

Kopelman & Paige's response to Citizen Petitions-Content NOT changed, but summary highlighted. This was requested at Monday's Pre-Town Meeting.

2014 Warrant #s 36 & 38

Posting of meeting minutes and posting meeting notices:

These two petitions address subjects that are governed by the Open Meeting Law (OML), but propose limitations that would be more strict than the Law. The OML requires that meeting notices be posted at least 48 hours before the meeting, while the petitioned article states that "departmental meetings" shall be posted 5 days before the meeting ["no later than four business days before the meeting, not including the day of the meeting" – with weekends excluded, this essentially requires posting one week in advance]. The second article would require that minutes, or draft minutes, of a meeting be posted on the Town website "within 24 hours of the next meeting." The OML merely requires that minutes be created and approved "in a timely manner." I note that both approved minutes and draft minutes are public records, however (not including executive session minutes).

I discussed these proposed by-laws with an attorney in the Attorney General's Municipal Law Unit, which has to approve any by-law voted by a Town Meeting before it becomes valid. While she could not give me a binding opinion, she did note that, in general, a town may adopt a by-law that is more strict than a statute as long as it is not inconsistent with the overall implementation of the statute. Since these by-laws would be more strict than the OML but do not appear to be in direct conflict nor contradictory to the statute, it is likely that legally these by-law could be approved by the AG's office. As a practical matter, compliance with these by-laws could pose problems for the boards and their staff, but it does not appear that they would be unlawful (unless the AG finds other issues with the final form). I would note, however, that **if a Town by-law is more strict than the OML, if a board acts consistently with the Open Meeting Law but inconsistent with the by-law, this would not be a violation of the OML and the Attorney General's Division of Open Government would not act on a complaint. In addition, if there the by-law regarding minutes was adopted as filed, it is my opinion that this would not apply to executive session minutes. Such minutes are exempt from disclosure under both the Open Meeting Law and Public Records Law, and it would be inconsistent with these statutes to have a by-law "override" state law in this regard, in my opinion.**

2014 Warrant # 37

By-law re: Replace Board of Assessors with an Assessor/Clerk:

In my opinion, a by-law under this article would not be approved by the Attorney General. The Massachusetts finance and taxation statutes are full of duties and authorities that are held only by a Board of Assessors, and a town does not have authority to delegate those duties to another board or individual. For

just one example, G.L. c.59, §59 empowers the Board of Assessors to rule on abatement requests, and this duty cannot be reassigned by by-law. The only method to make the proposed change, in my opinion, would be by a special act approved by the General Court.

2014 Warrant # 40

By-law re: Drive Ways:

This petition proposes an addition to the existing by-law Section 4.6, Drive Ways. The addition would require that in order to receive a drive way permit, "the driveway cut must be off a Public Town Road that is shown on the State Cherry Sheet; the road must be recognized by the state and receive state reimbursement." In my opinion, this by-law asserts jurisdiction on property over which the Town does not have legal authority. The addition would apparently prohibit constructing a driveway into anything other than a recognized public way. In my opinion, this by-law cannot impose this restriction against a private property owner to access a private way. In general, abutting property owners own to the center of a private way adjacent to their property, so the property owner would be constructing a driveway entirely on his or her own property. The Town clearly has an interest to regulate drive ways or other curb cuts from private property into a public way, and the existing Section 4.6 sets out those interests. **The Town has no such interest in a driveway that is on only private property, however, and it is my opinion that this would not be a valid or enforceable by-law.**

2014 Warrant # 41

Proposed Special Act – Recall of Elected Officials –

According to the information contained in the petition, this proposed special act was voted and approved at the 2009 Annual Town Meeting and was submitted to the General Court through the Town's Senator, but the General Court failed to adopt the act. The petition is to put the matter before Town Meeting again. In my opinion, this is an appropriate petitioned article. It is likely that if this was put before the General Court now by other means (the Senator's own filing, for example), the General Court would be concerned that the issue was "stale" and would want to see evidence that this was still supported by a Town Meeting vote. The text of the recall act is consistent with other such acts that have been approved, in my opinion. The Board of Selectmen is not obligated to do anything more than place the article on the warrant. In the event this may be approved again and the Board would like to have it be in proper form for filing with your State Senator or Representative, however, I recommend (as do the House and Senate Counsel) that the following language be inserted at the beginning of the motion on the article:

I move that the Town vote to authorize the Board of Selectmen to petition the General Court for a special act as set forth below to establish a procedure for the recall of elected officials; provided, however, that the General Court may

*make clerical or editorial changes of form only to the bill, unless the Board of Selectmen approve amendments to the bill before enactment by the General Court; and, provided further that the Board of Selectmen is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition:
[text of recall act]*

2014 Warrant # 42

By-law re: "Chapter Money" and Roll-Back Taxes:

In my opinion, this by-law does not appear to propose anything beyond what the Board of Assessors is already directed by statute to do with regard to "chapter lands" under G.L. c.61 (Forest Lands). While such a by-law may be approved by the Attorney General, it would not have any effect on the Assessors' duties. To the extent it is inconsistent with state law – for example, Chapter 61 has certain exemptions from the roll-back tax – the by-law would not be effective and/or be disapproved, in whole or in part, by the Attorney General on this basis. Moreover, the petition states that Town Meeting will, via the by-law, direct the Assessors to collect roll-back taxes. In my opinion, Town Meeting may not direct the Board of Assessors to take certain actions that are strictly governed by state statute; the Board is already required to handle chapter lands consistently with state law.

2014 Warrants # 44 & 45

By-law re: Campers:

This petition proposes to make a variety of changes to Section 4.3.2, governing the placement and permitting of tents, trailers and campers on undeveloped land. While this also concerns the use of private land, these types of by-laws have been recognized and approved as related to both aesthetics (conditions of private property visible to the public) as well as health and sanitary issues associated with such trailers and campers. The addition would permit "winter storage" of such vehicles, among other changes. In my opinion, **these by-law changes, if adopted, would not pose legal issues that would cause the Attorney General to disapprove the change.**