

**A REPRESENTATIVE TOWN
MEETING FOR THE 21ST
CENTURY**

By:

**Mr. James Hugh Powers,
Town Meeting Member,
Precinct F.**

**A Memorandum to the Town Meeting Study
Committee Authorized by Vote of the 2005
Annual Town Meeting of the Town of
Needham, Massachusetts Under Article 64 of
the Warrant Thereof**

August 1, 2006

A Representative Town Meeting for the 21st Century

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A REPRESENTATIVE TOWN MEETING FOR THE 21ST CENTURY

**LETTER OF TRANSMITTAL TO THE TOWN MEETING STUDY
COMMITTEE**

August 1, 2006

To the Members of the Town Meeting Study Committee:

LADIES AND GENTLEMEN: Greetings from the author of the vote of our 2005 Annual Town Meeting which gave birth to your Committee!

This Memorandum has been prepared for your use as a research source and “working” document as the Committee undertakes its study relative to ways and means of strengthening our Representative Town Meeting, and of solving the problem of excessive absenteeism among our Town Meeting Members. The Committee’s study directive, adopted under Article 64 of the Warrant for the 2005 Annual Town Meeting, details a number of aspects of these problems which it wants the Committee to explore.

In preparing this Memorandum, I have drawn on extensive research materials which I have accumulated over the years, pertaining to Needham’s town government and to municipal government generally in Massachusetts. Also included is recent information gathered while assisting our Board of Selectmen in drafting our new Town Manager plan, approved by voters of the Town at the State Biennial Election on November 2, 2004.

I wish to express my profound gratitude to Mr. Paul Siegenthaler, Town Meeting Member, Precinct E and his daughter Natalie, for their invaluable assistance in the preparation of this document. Without their hours of volunteer labor in transforming my rough manuscript text into a finely finished product, and offering editorial advice, this research memorandum would not have seen the light of day, and so served the public interest of our Town.

As noted in the Memorandum, some of the information set forth therein will require updating by the Committee. The Committee will undoubtedly find subject areas discussed in the Memorandum requiring further enquiry by it, as it digs further for facts. Hence, the Memorandum should be viewed only as a “think piece” and preliminary working paper at this juncture in time.

The Memorandum, hopefully, will save some time for the Committee in conducting its study, enabling it to devote more time to further research. And it may help the Committee in targeting those aspects of Town Meeting reform to which it wishes to give its highest priority. In evaluating what is done in other towns with representative town meetings, it is wise to remember that no two towns are exactly alike, that some innovations they have adopted may work well in Needham, but that not everything which may work well elsewhere necessarily will work in Needham. Our Town Meeting has problems, and it is looking for solutions which will work.

In summary, the Memorandum:

- 1) Chronicles the history and reasons as to why and how our Representative Town Meeting came into being in 1934, and its evolution since then as the Town underwent sweeping changes in its demographics, social structure, economy, governmental functions and organization with the passage of 72 years;
- 2) Identifies the problem areas and challenges the Representative Town Meeting now faces as an institution; and
- 3) Indicates what measures have been taken by other towns in relation to their representative town meetings when shifting to Selectmen-Town Manager systems of executive branch administration.

In the Memorandum the following abbreviations and simplified terms are used for the ease of reading:

Amend. Art.....	Amendment Article.
c.....	Chapter.
Constit.....	Constitution.
Executive branch.....	The elected and appointed officials, and administrative agencies of town government, as distinguished from the Town Meeting, which is the legislative branch of that government.
Gen. By-Laws.....	General By-Laws.
G.L.....	General Laws of the Commonwealth of Massachusetts, as amended.
Municipal Home Rule Amendment.....	Massachusetts State Constitution, Amendment Article II (1821), as revised by Amendment Article LXXXIX (1966) and further amended by Amendment Article CXIII (1978).
Needham Charter.....	Needham Special Home Rule Charter Act (Acts of 1971, c. 403, as amended.)
s.....	Section.

Respectfully submitted,

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August 1, 2006

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A REPRESENTATIVE TOWN MEETING FOR THE 21ST CENTURY

A Research Memorandum by Mr. James Hugh Powers,
Town Meeting Member, Precinct F

STUDY MANDATE

Legislative Background

At the State Biennial Election on November 2, 2004, voters of Needham, by a wide margin, accepted the provisions of Chapter 176 of the Acts of 2004 amending our Needham Charter to create a Selectmen-Town Manager system of government in the Town, effective on May 6, 2005.

That statute, the enactment of which was requested of the State Legislature by vote of the 2004 Annual Town Meeting,¹ was based on a proposal submitted to that body by the Board of Selectmen, and revised by that Town Meeting. The Needham Charter, as so revised, continued the Representative Town Meeting, established in 1934, as the legislative branch of our Town Government.

The advent of this Town Manager system, and the action of the 2005 Annual Town Meeting in implementing this change in our Town Charter with a general revision of the Town's General By-Laws, responded to years of voter complaints to the effect that the Town's executive branch was excessively decentralized, devoid of real coherent management, and inefficient.

Major issues facing the Town's voters and their Representative Town Meeting were: (1) how far to go in centralizing control of the executive branch in the hands of the Selectmen and Town Manager; and (2) how to reconcile the concept of a "balanced executive budget" formulated by the Town Manager, after consultation with the Selectmen, School Committee, and various agency heads, with the essential functions of the Finance Committee of the Representative Town Meeting.

Inescapably, the arrival of the Town Manager system has brought with it an important impact upon the political relationship between the executive and legislative branches of Town Government, which will have to be addressed as time passes. Tensions between the executive and legislative branches are natural, in American government, which emphasizes a separation of powers, especially where the framing of budgets are concerned.

Issues arise as to whether or not the reorganization of the executive branch along town manager lines should be followed by changes in the structure, rules and staffing of the Town Meeting in order to enable it to "hold its own" as a vital, effective, accountable and independent arm of government. These questions also surface at a time when the credibility of the Town Meeting is being damaged by controversial levels of absenteeism among Town Meeting Members at Town Meeting sessions over the past decade.

¹ Warrant for the 2004 Annual Town Meeting, Art. 61.

The relevant features of the 2004 amendments to the Needham Charter establishing the Selectmen-Town Manager plan are these:

Previously, the executive or administrative branch of town government was highly decentralized. The management authority of the Board of Selectmen was limited to those agencies whose administrative heads or boards were appointed by the Selectmen alone. The Selectmen had control over collective bargaining aspects of personnel administration in all town agencies other than the School Department and their exclusive authority to place Proposition 2 ½ override and debt exclusion questions on the ballot afforded them bargaining power in dealings with agencies not under their supervision. Under state law, the Selectmen were responsible for assembling the appropriation requests of spending agencies and forwarding them to the Finance Committee as a “budget” in each fiscal year; however, their effective power extended only to the budget requests of agencies under their supervision. Absent any kind of central budgetary planning in the executive branch, the real responsibility for formulating a unified, coherent balanced budget from the outset fell to the Finance Committee.

Under the new Town Manager system, the Selectmen assume the role similar to that of the board of directors of a business corporation. The Selectmen appoint, and may remove, a Town Manager whose role compares with that of the chief executive officer (CEO) of a business corporation. The CEO (Town Manager) is vested with full control over the day to day activities of the corporation (town agencies under his supervision) and is responsible to the Board of Selectmen for overseeing the same, managing corporate (town) finances, and implementing votes of the Board. While the 2004 Charter amendments continued in place other popularly-elected department heads and boards, it granted the Selectmen and Town Manager limited authority over certain of these agencies, leaving totally independent only the School Committee.

Study Directive

Among the supporters of a Town Manager system of government for Needham, I, with other Town Meeting Members, were also concerned that attention also be given promptly to making those reforms in the organization and operations of the Representative Town Meeting which will maintain the balance between the executive and legislative branches of town government and facilitate the role of the Representative Town Meeting as an effective, accountable and truly representative legislative body in the years ahead.

I had served as Chairman of the Home Rule Study Committee which had drafted the Needham Charter (1968-71), and as Vice-Chairman of the First Town Government Review Committee which proposed amendments to the Charter and various by-laws improving the Town Government (1971-75). As a research staff employee of the State Legislature, I had participated in the drafting of the Municipal Home Rule Amendment added to the State Constitution in 1966. And, as the longest-serving member of the Representative Town Meeting, I have been committed to the survival of that body in Needham.

Accordingly, under the “Omnibus” final Article 64 of the 2005 Annual Town Meeting, I moved, and the Town Meeting voted:

That the Moderator appoint a committee of seven Town Meeting Members to make a study and investigation of ways and means of strengthening the Representative Town Meeting as the legislative branch of Town Government now having a Town Manager system, such means to include, but not limited to:

- a) The creation of a standing committee of the Town Meeting having legislative oversight and post-audit powers;
- b) Improvements in the standing committee system of the Town Meeting;
- c) Improvements in the rules of procedure of the Town Meeting, with a view to enhancing the Town Meeting's role under the Separation of Powers;
- d) Giving standing committees of the Town Meeting their own independent power to employ staff, subject to appropriation and such approval by the Moderator as the Town may specify by by-law, in lieu of present Charter provisions which, with one exception, require such committee staff to be appointed by the Town Manager; and
- e) Methods of curbing excessive absenteeism by Town Meeting Members from Town Meeting sessions which threaten the right of voters in the several precincts to equal representation in the Town Meeting.

Said Committee shall report its findings and recommendations to the Town at the 2006 Annual Town Meeting, or sooner.

The above study mandate of the Committee was extended for another year by vote of the 2006 Annual Town Meeting.¹

The limitation of the Committee's membership to Town Meeting Members only, appointed solely by the Moderator as presiding officer of the Town Meeting, reflected my policy view that the study ordered relates solely to the legislative branch, to be addressed by knowledgeable members of the Town Meeting, as an internal Town Meeting concern, entirely independent of direct or indirect executive branch control, consonant with the Doctrine of the Separation of Powers.

¹ Warrant Art. 21.

The vote deliberately treats the issue of Town Meeting Member absenteeism as a subsidiary aspect of strengthening the Town Meeting institution, by protecting the constitutional right of the inhabitants of each of the town's ten precincts to equal representation in their Town Meeting.

The other four topics listed in the above Town Meeting vote include (a) issues discussed during the drafting of the amendments to the Needham Charter establishing the Town Manager system; and (b) measures adopted by town meetings in some selectmen-town manager towns to protect the role of the town meeting. The Study Committee will need to find out whether measures taken in other representative town meeting communities to strengthen that body in its relationship with a town manager system have been effective or have worked as intended.

Not included in the scope of the study directive is the subject of adopting charter amendments authorizing the recall, by voter petition, of townwide elected officials. To the best of my knowledge, no town with a representative town meeting provides in its charter for the recall of representative Town Meeting Members. In Massachusetts, recall provisions exist in the charters of 146 towns, 16 cities, three fire districts, one water district, and one regional school district. The recall is essentially a characteristic of the executive branch of municipal government only. However, the existence of a recall provision in a town's charter, and the possibility of its being invoked, can pose hazards for any townwide elected official who arouses the wrath of the Town Meeting.

In the past, there have been proposals to study, or to institute, a recall system in Needham. However, the decision not to include the recall within the scope of the study directive to the Town Meeting Study Committee reflects my conclusion that it relates to the executive branch of the town government, has nothing to do with the internal operations of the town meeting, and involves important public issues best left to the attention of an appropriately designated study committee, or to a home rule charter commission elected by the voters of the Town, at a future date, when there is more public interest in the topic.

