougere (3:21), John Edgerton (3:38), and Ted Sares (3:49). Also present: Lisa Towle, recording secretary

Excused: Greydon Turner and Michael Tetreault

Mr. Jensen led those present in the Pledge of Allegiance.

REVIEW OF OUTSTANDING MINUTES (JUNE 2018):

Mr. Laracy moved, seconded by Chair LeFebvre to approve the minutes as written. (6-0-2 [Mr. Jensen & Mr. Steiner])

CHAIRMAN'S COMMENTS AND INTRODUCTION OF DRA REPRESENTATIVE:

- A copy of the revision to RSA 32 was provided to all members present. This revision to the RSA supports the budget committees ability to place their tally on the non-monetary warrant articles enacted.
- To keep the DRA presentation moving along, please hold all questions until the end of the presentation.
- Question for the School and Town emailed to Chair LeFebvre no later than October 30, 2018 to allow him time to compile the questions and forward them to the Town Manager and Superintendent no later than November 6, 2018.
- The town and school should have their budget books ready prior to December 12, 2018 and available for pick up at a common location (preferably the Town Hall).
- The next meeting will be December 12, 2018 at 6:30 PM, held in the Professional Development Room.
- Introduction of Bruce Kneuer, DRA representative, who is here to review RSA 32 and any subsequent changes.

DRA PRESENTATION ON RSA 32:

- Committee members present introduced themselves, including Tom Holmes, Town Manager and Lilli Gilligan, Finance Director.
- I always advise members to have Chapter 32 statutes available as well as Chapter 40:13 & 14 that refer to default budgets.
- 32:1 to explains the principle role; *The purpose of this chapter is to clarify the law as it existed under former RSA 32. A town or district may establish a municipal budget committee to assist its voters in the prudent appropriation of public funds. The budget committee, in*

those municipalities which establish one, is intended to have budgetary authority analogous to that of a legislative appropriations committee. It is the legislature's further purpose to establish uniformity in the manner of appropriating and spending public funds in all municipal subdivisions to which this chapter applies, including those towns, school districts and village districts which do not operate with budget committees, and have not before had much statutory guidance.

- I would like to stress in your charge to assist voters in prudent appropriation of public funds and there is that confirming language you are analogous to an appropriations committee.
- This is important as the budget committee's work is not centered entirely on the budget that leads to a vote on appropriations but is heavily in that direction. The budget committee's primary role is in appropriations, preparing the budget so the voters can vote on the appropriations.
- Where are you right now; in the midst of a budget and expenditures and getting ready to build the next budget simultaneously.
- 32:16 will lay out the four (4) principle duties of the budget committee:
- *To prepare the budget as provided in RSA 32:5, which is referred to as the guts of making the budget, and if authorized under RSA 40:14-b, a default budget under RSA 40:13, IX(b).* Usually the budget committee does not have that authority unless the legislative body has voted to give that authority to the budget committee. Therefore, the governing bodies; school board, select board, and commissioners, will prepare the default budget.
 - **Chairman LeFebvre** advised that the budget committee does have that responsibility, however, we have allowed the staff to do both. **Mr. Kneuer** noted that means the town has voted to confer that power onto the budget committee. **Ms. Gilligan** clarified that the Town of Conway default budget is set by the budget committee and the school default budget is set by the school board.
- *To confer with the governing body or bodies and with other officers, department heads and other officials, relative to estimated costs, revenues anticipated, and services performed to the extent deemed necessary by the budget committee. It shall be the duty of all such officers and other persons to furnish such pertinent information to the budget committee.*
- This is the conferring to get ready to produce the recommended budgets that you will sign off on. That conferring duty is mirrored by an earlier section; 32:4, *All municipal officers, administrative officials and department heads, including officers of such self-sustaining departments as water, sewer, and electric departments, shall prepare statements of estimated expenditures and revenues for the ensuing fiscal year, and shall submit such statements to their respective governing bodies, at such times and in such detail as the governing body may require.*
- This is the companion and background work to your conferring, department heads are building budgets, they are moving up through administration to the governing body and prepared to recommend theirs, dovetailing with the budget committees conferring authority.
- III. *To conduct the public hearings.*
- Every proposed appropriation must be presented in a hearing for discussion. The budget committee is listening, controlling the destiny of timing, and what happens when that hearing is closed. Some committees go into their own meeting and make decisions, some have a

separate meeting, it is dependent on the statutory deadlines as to when the hearings have to take place and when the signed budget is to be turned over to the governing body.