It is my sense that for the time being the Town Meeting Study Committee ought not to disturb the compromises reached by the Selectmen and Finance Committee under Article 55 of the Warrant for the 2005 Annual Town Meeting, relating to budgetary procedures and the executive budget, absent an extraordinary reason for doing so. The revisions of the General By-Laws involved should be accepted as dispositive of budgetary reforms, and regarded as "settled business" of the Town Meeting, until a need for change becomes evident on some specific count following the present "shake-down cruise" of the new Town Manager system.

THE TOWN MEETING

The Functions of the Town Meeting

In Needham, as in other Massachusetts towns, the town meeting has, since Colonial Times, comprised the legislative branch of town government.

From the founding of the Town in 1711 through 1933, Needham had an “Open” Town Meeting which consisted of all Town residents eligible to vote in town, provincial or state elections, duly registered as such, who exercised their right to attend the Town Meeting when it was held pursuant to a warrant issued by the Selectmen, setting forth the agenda of the Town Meeting.

Effective in 1934, the Open Town Meeting was replaced by the present Representative or “Limited” Town Meeting composed of Town Meeting Members elected from election districts or precincts and Town Meeting Members-at-Large. Sessions of these Town Meetings, from Colonial Times, have been presided over by a Moderator elected by the local voters.

The legislative powers of the Town Meeting flow from provisions of the State Constitution,¹ the General Laws of Massachusetts,² special laws enacted by the State Legislature pertaining to Needham alone (including Needham’s Town Charter, as from time to time amended),³ and Common Law.⁴

The Town Meeting may, by the adoption, amendment or repeal of ordinances or by-laws, exercise any power or function which the State Legislature has the power to confer upon it, which is not inconsistent with the State Constitution, laws enacted by the State Legislature in conformity with powers reserved to it by that Constitution, and which is not denied, expressly or by clear implication, to the Town by its own Charter.⁵

The Town Meeting may regulate elections, impose taxes, borrow money, dispose of park land, enact certain regulations of civil relationships, and define and punish felonies, only as authorized by general or special laws enacted by the State Legislature.⁶

The exercise of the Town’s legislative powers is also subject to such standards and requirements as the State Legislature may ordain.⁷ These state laws are frequently referred to as “standards of local government”.

¹ Municipal Home Rule Amendment.

² Notably, G.L., c. 43B.

³ Acts of 1971, c. 403, as from time to time amended.

⁴ Mass. Constit., Part II, C. VI, Art. VI.

⁵ Municipal Home Rule Amendment, ss. 1 and 6.

⁶ Ibid., s. 7.

⁷ Ibid., s. 7.

Prior to the ratification of the Municipal Home Rule Amendment to the State Constitution in 1966, the legislative powers of town meetings were more limited. Under judicial case law predating 1966, town meetings were allowed to exercise only those powers expressly conferred upon them by law, or necessarily or fairly implied in or incidental to such powers expressly granted. And they could exercise any power deemed by the judiciary to be “essential to the declared objects and purposes or the municipality.”¹ This very restrictive judicial concept of Town powers, known as “Dillon’s Rule”, has now been relaxed, but not totally repealed, by the policies of the Municipal Home Rule Amendment which permits the Town, in the exercise of its legislative powers, to do anything not denied to it by the State Constitution, state law, and its own Town Charter.

The range of subjects in relation to which the Town Meeting may legislate is enormous. The General Laws are replete with provisions specifying these subjects, often prescribing in some detail procedures and restrictions with which the Town Meeting must comply. Town legislative powers have been greatly expanded beyond the foregoing enumerated powers, as just noted.

The most important legislative powers of the Town Meeting are the following:

- 1) The powers of the purse, including, but not limited to, the power to appropriate money to fund the operations of town officers and agencies and to pay financial obligations of the Town, the power to regulate Town budgetary practices and long-range fiscal planning, the power to levy certain “local option” taxes authorized by law, the power to levy fees, and the power to approve or reject Town employee collective bargaining agreements negotiated by the Town Manager and Selectmen with employee bargaining units.
- 2) The power to provide for the construction, maintenance and improvement of the Town’s infrastructure, and to regulate the same.
- 3) The power to regulate community development through the adoption, amendment, and repeal of zoning by-laws, zoning maps, building by-laws, and public safety by-laws, and by authorizing Town action under various mandatory and/or optional state laws relating to community development, housing, enterprise zones, and environmental protection.
- 4) The power to propose amendments to the Town Charter, either by submitting such proposals directly to the voters for their acceptance or rejection, or by petitioning the State Legislature for a special act making desired changes in that Charter.
- 5) The power to provide for the public safety through the enactment of by-laws in exercise of the Town’s police powers, with a view to protecting persons and property, the public health, the suppression of nuisances and the breach of the public peace, and the management of public emergencies.

¹ Dillon, John E., Commentaries on the Law of Municipal Corporations, 4th ed., Vol. I, Little Brown & Co., Boston, MA, 1890, s. 54, at p. 93.

- 6) The approval of certain intergovernmental agreements.
- 7) Hearing and acting upon petitions of citizens of the Town and others for relief from some grievance, or the enactment of some measure of interest to them.

In general, voters have traditionally held Town Meeting responsible for monitoring activities of the Town Government, for controlling Town spending, and for keeping abreast of community needs, addressing any problems arising in any of these sectors with prudent and appropriate legislative action within the four corners of the law whenever such action is warranted. The Town Meeting is not designed for, or capable of, micromanaging the day to day operations of Town agencies. However, implicit in the legislative power is the authority to authorize studies and investigations of these matters as fact-finding incidental to the legislative power, with a view to determining whether or not legislation is needed.

The Town Meeting, like the two Houses of the State Legislature, exercises its research, study and investigative functions through its committee system, including two permanent or “standing” committees (the Finance Committee¹ and Personnel Board²), all of whose members are appointed by the Moderator, other permanent committees whose members are appointed by various appointing authorities (usually including the Moderator)(such as the Future School Needs Committee³), and such temporary study committees as may be created by vote of the Town meeting to carry out specific study assignments.

In addition, certain boards and committees of the executive branch of the Town Government are required to report their findings and recommendations to the Town Meeting on pending matters falling within their subject jurisdictions. These entities included the Board of Selectmen,⁴ the Planning Board,⁵ and the Community Preservation Committee,⁶ most notably, among others.

Accountability of Representative Town Meeting to the Voters of the Town

The Town Meeting is accountable to the voters of the Town for the way in which it utilizes, or refuses to exercise, its legislative powers.⁷ Procedures set forth below are available to the electorate for addressing its concerns on this score. The Town Meeting is not, as occasionally alleged by its critics, to be “an unaccountable private club”!

The Right of Free Petition. Voters of the Town possess a Right of Free Petition deeply rooted in British and American history and constitutional law, and reinforced by the principals of

¹ G.L. c. 39, s. 16; Needham Gen. By-Laws, s. 1.11.

² Needham Gen. By-Laws, s. 1.12. The Personnel Board also performs certain executive branch functions in relation to town personnel administration (Gen. By-Laws, Art. 9).

³ Needham Gen. By-Laws, s. 2.7.3.

⁴ Needham Gen. By-Laws, ss. 2.2 and 2.3; Needham Town Charter, ss. 20B-20C.

⁵ G.L. c. 40A et al.

⁶ G.L. c. 44B; Needham Gen. By-Laws, s. 2.74.

⁷ Municipal Home Rule Amendment, s. 1.

the American Revolution. The Right of Free Petition is embedded in our State Constitution which states that:

“The people have a right...to request of the legislative body...(i.e. the State Legislature)...by way of addresses, petitions, or remonstrances, redress of the wrongs done to them, and of the grievances they suffer.”¹

This right has been confirmed to the people of our municipalities with respect to the conduct of their municipal affairs by the Municipal Home Rule Amendment of 1966, and by state law.²

Voters of the Town have the right to petition the Selectmen for the inclusion of articles in Town Meeting Warrants. A petition to include such a citizen proposal in the Warrant of an Annual Town Meeting must be honored if signed by at least 10 registered voters of the Town.³ Furthermore, the Selectmen can be compelled to call a Special Town Meeting to consider specific proposals or matters, pursuant to a petition signed by 20% of the total number of registered (legal) voters of the Town, or by 200 such voters, whichever is less.⁴ Should the Selectmen refuse “unreasonably” to call a Town Meeting, the same may be called by order of a justice of the peace, on petition of 10% of the total number of registered voters of the Town, or by 100 such voters, whichever is less.⁵

Finally, a non-binding public opinion question can be placed on the Town election ballot “advising” the Town Meeting or particular Town officials on some policy or other matter.⁶

It is for the Town Meeting to evaluate issues and proposals placed before it by these citizen petitions, and to take such action, if any, as it deems appropriate, conformable to all applicable state laws and the provisions of the Town Charter.

The Right of Initiative. Under the Town Charter, there is available to voters an initiative petition procedure, whereby they may propose to an Annual Town Meeting a measure which, if not so passed by that body, or replaced by an alternative measure acceptable to the initiative petitioners, may be submitted to the voters of the Town for their approval or rejection.⁷

Any initiative petition so presented under the Town Charter must be signed by not fewer than 100 nor more than 250 registered voters of the Town, and must be filed with the Town Counsel for his review as to its compliance with provision of the Town Charter and other applicable laws. The Town Counsel must then forward the initiative petition to the Board of Selectmen, together with his report, and for their inclusion of the measure proposed in the initiative petition as an initiative article in the Warrant for the next Annual Town Meeting (if it is not legally defective). If the measure proposed by the initiative petition is enacted by the said

¹ Mass. Constit., Part I, Art. XIX (1780).

² Municipal Home Rule Amendment, s. 1; G.L. c. 43B.

³ G.L. c. 39, s. 10.

⁴ G.L. c. 39, s. 10.

⁵ G.L. c. 39, s. 12.

⁶ G.L. c. 53, s. 18A.

⁷ Needham Town Charter, s. 12A.

Town Meeting, or if a substitute or alternative measure is enacted which the initiative petitioners find acceptable, no further action by the Town Meeting is required. If the Town Meeting takes no action on the initiative article, or rejects the same, but the proposal receives the affirmative votes of one-fourth of the Town Meeting Members voting thereon, the initiative petitioners may force their measure to the ballot at a special Town election by completing their petition through the addition of vote signatures thereto, so that the total number of voter signatures, including those initially gathered, will equal not less than 15% of all persons registered to vote in the Town. The Selectmen may include on the ballot for the special election, along with the initiative measure, any alternative measure which may have been adopted by the Annual Town Meeting.

To take effect, the initiative measure, or the aforesaid alternative thereto, must receive the affirmative vote at the special election of a majority of votes cast, but no less than a number of votes equaling 20% of the total number of registered voters of the Town; and if any such ballot proposal under state law requires a two-thirds affirmative majority vote of the Town Meeting for passage, then this two-thirds rule applies also to any initiative measure, or alternative thereto, on the special election ballot.

The initiative procedure may not be used to propose any measure (1) which makes an appropriation from the Town treasury other than to pay for the costs of a study or to pay for a capital acquisition or improvement; (2) which amends the Town's zoning by-laws or a zoning map of the Town; or (3) proposes submission of a Town Charter amendment to the voters.¹

Right of Referendum. Under provisions of the Town Charter, voters of the Town may challenge the action of the Town Meeting in passing any measure other than (1) a vote adjourning or dissolving the Town Meeting; (2) an appropriation of money to pay principal and interest due in the current fiscal year on the town debt; (3) a vote authorizing Town borrowing in anticipation of revenue; or (4) attaching an emergency preamble to an emergency measure necessary for the immediate preservation of the peace, health, safety or convenience of the Town.²

Except as provided above, any vote passed by the Town Meeting under any Town Meeting Warrant Article may be challenged by filing with the Board of Selectmen a referendum petition, signed by not less than 15% of the Town's registered voters, within 20 days following the adjournment sine die of the Annual or Special Town Meeting which passed the measure being objected to by the referendum petition. The Selectmen must, within 10 days, call a special election to be held within 14 days of such call, Sundays and legal holidays not counted.

At such a special election, the voters must be asked to approve the measure challenged by the referendum petitioners, in the same language and form in which the measure was adopted by the Town Meeting. Thus, an affirmative vote by the voters to uphold the action of the Town Meeting is a "yes" vote, while opponents vote "no".

¹ Procedures for the adoption or amendment of home rule charters, or of special acts of the Legislature having the force of a charter, are regulated in great detail by the Municipal Home Rule Procedures Act (G.L. c. 43B) and the Municipal Home Rule Amendment.

² Needham Town Charter, s. 13.

Restrictions on Special Elections. To prevent abuse of the initiative and referendum processes, the Town Charter forbids the holding of any special election on initiative and referendum questions between the first Wednesday of July and the First Wednesday of September immediately following the filing of the petition. Days covered by that time interval must be excluded in computing when the required special election must be held, and the election dates then scheduled accordingly.¹

Caveat. If the Town Meeting and political leaders are mindful of and sensitive to how voters of the Town perceive their acts to be, and if voters exercising their franchise pay attention to what is going on in the community, and are willing to avail themselves of the remedies provided in our Town Charter if need be, there will be accountability, albeit not perfection, in our Town government.

Size and Membership of Representative Town Meeting

Original Membership Under 1932 Statute. In 1932 the Annual Town Meeting in Needham petitioned the State Legislature for, and that body enacted, legislation creating a Representative Town Meeting in our Town.² The measure was accepted by the voters of the Town at the 1933 Annual Town Election, and the first Representative Town Meeting was elected at the 1934 Annual Town Election.

The aforesaid 1932 statute provided for a Representative Town Meeting consisting of (a) a total of not more than 240 Town Meeting Members elected to represent not more than eight individual election “districts” in which they resided; and (b) certain Town Meeting Members-at-Large, including nine townwide elected officers, three appointed town officials, and any member of the State Legislature residing in the Town (a maximum of two possible).

For the purpose of electing the above-cited 240 Town Meeting Members, and for other election purposes,³ the Representative Town Meeting Act of 1932 required the Selectmen to divide the Town decennially into not more than eight districts, each of which contained “approximately” an equal number of registered voters, but not fewer than 500 thereof.⁴ The Selectmen were further authorized to revise the boundaries of these election districts every five years on their own initiative or when ordered to do so by the Town Meeting.⁵ The number of elected Town Meeting Members chosen in each election district was required to consist of the largest number of such Members, divisible by three, as would cause the total number of Town Meeting Members not to exceed 240.⁶ Such elected Town Meeting Members were to be elected for three year terms so staggered that one-third of them would be elected at each Annual Town Election.

¹ Needham Town Charter, ss. 12A-13.

² Acts of 1932, c. 279, based on petition of the 1932 Annual Town Meeting (Warrant Art. 26).

³ The decennial re-division of the Commonwealth into districts for the election of state legislators, members of the Executive (Governor’s) Council, members of Congress, and county officials. (G.L. c. 54).

⁴ Acts of 1932, c. 279, ss. 1A-2.

⁵ Ibid.

⁶ Ibid.

Subsequent Changes re Elected Town Meeting Members. From 1934 to 1950, the Representative Town Meeting functioned with 240 Town Meeting Members elected from five election districts, plus At-Large Members. In 1950, on petition of the Town, the State Legislature enacted, and local voters subsequently accepted an act increasing the number of Town Meeting Members to not more than 252, elected from not less than five nor more than ten “precincts”, each containing approximately equal numbers of registered voters, but not fewer than 500 thereof. Precinct boundary revisions by the Selectmen were authorized at five year intervals or whenever ordered by vote of the Town Meeting.¹

The Town has continued to utilize plans dividing the Town into ten precincts to this day, subject to changes resulting from judicial “one person, one vote” case law,² subsequent changes in the State Constitution,³ and changes in the State Election Law implementing that “one person, one vote” standard.⁴ The State Election Law places a population limit of 4,000 inhabitants on the size of any precinct drawn in any city or town, and requires the city or town to create additional precincts, if need be, to keep all precincts within the 4,000 inhabitant cap.⁵ Wards and precincts in cities, and precincts in towns, have been used since 1857 not only for the election of local officials, but also as building blocks for the formation of districts for the election of state legislators, members of the State’s Executive (Governor’s) Council and members of Congress, and thus must pass constitutional muster for all these purposes.⁶

From 1951 until 1970, precincts in Needham were required to be formed, and revised, using a “legal voter” (registered voter) criterion as their guideline, the term “legal voter” being defined according to the legal domicile of the person enumerated. When that criterion was held judicially to violate the Fourteenth Amendment of the Federal Constitution in 1967, the State Legislature substituted, as the criterion for legislative redistricting purposes, and for the purpose of forming local wards and precincts, an “inhabitant” criterion. Needham’s Selectmen had to follow suit, and the Selectmen revised Town precincts accordingly. The Selectmen had to do so again, when the State Constitution was amended to abolish the State Decennial Census, and the Commonwealth opted, instead, to utilize the Federal Census as the basis for state legislative redistricting and ward and precinct formation in this State. The Federal Census enumerates a person at his or her “usual place of residence”.⁷

When, in 1971, Needham re-codified into one charter document all the earlier special acts which, collectively, together with General Law “local acceptance” laws composed its “charter”, it conformed the provisions of the same relative to the formation of precincts to all applicable

¹ Acts of 1950, c. 31, ss. 1-2.

² Baker v. Carr, 369 U.S. 186 (1962); Opinions of the Justices, 356 Mass. 790 (1967).

³ Mass. Constit. Amend., Arts. XCII (1970), CI (1974), CXVII (1990), and CXIX (2000).

⁴ Notably, Acts of 1967, c. 877; Acts of 1970, c. 498; Acts of 1972, c. 735; Acts of 1973, c. 663; and Acts of 1975, c.10.

⁵ G.L. c. 54, ss. 2 and 6.

⁶ Mass. Constit., Amend. Arts. XXI (1857) and XXII (1857).

⁷ Mass. Constit., Amend. Art. CXVII (1990).

“one person, one vote” requirements of the Federal and State Constitutions and court opinions on these matters rendered since 1932.¹

In 2001, the Town made its last change in the number of Town Meeting Members elected from precincts, when it petitioned the State Legislature for an act reducing that number from 252 to “not more than 240” such Members, and authorizing the Selectmen to reallocate such Town Meeting Member seats among precincts in proportion to their respective precinct “inhabitant” populations from time to time when precinct boundaries cannot be changed because of any restriction imposed by state law.²

A precinct boundary cannot be altered by a city or town if that municipality has been divided between state legislative districts or congressional districts.

Changes in the Number of At-Large Town Meeting Members. The number of At-Large Town Meeting Members – persons holding seats in the Representative Town Meeting by virtue of holding some other Town office – has varied from year to year, depending on the circumstances.

From 1934 until the adoption of Needham’s Town Charter in 1972, the right of At-Large Town Meeting Members to vote on matters before the Town Meeting was implied in the provisions of the Representative Town Meeting Act of 1932, rather than expressly stated. That right to so vote is now expressly assured by our Charter.³

The 1932 Representative Town Meeting Act designated the following as At-Large Town Meeting Members:

Officials Elected by the Voters:

The Moderator	The Chairman, Board of Assessors
The Town Clerk	The Chairman, Board of Health
The Selectmen ⁴	The Chairman, School Committee
The Treasurer	Any resident member of the State Legislature

Appointed Officials

The Chairman, Finance Committee⁵
The Town Counsel⁶

¹ Needham Town Charter (Acts of 1971, c. 403). Enacted on petition of the 1970 Annual Town Meeting (Art. 41) and the Special Town Meeting of 21 October 1970 (Art. 5), and accepted by the voters of the Town at the 1972 Annual Town Election.

² Acts of 2001, c. 201.

³ Needham Town Charter, s. 7.

⁴ Effective in 1956, the membership of the Board of Selectmen was increased from three to five (Special Town Meeting, 14 November 1955, Art. 12).

⁵ The nine members of the Finance Committee are appointed by the Moderator for staggered three year terms, and elect annually from among their members a Chairman (Gen. By-Laws, s. 1.11).

⁶ Appointed by the Selectmen.

In 1971, the Chairman of the Personnel Board was added to the list of At-Large Town Meeting Members.¹ Three years later, the Town Treasurer lost his status as an At-Large Town Meeting Member when that office was changed from one filled by vote of the people into an office whose incumbent was (and remains) named by the Selectmen.²

In 1975, the provisions of the Needham Town Charter relating to At-Large Members of the Town Meeting were further amended to conform to new State Constitutional requirements³ that membership in a representative town meeting be limited to “such inhabitants of the town as may be elected to meet, deliberate, act and vote in the exercise of the corporate powers of the town”. Deleted from the ranks of At-Large Town Meeting Members were resident members of the State Legislature whose legislative districts include territory outside of Needham, and two officials holding appointive offices, viz (a) the Chairman of the Finance Committee; and (b) the Town Counsel. While making these deletions, the 1975 amendatory statute substituted a provision stating broadly that the At-Large membership of the Representative Town Meeting shall include “the chairmen of each other elected board of the Town” except the Chairman of the Housing Authority and the Chairman of the Commissioners of Trust Funds.⁴

Hence, as matters now stand as of 1 May 2006, the At-Large Members of our Representative Town Meeting include the following:

The Moderator.....	1
The Town Clerk.....	1
The Selectmen.....	5
The Chairmen of the seven elected boards, <u>viz</u> :	
The Board of Assessors	
The Board of Health	
The Park and Recreation Commission	
The Planning Board	
The Board of Library Trustees	
The Memorial Park Trustees	
The School Committee.....	7
Any resident member of the State Legislature whose legislative district is wholly within Needham.....	0 ⁵
Total number of At-Large Town Meeting Members.....	14

Over time, the number and types of officials deemed important for inclusion in the ranks of At-Large Town Meeting Members has reflected a varying consensus as to who among them

¹ Needham Town Charter, s. 7. The five members of the Personnel Board are appointed by the Moderator for staggered three year terms, and elect annually from among their members a Chairman (Gen. By-Laws, s. 1.12).

² 1973 Annual Town Meeting, Art. 9; Charter amendment ratified by voters at the 1974 Annual Town Election.

³ Mass. Constit., Amend. Art. LXXXIX, s. 2.

⁴ Acts of 1975, c. 9, s. 1, based on petition of the 1974 Annual Town Meeting, Art. 12; accepted by voters of the Town at the 1975 Annual Town Meeting.

⁵ Under the State Constitution, a state representative district embracing Needham alone would require the Town to have a population of at least 40,000. It would have to be a municipality of at least 160,000 to comprise a state senatorial district all by itself (Mass. Constit., Amend. Arts. CI (1974) and CXIX (2000)).

were most important to the conduct of business before the Town Meeting by virtue of the responsibilities they bear. Other historic considerations have been the convenience of the Town Meeting, and concerns relative to preventing the dilution of the votes of Town Meeting Members elected from precincts by multiplying “unreasonably” the number of At-Large Members who are viewed as executive branch officials whose activities and spending the Town Meeting is supposed to watch, and who have agendas to pursue by the nature of their functions. It has been seen as a matter of finding “checks and balances”.