- IV. *To forward copies of the final budgets to the clerk or clerks. RSA 32:5, VI, and, in addition, to deliver 2 copies of such budgets and recommendations upon special warrant articles to the respective governing body or bodies at least 20 days before the date set for the annual or special meeting, to be posted with the warrant.*
- That's the broad scope of the duties. The budget committee will prepare the budget report, also known as the MS, 737, or 636 for municipalities that don't have a budget committee. The submission of the signed documents is submitted to the DRA through a web portal system. The portal will gather, format, and allow a copy to come out in print form for signature. In summary, the administration compiles the budget, and the duty of the budget committee is to review and sign.
- The distinction between the budget committee's activities, role, and energy up to the time the signed budget is presented to go up with the warrant. What happens after the voters are done, the appropriations are approved, and the governing bodies begin expending. Part of the conferring duty and role will be built in part by your observations and review of those expenditures.
- 32:10 Transfer of Appropriations – this is a duty and/or power of the governing body.
 - I. *If changes arise during the year following the annual meeting that make it necessary to expend more than the amount appropriated for a specific purpose, the governing body may transfer to that appropriation an unexpended balance remaining in some other appropriation, provided, however, that:*
 - (a) *The total amount spent shall not exceed the total amount appropriated at the town or district meeting. (The bottom line)*
 - (b) *Records shall be kept by the governing body, such that the budget committee, if any, or any citizen requesting such records pursuant to RSA 91-A:4 (Right to Know Chapter), may ascertain the purposes of appropriations to which, and from which, amounts have been transferred; provided, however, that neither the budget committee nor other citizens shall have any authority to dispute or challenge the discretion of the governing body in making such transfers.*
- You can ask and there will be some type of record, but the budget committee's authority stops at the observation. The statute is very clear there is no challenge to that.
 - **Chairman LeFebvre** inquired if our salt program is over expended or about to go to zero, there is another \$100,000 in another portion of the town budget and the select board has decided they want to transfer \$100,00 from the other accounts into the salt budget, and as long as it doesn't affect the bottom line analysis, they are within their rights to do so, correct? **Mr. Kneuer** answered yes, and section C will condition that statement.
- The governing body may transfer, and a record is to be kept. This is important for a budget committee, because if the answer is it wasn't an unusual October, or something is going on with salt prices, it explains why they over expended and you can expect the next budget will have higher appropriations for salt.
- (c) *A statement comparing all legislative body appropriations against all expenditures shall be deemed adequate for purposes of the records required by subparagraph (b).* A matter of

interpretation up to the municipality as to how you present and when, when requested; how are we doing is really what it amounts to. *so long as every expenditure has been properly authorized and properly classified and entered and any expenditures exceeding the original legislative appropriations are offset by unexpended balances remaining in other appropriations, in which case the governing body shall not be required to designate the specific source of each transfer.*

- The governing body has the authority to transfer and there is no challenge about the discretion and the adequacy of this statement it stands on its own. The budget committee and the citizen should be able to ascertain something about the need to transfer. The end of the year is when the bottom line really hits, and if need be there are other remedies, such as the need for emergency expenditures, etc.
- **Chairman LeFebvre** noted that historically the budget committee has done a quarterly review with the town and school district as to how they are doing with their budget. Does that enable the committee to say they are exercising our due diligence on this issue? **Mr. Kneuer** advised I think there is some play there as the question of due diligence is not defined and if you think quarterly is sufficient, then that is probably the answer.
- There is supposed to be a limitation on expenditures according to 32:8 *No board of selectmen, school board, village district commissioners or any other officer, employee, or agency of the municipality acting as such shall pay or agree to pay any money, or incur any liability involving the expenditure of any money, for any purpose in excess of the amount appropriated by the legislative body for that purpose, or for any purpose for which no appropriation has been made, except as provided in RSA 32:9-11.* (32:9 is a judgment, if the court says pay, then you pay. 32:10 is the transfer, and 32:11 is the emergency expenditures and over expenditures.)
- The statutory remedy that is going to explain why the governing body is going to be expending more dollars than the voters had appropriated at the annual meeting, it allows for it.
- The next statutes explain what is happening between the approval of appropriations and the end of the year, the expenditure phase.
- 32:22 *Review of Expenditures.* – *Upon request by the budget committee, the governing body of the town or district, or the town manager or other administrative official, shall forthwith submit to the budget committee a comparative statement of all appropriations and all expenditures by them made in such detail as the budget committee may require.*
- There are two(2) parts in here, again this is open to local interpretation and working together well; (1) Forthwith; generally means sooner rather than later, (2) In such detail as the budget committee may require, I think common sense would prevail, too much detail, but there is statutory guideline as to how much is too much, just says in as much detail you work out whether the detail is reasonable or not and forthwith. The legislature wanted to rework this and lay down all kinds of guidelines but I think that might be too much.
- *The budget committee shall meet periodically to review such statements.* That is what you have been doing and will be doing. *The provisions of this section shall not be construed to mean that the budget committee, or any member of the committee, shall have any authority to*