Voting by the Moderator

In Needham, the Moderator is, by Charter provisions, an At-Large Member of the Representative Town Meeting and, as such, entitle to vote on motions before that body.¹ The charters of many other towns with representative town meetings do likewise.

There are other towns with representative town meetings which go to the other extreme by denying the Moderator such authority, usually in association with charter provisions which prohibit or restrict multiple office holding or limit Town Meeting membership to members elected from precincts under “separation of powers” policies. Yet other towns with representative town meetings authorize their Moderator to vote on a motion before that body only to create or to break a tie vote.²

In all towns, whatever their form of town meeting, the Moderator tends to refrain from voting on any matter which, in his or her opinion and judgment, would give the appearance of a conflict of interest forbidden by the State’s Conflict of Interest Law.³

The element of that law aside, it is reported that as a policy matter, Moderators entitled to vote on matters before their town meetings tend to refrain from such voting, except in relation to creating or breaking a tie vote, a rare event in any case. This policy serves their desire to be perceived as impartial.⁴ It also affords them an opportunity to avoid partisan involvement in most every controversy which arises before the Town Meeting, however heated. Needham Moderators have sometimes referred to this neutrality as essential in enabling the Town Meeting to “work its way to a solution” or “work its will”. The Moderator’s stock in trade is the trust Town Meeting Members have in him.

In the past, some Moderators in Needham have striven quietly, behind the scenes, to bring conflicting parties together to reach a compromise of their differences, thereby enabling the Town Meeting to reach a decision without protracted, time consuming, or even bitter debate.

¹ Needham Town Charter, s. 7.

² Stoughton Home Rule Charter, s. 7.2.

³ G.L. c. 268A, s. 23.

⁴ See Bolton, Geoffrey, Handbook for Town Moderators, Mass. Taxpayers’ Association, Boston, MA, at p.20.

ISSUES: THE SIZE AND COMPOSITION OF THE REPRESENTATIVE TOWN MEETING

At-Large Members of Representative Town Meetings

Four Basic Questions. Four basic questions arise in connection with certain townwide elected officials serving as At-Large Town Meeting Members:

- a) What public convenience is served by vesting such officials with At-Large Representative Town Meeting Member Status?
- b) Are the number of At-Large Town Meeting Members so great as to dilute, somehow, the votes cast by Town Meeting Members elected from precincts, to the disadvantage of the latter?
- c) Does such multiple officeholding raise questions of a conflict of interest?
- d) Does such multiple officeholding further do violence to the concepts of the separation of legislative and executive branches of government, and of checks and balances?

Commentary. Among Towns having Representative Town Meetings, views vary as to which townwide elected officials, and how many of them, if any, should be accorded the status of At-Large Town Meeting Members with a power to vote in the proceedings of the Town Meeting. This discussion may be particularly vigorous in Towns which are considering adopting a Town Manager System of administration or have done so.

In such Representative Town Meeting communities, the most common justification given for At-Large Town Meeting Members is that they represent townwide elected officers and boards, commissions and committees which have distinctive major roles to play in the operations of the Representative Town Meeting as an institution or are in major degree the sponsors of most of the business coming before the Town Meeting. At-Large Town Meeting Member status permits such officials to offer motions in relation to which their agencies have responsibilities. As such officials are elected by the Town electorate generally, no "one person, one vote" issues arise.

The highest priority, in conferring At-Large Town Meeting Member status appears to be given to townwide elected officials involved on the institutional side of the Town Meeting, such as (a) the Moderator, who is the presiding officer of the Town Meeting; (b) the Selectmen, who prepare and issue the warrant for each annual and special Town Meeting; and (c) the Town Clerk, who prepares the official record of the Town Meeting and assists the Moderator in respect to parliamentary matters when asked.

A report of the Massachusetts Legislative Research Council in 1971¹ revealed that in general, at that time, the more numerous were the number of Town Meeting Members elected from precincts in a town, the greater were its number of At-Large Town Meeting Members. However, some towns with very large numbers of Town Meeting Members elected from precincts had fewer At-Large Town Meeting Members than Needham. And among the 47

¹ Mass. Legislative Research Council, The Form of Government in Large Towns, House, No. 5302 (1971), 247pp, Table "Discussion of Massachusetts Representative Town Meeting Membership", at pp. 144-145.

Representative Town Meetings studied, seven reported that they had no At-Large Town Meeting Members at all (Athol, Auburn, Barnstable, Belmont, Framingham, Milford and Saugus). I have no data as to the current 2006 situation.

There is some evidence suggesting that the reluctance to include At-Large Members in the Representative Town Meetings in some Towns has been influenced by local concerns about conflicts of interest.

Town Meeting Members elected to represent the inhabitants of precincts are not subject to the State Conflict of Interest Law,¹ but At-Large Members appear to be in their capacity as “regular” or “special” municipal employees. Under the Municipal Home Rule Amendment, cities and towns may include provisions in their charters prohibiting multiple officeholding.² Thus, Framingham’s charter allows any Town Meeting Member elected to represent a precinct to serve on any appointed board, committee or commission, unless otherwise provided by by-law.³ Moreover, a Town Meeting Member who is elected or appointed to any other Town office, other than the Board of Registrars of Voters or a Charter Commission, automatically ceases to be a Town Meeting Member.⁴

The Stoughton Town Charter allows the Moderator to cast a vote in Town Meeting proceedings only to create or break a tie vote.⁵

Reducing the Number of Town Meeting Members Elected from Precincts

Questions. Is the number of Representative Town Meeting Members chosen from precincts in Needham, reduced from 252 to 240 in 2001, still too large? And if so, what number should it be reduced to, and why?

Wide Discretion of Towns. Neither the State Constitution nor state laws limit the number of members that a Representative Town Meeting may have, beyond specifying that this membership be limited to “such inhabitants of the town as may be elected to meet, deliberate, act and vote in the exercise of the corporate powers of the town”.⁶ The wide latitude so allowed to Massachusetts towns reflects the intent of the Municipal Home Rule Amendment to empower local voters to reform and modernize their local governments, and to experiment and innovate in designing solutions to local needs and problems.

Under judicial case law, a community continues to be deemed a “town” if it continues to have a Board of Selectmen, and a Town Meeting, however the latter body is named; provided, that such a Representative Town Meeting may be established only in a Town of 6,000 or more inhabitants.⁷ Thus, a Town of 6,000 or more inhabitants may create a very small elected

¹ G.L. c. 268A, s. 1(g).

² Mass. Constit., Amend. Art. LXXXIX, ss. 2 and 6.

³ Acts of 1949, c. 143, s. 3, as amended.

⁴ Ibid.

⁵ Stoughton Home Rule Charter, Art. 7, s. 7-3.

⁶ Municipal Home Rule Amendment, ss. 2 and 8.

⁷ Opinions of the Justices, 229 Mass. 601 (1918).

legislative body and call it a “Town Council”, the same passing constitutional muster as a “Representative Town Meeting”. Absent a Board of Selectmen, and having only a single chief executive (a Mayor or a Manager) and a legislative body, the community is, constitutionally, a “City”, an arrangement available only to towns of 12,000 or more inhabitants.¹

How large a Representative Town Meeting a Town may choose reflects varying local perceptions as to the point at which the Town Meeting will become too cumbersome to manage in practical terms, and too vulnerable to shortages of candidates for Town Meeting seats and to absenteeism.

In Connecticut and Rhode Island, Towns are allowed to have two legislative bodies, with the Town’s legislative powers divided between them, if they so desire.

Firstly, they may have an Open or Representative Town Meeting, sometimes called a “Financial Town Meeting”, which exercises the appropriation, budgetary, borrowing and eminent domain powers of the Town, plus certain other designated legislative powers of the Town.

Secondly, all municipal legislative powers not so preempted for the Town Meeting are vested in a “Town Council”, composed, like a City Council, of members elected at-large, or elected from precincts or other election districts, or some combination thereof. The Town Meeting may be empowered to veto, amend or repeal ordinances passed by the Town Council; and enactments of one or both legislative bodies may be open to challenge by voters via a referendum process.

It is not certain whether such a scheme of dual local legislative bodies will be allowed by the courts in Massachusetts, as the Municipal Home Rule Amendment speaks only of one such body in a municipality. However, Massachusetts has a long history of allowing bicameral city councils. Currently, such a bicameral City Council exists only in the City of Everett.

Commentary. The Massachusetts Legislative Research Council report of 1971, cited earlier, listed 47 Towns as then having Representative Town Meetings, with Town Meeting membership ranging from as few as 60 in Saugus to as many as 384 in Fairhaven. Of these 47 Towns, 18 (including Needham) fell within a 200 member to a 252 member range. Since the ratification of the Municipal Home Rule Amendment in 1966, additional towns have adopted Representative Town Meetings, while about a dozen Towns, including some with Representative Town Meetings, have abandoned Town Meeting systems to adopt city forms of government. And yet other Towns, with very large Representative Town Meeting memberships have reduced the size of that body (occasionally drastically).

Updating this data will be necessary for a proper comparison of Needham with other Towns having Representative Town Meetings on this score.

The large size of Needham’s Representative Town Meeting membership has reflected a policy preference, since 1932, for affording a large number of voters of the Town an opportunity

¹ Municipal Home Rule Amendment, ss. 2 and 8.

to win election to that body, and to participate in our local democracy. In the period 1932 to the 1950s, a larger proportion of families residing in the Town had lived there all their lives, or had lived there for a considerable length of time and had absorbed the traditions and culture of the Town, than is now the case.

Also, the traditional family of the time featured a husband who worked in Needham or elsewhere in the Boston Metropolitan Area, during the working day, while his wife managed their home, oversaw and educated their children, and had time during the day to devote to community activities while their children were in school. The father had time and energy in the evenings and on holidays and weekends for service to the community.

Today, both parents are likely to be fully employed outside their home, with less free time and energy to give to community service other than groups serving the local school attended by their children. Hence, they have less interest in serving in the Representative Town Meeting, other Town offices, and in local community and religious organizations. For example, since the 1950s, the old Needham Taxpayers Association, which once had up to 700 members and was a dominant conservative political force in Town affairs, has all but vanished; and the membership of the Needham league of Women Voters is about half what it was in the 1950s.

Thus, one of the factors motivating the 2001 reduction of the number of Town Meeting Members elected from precincts from 252 to 240 was concern over the failure of voters in certain precincts to elect their full quota of Representative Town Meeting Members, simply because of a lack of candidates. Factors drying up the pool of candidates may also bear significant blame for the growing problem of absenteeism among Town Meeting Members in recent years.

Hence, some critics of our Representative Town Meeting have advocated a “major” reduction in the number of Town Meeting Members elected from precincts, to make election to that body “more representative”, more prestigious and hence more sought after, and supposedly more accountable to their constituents.

Opponents of any large reduction in the ranks of Town Meeting Members elected from precincts caution that “tinkering” with the numbers of such Members may not necessarily lead to the end sought by sponsors thereof.

They warn that such a reduction could strengthen particular interest groups represented in the Town Meeting, such as groups advocating increased funding for the public schools, and new school projects, while diminishing the voices for other community concerns in the body. They note that the reduction of the size of the State House of Representatives from 240 members to 160 members in 1970-1972 produced few if any of the reform benefits predicted by sponsors of that “House Cut”, and, if anything, made that body more responsive to organized pressure groups and lobbies and “less accountable” to the people.

Some critics of Needham’s Representative Town Meeting argue that it has “more fundamental” problems to resolve if it is to hold its own in the 21st century. Indeed, some observers of the Town Meeting go so far as to describe the Town Meeting system in New England, and in Needham in particular, as “obsolete”, “cumbersome”, an alleged “rubber stamp”

made up of “faceless members” who are said to be “not really representative”, and too many of whom are alleged to be poorly informed of the needs of the Town. Instead, these critics call for the replacement of our present Town Meeting by a Town Council which employs and may remove the Town Manager, i.e. a city manager-city council system, which dispenses with the Town Meeting and the Board of Selectmen, and vests the legislative powers of the municipality in the Town Council. There are few supporters of this radical approach in the Town at this time; and clear evidence that voters prefer to reform the Town Meeting, not to abolish it.

ISSUES: CURBING EXCESSIVE ABSENTEEISM AMONG TOWN MEETING MEMBERS

The Challenge: Preserving the Effectiveness and Integrity of the Representative Town Meeting

Question. What can be done to reduce the unacceptably high rates of absenteeism among Representative Town Meeting Members at sessions of that body in recent years, and to protect the federal and state constitutional rights of voters of the Town to full, fair and equal representation in the Town Meeting?

Commentary. Needham has a growing problem with the numbers of members of its Representative Town Meeting who absent themselves entirely from a session of the Town Meeting, or who attend such sessions initially, only to depart from the session midway through its course (usually at the coffee break), or who check in shortly before the Town Meeting begins only to return home before the Town Meeting opens formally, or who never attend the Town Meeting at all.

A report published by the Massachusetts Legislature Research Council in 1971 indicated that absenteeism in Representative Town Meetings reflects (1) apathy or satisfaction with “the ways things are done”; (2) a sense that the Town Meeting Members’ votes “don’t count” because of state mandates and because of the financial independence of School Committees; (3) limited Town Meeting Member interest in Town Meeting Warrant Articles; (4) conflicting engagements; (5) baby-sitter problems; (6) inclement weather; (7) inadequate knowledge of town government; (8) age and illness ; (9) poor Town Meeting facilities; and (10) the lack of a local newspaper to inform voters and stimulate their interest in community affairs.¹

With the advent of Proposition 2½ in 1980, limiting local property tax levies, and vesting the Selectmen alone with the power to place Proposition 2½ override questions on the ballot for local voter approval or rejection, some members of Town Meetings across the State have felt an additional erosion of their control over town finances. This may be an additional incentive for absenteeism.

On 19 May 2005, the Needham Times published an analysis of Town Meeting Member absenteeism which reported average Town Meeting Member absences per night for 2000-2005 as follows:

Town Meeting (year)	Town Meeting Member Average Absences
2000.....	53
2001.....	46
2002.....	30
2003.....	27
2004.....	33
2005.....	44

¹ Massachusetts Legislative Research Council, The Form of Government in Large Towns, House No, 5302 (1971), 247 pp., at p.157.

The Needham Times analysis indicated that the greatest number of Town Meeting Members absent on a single night (64) occurred at the Annual Town Meeting on 15 May 2000. The lowest number of such absences (18) took place at the Annual Town Meeting session on 8 May 2002.

Concern has been growing among Town Meeting Members, townwide elected officers, members of community organizations and the local media that absenteeism among Town Meeting Members is going well beyond such “reasonable” grounds for absences such as the illness of a Town Meeting Member or one of his or her dependents, or the need to be out of town on an assignment from one’s employer, or a call to military/naval duty or to jury duty. Excessive, “inexcusable” levels of absenteeism among Town Meeting Members are viewed as a breach of the constitutional right of voters in each of the ten precincts of the Town to equal representation in the Representative Town Meeting. Further, absenteeism of this character is thus viewed as damaging to the trust placed by the people in the Representative Town Meeting as an institution and as contributing to a negative impact upon the voters’ perception of that institution.

This is particularly true when one takes into consideration that when voters of the Town opted to remove the legislative power of their Town from the old “open” Town Meeting in which each voter represented himself or herself, and to vest that power instead in a Town Meeting composed of members elected from precincts and a small number of townwide elected officers, those voters gave up an old freedom in return for the reasonable expectation that the resulting Representative Town Meeting would, in principle and in fact, actually be “representative”.

Hence, Town Meeting Members elected from precincts to the Representative Town Meeting are not to be compared to members of a private club, who may attend or not attend club meetings and events as they choose. No one points a gun at a citizen of the Town and orders him or her to stand as a candidate for election to the Representative Town Meeting. Running for election to the Representative Town Meeting is a completely voluntary matter, and the obligations of the office are well-known.

Indeed, upon his or her election or reelection, each Representative Town Meeting Member must take an oath to “Faithfully and impartially perform... (his or her)... duties as a Town Meeting Member to the best of... (his or her)... ability and according to the laws of the Commonwealth of Massachusetts”.

As cities, towns and other political subdivisions of the State are, constitutionally, agents of the State, this oath appears to fall short of state constitutional requirements that every person elected or appointed to any office, civil or military, under the government of this State, take an oath, or affirm, that he or she will uphold and support the Constitutions of the United States and of the Commonwealth.¹ Adding this requirement to the oath taken by Town Meeting Members might serve to impress them more with the seriousness of their commitment.

¹ Mass. Constit., Part II, C. VI, Art. I, and Amend. Art. VI (1821); G.L. C. 30, s. 11.

The “One Person, One Vote” principle, and the right to equality of representation in state and local legislative bodies, are enshrined in our Federal Constitution, which provides that:

“...No State shall make or enforce any law which shall abridge the Privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.”¹

The above principle re equality in voting and the right to equality of representation, as expanded by acts of Congress and judicial case law, are strengthened by provisions of our State Constitution. Among these are provisions dealing with (a) the right to vote for and to be elected to public offices in the State;² (b) the decennial re-division of the Commonwealth into districts for the election of members of the State Senate, State House of Representatives, and the Governor’s (Executive) Council;³ and (c) the composition of representative town meetings.⁴

Another factor is a provision in Massachusetts Municipal Home Rule Amendment, without parallel in other state constitutions, which vests a Right of Local Self-Government directly in the people of each city and town, rather than in municipal governments as such:

“It is the intention of this article to reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government, and to grant and confirm to people of every city and town the right of self-government in local matters, subject to the provisions of this article and to such standards and requirements as the general court may establish by law in accordance with the provisions of this article.”⁵

The above provision is but one of many in our State Constitution reflecting the historic and vital role of Towns and their Town Meetings, and the “traditional liberties” of the people acting in Town Meeting. That Constitution also treats elections in Towns as “town meetings”, a characterization limited to certain provisions of that document⁶ predating the addition of the 1926 constitutional amendment authorizing Representative Town Meetings in Towns having 6,000 or more inhabitants.⁷

The critical importance of voter participation in their Town government, and of attendance at Town Meeting, is thus highlighted.

Needham is not the only Town with a Representative Town Meeting experiencing absenteeism among its members.

¹ U.S. Constit., Art. VI and Amend. Art. XIV: U.S. Code Title 4, ss. 101-102.

² Mass. Constit., Amend. Art. III (1821), as from time to time amended.

³ Mass. Constit., Amend. Art. CI (1974), as from time to time amended.

⁴ Municipal Home Rule Amendment, ss. 2, 7 and 8.

⁵ *Ibid.*, s. 1.

⁶ Mass. Constit., Part II, c. I, s. II, c. II, s. I: Amend. Art X (1831).

⁷ Mass. Constit., Amend. Art. LXX (1926).

A number of such Towns have attempted to address this issue through charter provisions and related provisions in their by-laws providing for the removal from office of Representative Town Meeting Members who absent themselves too frequently from sessions of their Town Meeting. Under the Municipal Home Rule Amendment, such removals may be authorized by the charter itself, or by procedures prescribed by a by-law authorized by the charter. Due process requirements of the Federal and State Constitutions and laws may apply.¹

The Framingham Town Charter, as amended in 2002, ordains that:

“A town meeting member who does not attend at least 1 percent of the town meeting sessions for which the person is qualified during the period beginning from the first day of the year, or beginning from the time the person is qualified, and ending on the last day of the year shall be deemed to have abandoned that office as of the last day of such period. The percent indicated may be changed by by-law of the town.”²

An aide to the Framingham Town Clerk has advised me that in practice, the Town Clerk terminates the tenure of any Representative Town Meeting Member who has been absent from any Town Meeting during the year. Reportedly, this charter provision was drafted without prior consultation by its authors with the Town Clerk, and forwarded to the Legislature by the Town Meeting as a “home rule petition” of the Town, notwithstanding the Town Clerk’s concerns that the measure was and remains poorly drafted and confusing. The provision is now under review by a Town study committee.³

The Town of Natick formerly had a Representative Town Meeting consisting of 240 Town Meeting Members elected from precincts, and four At-Large Town Meeting Members. Subsequently, the number of Town Meeting Members elected from precincts was reduced to 180, while the ranks of At-Large Town Meeting Members has risen to at least 16. Of the 180 “precinct-based” Town Meeting seats, 27 are occupied by other elected and appointed Town officials who won election to their Town Meeting seats as precinct Town Meeting Members. The Town has experienced controversy since 2002 over both absenteeism among Town Meeting Members elected from precincts, and the number and influence of At-Large Town Meeting Members. A study published in the Metrowest Daily News in 2004 revealed that the average attendance among the 180 Town Meeting Members elected from precincts was 150, with only 122 showing up in 2002.⁴

In a telephone conversation which I had with Natick’s Town Clerk in the Spring of 2006, she informed me that in her Town the situation described by the Metrowest Daily News article aforesaid still obtains, and is being complicated by increasing difficulty in drawing enough candidates to run for election to the Representative Town Meeting.

¹ Municipal Home Rule Amendment, s. 4.

² Acts of 1949, c. 143, s. 5A (added by Acts of 2002, c. 338).

³ Telephone conversation, 13 February 2006.

⁴ Metrowest Daily News, Framingham, Massachusetts, 20 February 2004.

Limited information immediately available to me suggests that in terms of the percentage of all Town Meeting Members, absenteeism among these Members may increase as the number of Town Meeting Members composing that body decreases. In that event, charter changes reducing the total number of Representative Town Meeting Members may not cause the problem of absenteeism to vanish.

Currently in Needham, elected and At-Large Representative Town Meeting Members arriving at each session on the Town Meeting are checked in by the staff of the Town Clerk, and are not required to check out similarly if they depart from the session before it adjourns.

If our Town Charter is to be amended to provide some system for ousting Representative Town Meeting Members with unacceptable records of absenteeism, a check-out procedure will be required to make that system workable. Also, if such a charter amendment is to distinguish between “acceptable” and “unacceptable” grounds for a Town Meeting Member’s absences from sessions of the Town Meeting, and not base his or her expulsion from that body automatically upon his or her having been absent for a specific time alone, then criteria will have to be developed to prevent the process from being arbitrary and capricious.

Moreover, it is likely that a vacancy created in the representation of any precinct by the removal of one of its Town Meeting Members for absenteeism will have to be filled in the same manner prescribed by the Town Charter for the filling of a vacancy caused by the death or resignation, or removal from Town, of a Representative Town Meeting member elected from that precinct. The right of voters in each precinct to be represented by a qualified person of their choice must be respected.