dispute or challenge the discretion of other officials over current town or district expenditures, except as provided in RSA 32:23.

- 32:23 a/k/a the nuclear option - *Upon receipt of the reports provided for by RSA 32:22, the budget committee shall examine the same promptly, and if it shall be found that the governing body or town manager have failed to comply with the provisions of this chapter concerning expenditures, a majority of the committee, at the expense of the municipality, may petition the superior court for removal as provided in RSA 32:12.*
- To the best of my knowledge, we don't have an example of use of 32:23 where a budget committee has gone to superior court at the expense of the tax payers and said we want you to remove a person(s) from office for violating the expenditure law. Being spending money you had no authority to spend money on, etc. There was a 2005 case where a citizen under 32:12 filed a case against the town of Bridgewater. The court found that the town and its officials simply didn't understand what they are doing and they over expended. I have great confidence that Conway and all its officials know exactly how the budget works.
- The legislative change to 32:5 V-a; In the past a governing body through its own initiative could put its numbers down, (i.e.: recommended 10-8) and budget committees did not have the same opportunity unless the voters put it in. The change is that the governing body OR the budget committee adopted under RSA 32:13 may on its own initiative require its tally votes to be printed next to the effected article. If the budget committee wishes its numeric vote it shall be placed on the warrant with the article.
- *The legislative body of any town, school district, or village district may vote to require that all votes by an advisory budget committee, a town, school district, or village district budget committee, and the governing body or, in towns, school districts, or village districts 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, school district, or village district warrant next to the affected warrant article. All votes.* Check with your respective counsel to interpret all votes vs. appropriation votes.
- **Mr. Jensen** inquired if that means the budget committee has the responsibility vs. opportunity to vote on things such as planning and zoning board regulations. **Mr. Kneuer** discretion can be the better part of valor, as it says may not shall, I would be checking with counsel how they want to interpret. **Ms. Gilligan** noted that planning and zoning board issues are not read or discussed during the deliberative session.
- **Mr. Colbath** noted often an article for acceptance of a new town road has come up and in the past the budget committee's vote was not noted. **Mr. Kneuer** advised it is best if counsel was involved to answer the question for the town or respective entity, if the budget committee wants to put a tally vote on an article that doesn't require an appropriation.
- *Unless the legislative body has voted otherwise, if a town or school district has not voted to require such tallies to be printed in the town or school district warrant next to the affected warrant article, the governing body may do so on its own initiative.*
 - **Mr. Fougere** noted in the past the budget committee's input has been rejected. **Mr. Kneuer** noted the budget Committees recommendations must go on the operating budget. This law gave the budget committee the independent authority to put the tally on any appropriation article. Whether it was intended for non-appropriation articles, is unknown,

however, it reads all votes relative to budget items or any warrant articles. **Mr. Fougere** commented the decision wouldn't be monetary rather an opinion value to the community as the members of the budget committee are elected by a body of the town. **Mr. Kneuer** responded the general principle is that you are only supposed to do what the allows you to do and don't get to do things because it doesn't say you can't.