Enhancing Town Meeting Member Attendance and Participation

Changing Town Meeting Dates. From time to time towns have endeavored to promote town meeting attendance by rescheduling their Annual Town Meetings to accommodate changing local social conditions and changing state laws governing the handling of business before them, such as the gradual shift of the state and local government fiscal year from a calendar fiscal year to a fiscal year starting on July 1st in 1974-75, and the advent in 1980 of an initiative law (Proposition 2½), approved by the state’s voters, limiting municipal property tax levies. Also, Towns have readjusted the dates for the convening of their Annual Town Meetings to reflect changes in the dates of their Annual Town Elections.

In the past, the Needham Representative Town Meeting has considered, but rejected, proposals to hold the Town’s Annual Town Election and Town Meetings on Saturdays.¹ A report published by the Massachusetts Secretary of State in 2000 indicated that 43 Towns were then holding their Annual Town Meetings on Saturdays.² Only four of them were Towns with Representative Town Meetings (Arlington, Fairhaven, Plymouth and West Springfield).³ The remaining 39 Towns were, for the most part, small communities with open Town Meetings.

¹ 1967 Annual Town Meeting, Art. 66.

² Massachusetts Secretary of State, Citizens’ Guide to Town Meetings, 33pp., 2000, Boston, MA.

³ In 2000, after the issuance of the above report, West Springfield adopted a home rule charter establishing a Town Manager-Town Council form of government in that Town.

In 1975, the Annual Town Meeting in Needham created a study committee to consider changing the starting date of Annual Town Meetings from May to March.¹ A preliminary check by me indicates that this committee expired without submitting any recommendations for inclusion in the Warrant for the 1976 Annual Town Meeting.

The 2001 Annual Town Meeting established a Study Committee² which recommended to the 2002 Annual Town Meeting that the dates for holding the Annual Town Election and for the opening of the Annual Town Meeting be reversed.³ The 2001-2002 study committee recommended changes as follows:

“We are suggesting that the Annual Town Meeting be moved from May to April (one month earlier in the year than currently) because we think that this change would result in fewer conflicts with other activities in Town. We hope that this would lead, in turn, to a larger pool of candidates for town meeting member and better attendance at all sessions of Town Meeting. We are interested in keeping Town Meeting as a vibrant institution.

“We are also suggesting that the Annual Town Election be moved from April to May (one month later in the year than currently and after Town Meeting rather than before) because we think that this change would improve voter turn-out. Elections would occur when issues were fresh following the Annual Town Meeting. Newly elected Town Meeting Members would have an opportunity to learn the ropes and study the issues throughout the year. Also, elected boards and committees would be able to reorganize after Town Meeting. We feel that the annual town meeting cycle is a full 12 months. It should start with the Annual Town Election in May and end with the Annual Town Meeting the following April.⁴

The above proposal failed of passage in the 2002 Annual Town Meeting because of concerns of the Finance Committee that the changes would have an adverse impact on the preparation of the budget, and from other Town Meeting Members who feared conflicts with Jewish holidays in April, and with Little League and soccer programs in which they were involved as parents or coaches.

Automatic Adjournment Hour for Evening Sessions of the Town Meeting. Over the years, the evening sessions of our Annual Town Meeting and of Special Town Meetings have run well past 10:00 p.m., late into the night and, on rare occasions, to the early morning hours, especially on the final evening of such Town Meetings. This has brought complaints from Town Meeting Members who are young parents with minor children at home under babysitter care, Town Meeting Members with ill or elderly family members at home, and elderly Town Meeting

¹ 1975 Annual Town Meeting, Art. 55.

² 2001 Annual Town Meeting, Art. 76.

³ 2002 Annual Town Meeting, Arts. 21 and 31.

⁴ From explanation sheet distributed to Members of 2002 Annual Town Meeting by the Committee to Study Annual Town Meeting Dates.

Members who find it hard to focus on the business before them at such late hours. The prospect of very late evening sessions of the Town Meeting has been cited by some citizens as a disincentive to seek election to the Representative Town Meeting.

This state of affairs unquestionably contributes to absenteeism among Representative Town Meeting Members, especially to departures of such Members from the Town Meeting at the traditional mid-evening “coffee break” during each Town Meeting session. It is a source of discontent among Town Meeting Members who complain that “unreasonably protracted evening sessions” constitute “government by exhaustion” and are unfair to sponsors of Warrant Articles reached so late in the evening. Hence, there is a discernable interest among Town Meeting Members in “capping” late night sessions, other than the final session, on some reasonable basis, even if it extends the number of sessions required to complete the business of a Town Meeting for another evening or two.

Similar concerns about late night sessions among members of our State House of Representatives have moved that body to adopt a rule which requires its presiding officer (the Speaker of the House or the legislator acting for him in the chair) to adjourn the House at 9:00 p.m. until the time for convening the next sitting of the House, unless that rule is suspended by majority affirmative vote of the body. In that event, if the session is continued with unanimous consent, it must be adjourned at midnight, unless further continued by unanimous consent.¹

Better Informed Town Meeting Members. Town Meeting Members who take pains to familiarize themselves with the organization and procedures of the Town Meeting, and with the contents of the Warrant Articles of their upcoming Annual or Special Town Meeting, manifest a serious interest in, and commitment to, their Town Meeting as an institution. Although data does not exist on this score, it may be fair to assume that such Town Meeting Members may be far less prone to absenting themselves unreasonably from Town Meeting sessions. For them, it is a matter of personal standards and pride of public duty.

Needham is in the front ranks of Towns which go out of their way to provide its Town Meeting Members with opportunities to hone their knowledge and skills needed to do a good job as local legislators.

Aside from the many public hearings which different Town boards, committees, commissions and departments are required to hold by law and/or by-law, an impressive on-going effort to “educate” Town Meeting Members and local voters generally as to Town Meeting functions and business coming before the Town Meeting has been made annually by Needham’s League of Women Voters, in cooperation with the Moderator, the Selectmen and the Town Clerk.

Prior to the Annual Town Election, the league of Women Voters sponsors a “Candidates’ Night”, offering candidates for election or re-election to townwide offices an opportunity to present themselves to the local electorate and to debate issues, including subjects set forth in Town Meeting Warrant Articles. Candidates seeking election or re-election by the voters of their precincts as Representative Town Meeting Members are afforded an opportunity to meet with

¹ Massachusetts House of Representatives, House Rule 1A.

one another, and voters generally, prior to the opening of “Candidates Night” but they do not debate formally for their Town Meeting seats.

Shortly following each Annual Town Election, the League of Women Voters sponsors a “Warrant Article Meeting” for Town Meeting Members. At this meeting, Town Meeting Members may discuss with the sponsors, other proponents, and opponents of each Warrant Article their respective reasons for advocating or opposing that Article. Factual input into these discussions is provided by representatives of the League who have studied the subject matter of such Warrant Articles.

In recent years, the Town’s Moderator, who is the presiding officer of the Town Meeting, has been holding “Seminars” or “Orientation Meetings” on Town Meeting organization, rules and procedures, and on informational sources available to Town Meeting Members, in conjunction with the League’s Warrant Article Meetings.

Attendance at the above-cited functions of the league of Women Voters is voluntary. It is up to the Town Meeting Members to make the best of the opportunities provided.

Formal Precinct Delegations. Some Towns with Representative Town Meetings have undertaken to organize the Town Meeting Members from each Town precinct or election district into a “Caucus”, “Delegation” or “Committee” with assigned functions in respect to the operations of the Town Meeting, under the supervision of the Moderator. Such action is viewed as a means of empowering Town Meeting Members by giving them responsibilities as “working Town Meeting Members”, and greater accountability to their electorate, as contrasted with a purely passive role of “sitting about like lumps on a log”.

Thus, in Plymouth, the Town Meeting Members from each Precinct Delegation must caucus within 20 days following the Town’s Annual Election to choose a Chairman, a Vice-Chairman and a Clerk, to serve for one-year terms respectively. Each Delegation must then caucus prior to each Annual and Special Town Meeting for the purpose of reviewing and discussing the subject matter of the various Articles in the Town Meeting Warrant. Due notice of each Precinct Delegation caucus must be posted in the Town Hall.¹

All such caucuses must conform to the State’s Open Meeting Law.²

In Plymouth’s case, this scheme of Precinct Delegations reflects the fact that, territorially, Plymouth is the largest Town in the Commonwealth (about 90 square miles), containing much forest, and characterized by a number of distinctive unincorporated “villages” or “neighborhoods”, together with a Town center.

Similarly, the Town of Stoughton’s Home Rule Charter requires that an “organizational Town Meeting” be convened prior to the opening of the Annual Town Meeting for the following purposes only: (a) the election by each Precinct Delegation of a Chairman and a Clerk; (b) the

¹ Town of Plymouth, Gen. By-Laws, s. 11.

² G.L. c. 39, s. 23A.

election of a Deputy Moderator; and (c) the adoption of Town Meeting rules.¹ The Chairman of each Precinct Delegation, together with the Deputy Moderator, and the Moderator (who is Chairman of that Committee) comprise the Town Meeting's Committee on Rules.²

The creation of precinct delegations is not favored by some Town Moderators and others who fear that a multiplication of permanent committees of a town meeting when there are, in addition, many ad hoc special temporary study committees present as well, will slow down the work of the Town Meeting and drag it out. They also warn that formalizing a "balkanization" of Town Meeting Members on a precinct by precinct basis may instigate "regional fights" and be detrimental to the consideration by the Town Meeting of what is in the best interest of the entire Town.

Home Aid Support Services. A novel approach to the problem of enhancing Town Meeting attendance and reducing Town Meeting Member absenteeism was suggested by a news article in the MetroWest Daily News in 2001.

That newspaper reported that "pro-school" citizens in the four Towns of Hopkinton, Medway, Norfolk and Uxbridge, all of which have old "open" Town Meetings, and which were considering proposals for the renovation or construction of schools, established organized babysitting services for "pro-school" voters who could not attend the Town Meeting unless they could find babysitters to care for their minor children at home. This private, volunteer service was instrumental in "packing" those open Town Meetings with "pro-school" voters, assuring the approval of such projects by those Town Meetings.³

Such tactics are less likely to work in a Representative Town Meeting, which tends to have much higher percentages of Town Meeting Member attendance and whose Members from precincts are elected for staggered three-year terms. However, "pro-school" organizations have been successful in encouraging voters supportive of their Town's public schools to run for, and be elected as, Town Meeting Members in Representative Town Meeting communities. Other citizen organizations have been successful occasionally in placing supporters in Representative Town Meeting seats.⁴

While there are obviously negative aspects of providing baby-sitting services by organized interests to influence Town Meeting actions, it is also true that the organization of baby-sitting services on a non-partisan basis to facilitate Town Meeting Member attendance may offer positive benefits, under appropriate controls.

In Needham's case, it is not immediately known how many Representative Town Meeting Members have minor children, or sick or disabled family members for whom a Town Meeting Member is a caregiver, at home, and hence would benefit from home aid support services in some form. It is possible, but improbable, that the Town would be willing to organize

¹ Town of Stoughton, Home rule Charter of 1972, as amended, sec. 7-11.

² Ibid., sec. 7-14(a).

³ MetroWest Daily News, Framingham, Mass., February 11, 2001, page 8.

⁴ In the period 1934-1960, the Needham Taxpayers Association, then powerful, saw many of its members elected to the Town's Representative Town Meeting.

and provide such home aid support services itself. But it may have a significant interest in encouraging the provision of such services by local not-for-profit entities or volunteer organizations, or by for-profit entities, as a means of facilitating Town Meeting Member attendance, attracting Town Meeting participation by adults of all ages, and causing the Town Meeting to reflect a more balanced mix of Town Meeting Members across the social spectrum of the Town.

Persons seeking election to the Representative Town Meeting have the primary responsibility to ascertain whether or not their personal health, family circumstances and employment commitments will enable them to participate fully in the deliberations of the Town Meetings, permitting them to assure equal representation in that body for their precinct inhabitants as a whole.

ISSUES: THE TOWN MEETING AND THE CONFLICT OF INTEREST LAW

Conflicts of interest, and the powers of the Town to legislate in relation thereto, are governed by the Massachusetts Conflict of Interest Law and certain related statutes, and have commanded the attention of Needham's Representative Town Meeting for some years.

Purposes and Provisions of the Massachusetts Conflict of Interest Law (G.L. c. 268A)

General Purposes. Federal and state conflict of interest laws seek to reach beyond the realm of traditional corrupt practices legislation, to those undesirable influences on public personnel which do not necessarily involve venality, and which impair, or may impair, the impartial discharge of an official's duties.¹

The basic concept of conflict of interest laws has been summarized as follows in a report of the Massachusetts Legislative Research Council:

A conflict of interest in government exists when a government employee is involved in any personal action which affects the public interest. In more explicit terms, a conflict arises when a legislator or other public official is placed in a position where, for some advantage to be gained for himself, he finds it difficult or impossible to devote himself with complete energy and loyalty to the public interest.²

That Council has further noted that:

In general, "conflict of interest" provisions deal with those situations in which a public official's decisions are, or could be, influenced by his own economic interests, to the detriment of the public interest. Usually, such laws seek to distinguish between avoidable conflicts of interest on the one hand, and those which are inherent or personally necessary on the other. In the *avoidable conflict of interest* category are those personal interests – economic or otherwise – which substantially risk impairment of the official's independence and which are unnecessarily held or pursued by him, particularly if his official office or position is full-time and so compensated by law. Of somewhat less concern to authors of conflict of interest laws are (a) *inherent conflicts* arising from situations which occur due to the public official's status as a parent, general taxpayer, consumer or member of some other large category of high visibility having a very low potential for a conflict of interest, and (b) *personally necessary conflict of interest* arising from an employee's normal employment and other known income-producing investments and activities.³

¹ Massachusetts Legislative Research Council, The Conflict of Interest Law and the Separation of Powers, House, No. 6475 (1975), 180 pp., at p.26.

² Massachusetts Legislative Research Council, Conflict of Interest, Senate, No. 650 (1961), 48pp., at pp.15-16, 25.

³ *Ibid.*

Scope. The Massachusetts Conflict of Interest Law (General Laws, Chapter 268B) enumerates, describes and defines, in varying degrees of detail, those kinds of decisions, actions and involvements of public officers and employees of the State, its political subdivisions and instrumentalities which, directly or indirectly, constitute “conflicts of interest” detrimental to the public interest, the integrity of government and the public trust.

That statute, and its companion law, commonly called the “Code of Ethics Law” (General Laws, Chapter 268B), are administered under the general oversight of the State Ethics Commission, a five-member body consisting of appointees of the Governor (3), The Secretary of State (1) and the Attorney General (1).¹ The State Ethics Commission is authorized and directed to adopt and amend rules and regulations implementing the provisions of both statutes, to render confidential advisory opinions to any person subject to, or possibly subject to, the provision of either of these statutes who may request such an opinion, and to conduct investigations of alleged violations of either or both laws. Alleged violations of these statutes are subject to administrative hearings and findings, before the Commission, and to civil or criminal proceedings before the Superior Court, depending upon the offense alleged. Complex provisions share enforcement responsibilities among the Commission, “appropriate” state constitutional officers,² district attorneys, the heads of state, county or municipal agencies, and the judiciary.

Punishable conflicts of interest, and related corrupt acts, cited in the Conflict of Interest Law and the Code of Ethics Law are many. In summary, they include (a) the offering, soliciting, and acceptance of bribes and unlawful gifts; (b) influence peddling by public officers and employees; (c) an official’s acting illegally in relation to any matter before him in which he or she, his or her spouse or any other immediate member of his or her family, or a business partner or associate, has a financial interest; (d) corruption in relation to public contracts; (e) certain other actions similar to “insider trading” in the public sector; (f) the corruption of witness; and (g) certain types of multiple officeholding.

The Code of Ethics Law addresses further some of the above topics, but addresses primarily corrupt practices in relation to (a) elections; (b) the activities of lobbyists and legislators in relation to the state legislative process; (c) the sale of political favors by public officers and employees; and (d) the bribery of public officeholders.

Violations of the Conflict of Interest Law and Code of Ethics Law are punishable by fines ranging, variously, as high as \$5,000.00, and, in certain cases, to imprisonment for as long as three years, depending on the type of offense committed. In given instances, contracts and decisions of the offender’s employing agency, influenced by his or her violation of the statute, may be nullified. In a few cases, a public officer or employee may be removed from office for violating the Conflict of Interest Law or the Code of Ethics Law.

¹ G.L. c. 268A, ss. 2-9;G.L. c. 268B, ss. 3-5.

² The Governor, Lieutenant Governor, the Secretary of State, the Attorney General, the State Auditor, and the State Treasurer and Receiver-General

Classification of “Municipal” and “Special Municipal” Town Personnel

For the purposes of administering the provisions of the Conflict of Interest Law as they apply to Town officers and employees, that law provides for the division of such personnel into two classes, viz, “municipal” and “special municipal employees”. The requirements applying to officers and employees in the latter class are less stringent than those pertaining to the former. Certain municipal offices and positions are automatically classified by the statute itself. All other offices and positions in the service of a city or town must be classified by the city’s legislative body, however styled,¹ and in a Town, by its Board of Selectmen. In a Town, the Town Meeting has no role in this process.

The Conflict of Interest Law defines the term “municipal employee” as:

“A person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.²

Members of municipal charter commissions are constitutional officers.

Offices and positions expressly designated by the Conflict of Interest Law as those of “municipal employees” include the Board of Selectmen in Towns of 10,000 or more inhabitants, and all town offices and positions in Towns whose Selectmen have failed to classify them as either “municipal” or “special municipal” employees.³

A “special municipal employee” is defined by the Conflict of Interest Law as one who has not been classified as a “municipal employee” under the above-cited provisions of that law. In respect to the classification of Town officers and employees as “special municipal employees”, the Conflict of Interest Law directs that:

“All employees who hold equivalent offices, positions, employment or membership in the same municipal agency shall have the same classification; provided, however, no municipal employee shall be classified as a “special municipal employee” unless he occupies a position for which no compensation is provided or which, by its classification in the municipal agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, or unless he in fact does not earn compensation as a municipal employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to

¹ Usually “City Council” or “Board of Aldermen”. A town which adopts a “town manager – town council” form of government without a board of selectmen is, constitutionally-speaking, a city and is treated as such by the Conflict of Interest Law. See “Municipal Home Rule Amendment, ss. 2, 4 and 6.

² G.L. c. 268A, s. 1(g), underline added for emphasis.

³ G.L. c. 268A, s. 1(n).

compensation for seven hours per day. A special municipal employee shall be in such status on days for which he is not compensated as well as on days on which he earns compensation.”¹

In certain instances, the Selectmen may waive particular requirements of the Conflict of Interest Law as applied to “municipal” and “special municipal” employees. And, subject to statutory limitations, exemptions are authorized for certain officers and employees in each of these classes of municipal personnel.

In Needham, the Selectmen – who are classified as “municipal employees” by the Conflict of Interest Law itself as Needham has more than 10,000 residents – have classified the other townwide elected officers who serve as Town Meeting Members At-Large as “special municipal employees”, with the exception of the Town Clerk. The Selectmen have further classified all members of the Finance Committee, the Personnel Board, and so far as reported to me to date, all members of study committees authorized by the Town, as “special employees”.

Multiple Office-holding

Conflict of Interest Law Provisions. Historically, multiple office-holding has been a controversial subject among reform groups wishing to alter the political status quo and those opposed to change; and hence it has been viewed as a “conflict of interest” issue.

The Conflict of Interest Law thus imposes certain restraints upon one person’s holding, simultaneously, more than one public office or position. Such office-holding may involve the holding simultaneously of a state and a local office, or of different offices in the service of the same city or town.

Thus, a “state employee” and, subject to slightly different requirements, a “special state employee”, may hold his or her state elected or appointive office or position and an elected or appointive municipal office or position, so long as he or she does not vote or act as a state official on any matter pertaining to the jurisdiction of his or her local official responsibilities which fall within the purview of the state office or position in which he or she is serving.² A similar provision applies to the simultaneous holding of municipal or district offices by county personnel.³

Subject to certain detailed statutory requirements, an individual officer or employee of a Town of over 3,000 inhabitants may be elected to its Board of Selectmen and perform the duties of a member of that Board. No Selectman in such a Town is eligible for appointment to an additional Town position until he or she has served as a Selectman for six months thereafter. A Selectman in such a Town is forbidden to act or vote on any matter which is within the purview of the other Town agency by which he or she is employed or over which he or she has official

¹ G.L., c. 268A, s. 1(n).

² G.L., c. 268A, s. 4.

³ G.L., c. 268A, ss. 11, 23.

responsibility. A Selectman holding more than one Town position or office of the Town may draw the salary of, or compensation for, only one of them, as chosen by him.¹

Unless previously approved by the Town's Annual Town Meeting, no member of a Town commission or board may be eligible for appointment or election to an office or position under the supervision of such commission or board.²

In a Town of fewer than 3,500 inhabitants, a Town officer or employee may, with the approval of the Board of Selectmen, hold more than one position.³

Related Statutory Requirements. In addition to the Conflict of Interest Law are related provisions of other general laws which impose further restrictions on multiple office-holding.

Such restraints on multiple office-holding variously apply to Mayors, members of City Councils, and members of Boards of Assessors, Housing Authorities, Industrial Development Commissions, Licensing Boards, Municipal Light Commissions (and their General Managers), School Committee Members, and Superintendents of Schools. In the instance of School Superintendents, those officers are forbidden to appoint any member of their immediate families to any position under such Superintendent's supervision.

The Conflict of Interest Law as a Standard of Local Government

How much leeway do cities and towns have in legislating as to conflict of interest matters?

The Municipal Home Rule Amendment to the State Constitution grants cities and towns very broad home rule powers to adopt, amend or repeal their charters, ordinances and by-laws, and to exercise any power or function which the State Legislature has the power to confer upon them, which is not inconsistent with the State Constitution or laws enacted by the Legislature, or which is not, in the case of local ordinances and by-laws, denied by the provisions of the city or town's own charter.⁴

The Municipal Home Rule Amendment, however, excludes from such grant of home rule powers the power (1) to regulate elections other than those prescribed by the Constitution itself; (2) to levy and collect taxes; (3) to borrow money or incur debt; (4) to dispose of park land; (5) to enact private or civil law governing civil relationships; and (6) to define and provide for the punishment of felonies. As to these "excluded" matters, cities and towns may act only as authorized by the General Laws of the State, or by special acts enacted by the Legislature conformable to procedures set out in the Municipal Home Rule Amendment itself.⁵

¹ G.L., c. 269A, s. 20.

² G.L., c. 268A, s. 21A.