- **Mr. Colbath** inquired when the revision occurred. **Mr. Kneuer** noted it was approved June 12, 2018 and effective August 11, 2018.
- **Mr. Colbath** inquired when it was recommended to seek a legal opinion. **Mr. Kneuer** suggested if the budget committee wants to make a recommendation on an article that has no appropriation and the statute says ALL warrant articles, but the governing body isn't sure or disagrees, legal counsel would be the one to make the legal decision.
- **Chair LeFebvre** suggested the he work with Mr. Holmes, the town attorney, and the attorney from the NHMA to see how they are currently reading this statute and get some guidance.
- **Mr. Laracy** commented the way he reads the statute is that the legislative body decides if the budget committees tally is added, not the budget committee. **Chair LeFebvre** referred Mr. Laracy to RSA 32:14. **Mr. Kneuer** responded this statute grants authority to the legislative body (the voters), if they have chosen not to act, they haven't voted that they want tally votes, the statute in the past said the governing body can do it on its own. Now with respect to the budget committee recommendation. If I read this correctly the legislative body not voted to make mandatory for all articles to have numeric votes.
- **Mr. Colbath** inquired if the "governing body" was the Conway Board of Selectmen, and they have the final say one way or another and the legislature does not? **Mr. Kneuer** answered yes. The governing body, until this change could say on our own authority we want to show the vote, or we don't need/ want to. This change says the budget committee can now do the same no matter what the governing body's position is, and they have to work with the governing body. However, the legislative body could say no, because it says "unless the legislative body votes otherwise, then the governing body and budget committee can use this power, but if the people for some reason say we do not want them then that would block the use of them.
- **Mr. Colbath** suggested where we are a member of the NHMA, it would be best to seek advice from them first before going to the town counsel, which would cost the taxpayers money. **Chair LeFebvre** agreed, as we want to be a frugal as possible, and revised his suggestion that he would approach the NHMA counsel to get their opinion on the change to this statute.

Chair LeFebvre moved, seconded by Mr. Jensen to allow him to reach out to the NHMA counsel to get their opinion on the change to this statute. (Motion carries 13-0-1 [Mr. Sares])

- I looked at NHMA work and the case they are going to talk about under their section of special articles and recommendations, "*special*" warrant articles must include the recommendation or non-recommendation of the governing body and official budget committee These statutes 32:5 V and 32:19 do not nor any other statute expressly extend the

recommendation requirement to non-monetary articles and there has been debate over whether the select board has such authority. At least one superior court judge has determined that a select board does have the authority to place a recommendation on non-monetary articles. (Jeremy Olson v Town of Graton, 215-2015-CV-057, 2015).

- The default budget per statute; you start with the prior years approved operating budget only, then added or subtract with certain conditions, one which is contracts. The town is prepping default budget for the town and the school board prepping the default budget for the school district. The legislature made changes having to do with contracts and whether or not it has to be included in the default budget. The DRA has no jurisdiction to review or approve the default budget. There is a lot of creativity being exerted to try to understand how to implement these changes. The legislature reacted to contracts that were signed after the annual meeting then placed in the default budget. When you prepare the default budget, if the contract you want to put in that default budget was signed after the town meeting or legislative body had a chance to vote on appropriations, the answer is NO, however, it doesn't mean the governing body can't sign the contract. The legislature also added a stipulation that the changes to the default budget has to be transparent and explained by the governing body (if needed) during the deliberative session. Before the ballot goes to vote, the governing body has the authority to change the default budget.
- **Mr. Sares** inquired if there is any consistency to the definition of a contract, such as the school treats utilities as a contract and the town does not? **Mr. Kneuer** noted whatever decision is made is going to have ramifications, as you need to pay per the agreement and appropriate in the proposed budget. This is more about the question of what is in that default budget, and if it is signed after the meeting it doesn't go in. The legislature's position is if it happens after and calling for appropriations that the governing body wants to put into the default budget the answer is NO.
- **Mr. Jensen** inquired if the governing body can change the default budget after the deliberative, does the budget committee have any responsibility to approve or have a voice on that default budget change. **Mr. Kneuer** answered no, it is entirely the governing body's duty.
- *40:13 XI. (a) The default budget shall be disclosed at the first budget hearing held pursuant to RSA 32:5 or RSA 197:6. The governing body, unless the provisions of RSA 40:14-b are adopted, the budget committee shall complete a default budget form created by the department of revenue administration to demonstrate how the default budget amount was calculated.*
- *40:13 XI. (b) This amount shall not be amended by the legislative body. However, this amount may be adjusted by the governing body, unless the power to create the default budget has been voted to the budget committee, however this amount may be adjusted by the governing body/budget committee, acting on relevant new information at any time before the ballots are printed, provided the governing body/budget committee, completes an amended default budget form.*
- Whoever the voters chose to prepare the default budget, has one last opportunity after deliberative to say we heard something that changed our mind. The time is limited by the printing of the ballot.

- **Mr. Holmes** inquired if the statute says “add to” or can default either way. **Mr. Kneuer** clarified it says amended.
- **Mr. Sares** commented that most people think that if the default budget is higher something is wrong. **Mr. Kneuer** responded that 40:13 added language to say the default budget can be higher or lower. It can be higher if an entity is shrinking appropriations.
- The other change is if in the operating budget last year it called for funding of 100 positions and in the proposed budget there are 98 positions, you are now to go back to the default budget and remove the dollar amount for those two (2) positions, unless you are calling for 100 positions and recruiting for the open positions, the second is we eliminated this position but reclassifying it so there are still the same 100 people.
- **Mr. Holmes** inquired if there is an exception to changing the amount of the contract if the position is being privatized. **Mr. Kneuer** noted that the bodies responsible for the default budgets are going to be working with their attorneys to understand the changes.
- Follows the rules you will have more transparency and discussion.

Questions:

- **Mr. Steiner** inquired if the school can be asked to provide a register of employees and their salaries? **Chair LeFebvre** noted that gets into we can ask the questions, but it is dependent on how much work it entails, “forthwith and reasonable”. **Mr. Kneuer** advised to go to the statute, as a committee you operate under 32:22 you would be asking the governing body; *shall forthwith submit to the budget committee a comparative statement of all appropriations and all expenditures by them made in such detail as the budget committee may require.* It doesn’t say how much detail is enough or too much, but what is the purpose in helping to understand and get ready for the next budget.
- **Ms. Ryan** commented she had been to an NHMA seminar and it is the budget committee’s responsibility to judge if the budget meets the needs of the municipality, how do you judge that. **Mr. Kneuer** noted he agreed with NHMA in that you are trying to propose spending and associated revenues that you believe is consistent with needs of the community respectful of what taxes are based on the experience of the prior year and the recommendations of the people who are building the budget. The legislature’s intent as noted in the central purpose; *“to assist voters in the prudent appropriation of public funds”*. Prudent: implies caution in deliberating and consulting on the most suitable means to accomplish valuable purposes, like the health and wellbeing of a town or school, and exercise sagacity in discerning and selecting them.
- The State Constitution, Article 38, written and adopted June 2, 1784; *A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought, therefore, to have a particular regard to all those principles in the choice of their officers and representatives, and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of government.*” As elected officials you have the responsibility to help meet those standards, the people you serve have a right to demand that of you.

- **Mr. Sares** inquired if there should be tension between the budget committee and town and schools. **Mr. Kneuer** agreed there should be a healthy tension, as there is going to be disagreement, and the voters created the budget committee to help with the prudent expenditure of their money. You can only take care of your own attitudes.
- **Mr. Fougere** inquired about meetings outside of meetings, such as contingents of the budget committee meeting up at a school board meeting and having a small meeting in the back. **Mr. Kneuer** noted it is not in the prevue of the municipal part of the DRA as this is a right to know question, whether a meeting is taking place without notice. Personally, I would say shy away from that appearance, especially when it looks like a quorum.

OLD BUSINESS: None

NEW BUSINESS:

Reminder to get any proposed questions to Chair LeFebvre no later than **October 30, 2018**, so they can be presented to the town and school no later than **November 6, 2018**.

Mr. Steiner addressed the members and community thanking those who have reached out to them during the tragedy his family suffered last week.

PUBLIC COMMENT:

Mr. Greenleaf-Whittier stated he understood last year it had been decided that the warrant had to have a numeric value for the budget committee to put a tally on it. **Chair LeFebvre** advised that is the change that is being discussed as it has the potential to change that, which is why I will be talking to the NHMA attorney.

Mr. Greenleaf-Whittier inquired when the budget is sent to the DRA, what are they looking for in approving the expenditures. **Mr. Kneuer** noted the DRA approves appropriations, we make sure the budget is on the right form and signed by the right body, but we will not be reviewing the actual budget. However, there is a phase during the development of the budget called the pre-review for the warrant articles. DRA authority through the commissioner centers on two (2) things, approving the appropriations so the bodies have the authority to expend, and approving the associated revenue, which is a two part process as you see it in the budget initially and by September 1st there is a revision of those, we want to make sure those are as accurate as they can be because they are going to alter the taxes.

ADJOURN:

Mr. Colbath moved, seconded by **Mr. Jensen** to adjourn the meeting at 4:29 PM. Motion carried unanimously.

Respectfully Submitted,

Lisa E. Towle, Recording Secretary