³ G.L., c. 268A, s. 20.

⁴ Municipal Home Rule Amend., ss. 1-6.

⁵ Municipal Home Rule Amend., s. 7.

The Legislature retains the power to preempt from independent local home rule authority additional subject areas by enacting statutes which establish general standards of municipal government with which cities and/or towns must comply, unless exempted therefrom by a special act.¹ Such a statute may preempt such subject matter totally or partially, leaving cities and towns discretion of making certain decisions locally via municipal charter provisions and/or through ordinances or by-laws.

A statute of general application imposing standards and requirements upon cities and towns generally, or upon any class of two or more municipalities, constitutes in common parlance a “standard of local government”. This term includes statutes which allow local action in accordance with the terms of the statute, and those statutes which totally preempt particular subjects for state action alone.²

In respect to such statutes, the Supreme Judicial Court has interpreted the powers of cities and towns to act under standards of local government as broadly as reasonable. It has held that where such a statute does not specifically prohibit local legislation on a subject regulated, cities and towns may enact ordinances and by-laws thereon, so long as the same are not inconsistent with the requirements of the regulating state law.³ The Court has further held that if it is the legislative intent of an act passed by the Legislature to preempt or preclude local legislation totally in respect to some matter, that intention must be clearly stated in such statute.⁴

The Conflict of Interest Law is a “standard of local government” insofar as it applies to cities and towns. And it contains no expressed prohibition denying cities and towns to enact ordinances or by-laws in relation to its subject matter. Hence, cities and towns may legislate as to conflict of interest matters so long as the provisions thereof do not conflict with requirements of the Conflict of Interest Law.

Thus, as a practical matter, cities and towns have wide discretion to adopt charter provisions and to enact ordinances and by-laws on the subject of multiple office-holding by elected and appointed municipal personnel. But they must adhere pretty strictly to the letter of that law otherwise. Unless so authorized by a general or special act of the Legislature, they may not create new definitions of the term “conflict of interest” which constitute a felony or are punishable by imprisonment.

Town Meetings, may, by by-law, regulate their own proceedings, and in connection therewith, impose fines of up to \$300. for violations of the same.⁵ And, as a matter of ancient right, they may adopt rules, not in by-law form, for the conduct of each Town Meeting.⁶

Technically, such by-laws and rules may forbid a Town Meeting Member to vote on any matter in which he or she has a distinctive interest apart from the general interest. However, as a

¹ *Ibid.*, s. 1.

² *Ibid.*, ss. 1 and 8.

³ *Marshfield Family Skateland, Inc., v. Marshfield*, 389 Mass. 436 (1983); *Wendell v. Attorney General*, 394 Mass. 518 (1985); *Canner v. Groton*, 402 Mass. 804 (1988).

⁴ *Bloom v. Worcester*, 363 Mass. 136 (1973).

⁵ G.L. c. 39, s. 15; G.L. c. 40, s. 21.

⁶ *Municipal Home Rule Amend.*, s. 1.

practical matter, such a standard would be extremely difficult to enforce. It was in recognition of this problem that the Conflict of Interest Law excludes Town Meeting Members from its provisions.

The Role of the Town Counsel Under the Conflict of Interest Law

Duties Generally. The Town Counsel, who is appointed annually by the Board of Selectmen, is responsible for serving as the Town's legal advisor and represents the Town in legal proceedings.¹ Among his important functions is that of advising the Selectmen and other Town boards, commissions, committees and departments, and individual Town officers and employees, in respect to the Conflict of Interest Law.² In addition to those duties, he also assists the Selectmen and other Town agencies in preparing their warrant article for inclusion in the warrant for each Town Meeting, and advises the Town Meeting as to legal issues arising in relation to matters before it.

The Needham Golf Club Controversy. Long a matter of heated debate before Needham's Town Meeting has been the matter of renewing the periodic lease of 58 acres of Town-owned water lands to the Needham Golf Club, a not-for-profit corporation.

This contentious issue raised its head once again in 2006, when Mr. Carl M. Rubin, Mr. Alan S. Fanger, and others filed a citizen's petition for the inclusion in the Warrant of that year's Annual Town Meeting an Article requesting that such body prohibit any negotiations between Town authorities involved and the Needham Golf Club concerning a renewal of the lease of the Town water lands to the Club, until Golf Club members or their kin serving on two appointed study committees dealing with aspects of the water lands recused themselves from consideration of water land issues.³

Also raised in connection with the above Warrant Article was the question as to what legal authority the Representative Town Meeting had to act on the matter.

In response to the request of the Board of Selectmen for an advisory opinion on the subject, the Town Counsel ruled that:

"I took no action on this petition because I am of the opinion that it is a proper matter to be discussed and voted on by Town Meeting, but in an advisory capacity only.

Town Meeting is the legislative branch of our body politic. Its functions are to establish by-laws, appropriate money, establish study committees and adopt resolutions.

It is the job of the executive departments to carry out those votes and to carry out the mandates of both state laws and local by-laws.

¹ Needham Charter, s. 20(b); Needham Gen. By-Laws, s. 2.2.3.

² G.L. c. 268A, s. 22.

³ 2006 Annual Town Meeting, Art. 20.

Town Meeting may refuse to authorize the lease of Town owned land, but may not ban the executive branch of the Town from negotiating a proposed lease of the land. It will be ineffective until Town Meeting authorizes the Town Manager to execute the lease.

The Field Study Committee is charged to study the feasibility of putting synthetic turf on DeFazio Field and Memorial Park. The consultant hired with the appropriation from Town Meeting is commissioned to do a study limited to those two recreation areas. The Field Study Committee has no connection to the Needham Golf Club.

The Town Wide Facilities Working Group is in the process of studying all properties and facilities owned by the Town and to see how they can best be used to meet the Town's foreseeable future needs. The land leased to the Needham Golf Club is one of the assets within that study...

The Needham Golf Club membership consists mostly of Needham residents. Although the club is a private non-profit corporation, membership is open to all Needham residents on a non-discriminatory basis. Residents of Needham who are not members of the club have the right to play at the course during parts of the week. All residents may use the leased area for passive recreation (such as walking or skiing) during the off-season...

Thus, I am of the opinion that the present activities of the Town Wide Facilities Working Group involve determinations of general policy and the interests of members of the Town Wide Facilities Working Group, who are members of the Needham Golf Club or have members of their immediate family who are members of the Club, are shared with a substantial segment of the population of the Town of Needham. At this time, their participation as a member of the working group is exempt from the provisions of Section 19 of the Conflict of Interest law regarding participation.”¹

The proposal in Warrant Article 20 failed to pass.

Negative Impact Upon Representative Town Meetings

One provision of the Conflict of Interest Law has been troublesome to Towns with Representative Town Meetings. It is the definition of “municipal employee” which excludes from that definition “(1) elected members of a town meeting”.² The exclusion exempts such Town Meeting Members entirely from the reach of the Conflict of Interest Law, or seems to. Its ambiguities abound.

¹ Town of Needham, David C. Tobin, P.C., Town Counsel, Memorandum to the Needham Board of Selectmen, Opinion re Warrant Article 20, 2006 Annual Town Meeting, April 28, 2006, 4pp., plus attachment of 2pp.

² G.L., c. 268A, s. 1(g).

For example, it is ambiguous as to the status of townwide elected officials who are, by virtue of the Town Charter, included among the Representative Town Meeting Members at-Large. They are “elected”, as the State Constitution excludes non-elected, appointed town officials from at-Large Town Meeting Member status.¹ A townwide elected official not included in the charter’s list of at-Large Members, and such an “overlooked” officer, or any resident Town appointed official, may, if a legal resident of the Town, run for, and be elected to, the Representative Town Meeting as one of the Town Meeting Members elected to represent the inhabitants of the precinct in which they have their home (unless constrained by a multioffice-holding provision in the Town Charter).

As to the above problem, the Massachusetts Legislative Research Council has noted that:

“Here a question arises as to the scope of the words “elected members of a town meeting” in the exception in Clause (1). Does this exception apply only to members of a representative town meeting elected by and from among the voters of their respective precincts or electoral districts, or does it also extend to townwide elected officers of the town who are *ex officio*s or at-large members of that body under the provisions of the statute or home rule charter creating the representative town meeting? If so, does the exemption apply to these townwide elected officers only in relation to their activity as members of the representative town meeting while it is in session, or does it remove them entirely from the strictures of the Conflict of Interest Law? The history of the Conflict of Interest Law strongly suggests a “yes” answer to the first part of the latter question, and a “no” answer to the second part thereof. However, the issue is clouded, since in litigation what a law says may dominate the issue as to what it ought to say...

“The exception in Clause (1) is also ambiguous as it relates – or appears to relate– to open town meetings, in which elected town officials are automatically Town Meeting Members since they are registered voters. Had Clause (1) specified its exemption only in terms of “a representative town meeting” rather than a “town meeting” this ambiguity would have been avoided. Until Clause (1) is altered, it may constitute an unintended loophole in the law.

In this general connection, it should be noted that selectmen in towns are “municipal employees” and may not be classified as “special municipal employees”.²

Concerns about the strictures and complexity of the Conflict of Interest Law have discouraged local businessmen and businesswomen, here and there, from seeking elective or appointive office at the municipal level, including service on study committees created by Town Meetings, if any, if they perform contractual services for the Town, or may wish to remain eligible to receive such contracts, and wish to avoid even the remotest appearance of a conflict of interest.

¹ Municipal Home Rule Amend., ss. 2 and 8.

² Massachusetts Legislative Research Council, The Conflict of Interest Law and the Separation of Powers, House, No. 6475 (1975), at p. 68.

This poses a problem for the Moderator and other appointing authorities in Towns which, traditionally, have sought to create study committees consisting of representatives of contending parties, and/or of different disciplines, to bring expertise to bear on community problems, and/or to hammer out compromise solutions acceptable to the community and all interests concerned.

ISSUES: THE LEGISLATIVE OVERSIGHT POWERS OF TOWN MEETINGS VS. THE SEPARATION OF POWERS

In Search of a “Separation of Powers” Boundary Line

As population growth and changes in social, economic and political conditions faced by towns have multiplied demands made upon them, towns have been forced to move away from the highly decentralized forms of government of simpler former times, to more centralized forms of town organization such as town manager systems. Town meetings have become increasingly concerned about remaining relevant, and about “holding their own” versus a more centralized and more politically powerful “executive” branch, embracing at the top the board of selectmen, the town manager and the independent school committee, with other town administrative agencies serving under them.

Often, opponents of town manager systems of administration express the fear that the selectmen and/or the town manager may attempt to “manipulate” the town meeting, or that the town manager may try to “manage” the board of selectmen as well. Either type of development is perceived, by such critics, as detrimental to the town meeting. Thus, when towns are designing town manager charters for themselves, an issue frequently debated is how to preserve a balance of power between the selectmen and town manager on one hand, and the town meeting on the other. The town meeting has no desire to play the role of a dinghy towed in anybody’s wake.

Another town meeting concern, re town manager systems, is executive branch control of the information fed to the town meeting, and town meeting access to “all the facts”.

In response to these concerns, a number of larger towns – usually those with representative town meetings and town manager system – have moved aggressively via charter provisions or local by-laws, to enhance the role and authority of the town meeting, as the independent legislative branch of government, by exercising their “legislative oversight powers”, as defined below. This involves an exercise of the town meeting’s right to be informed, its power of the purse, and its authority, under statute or a home rule charter, to regulate or approve certain actions of town administrative agencies. Commonly, this entails delegating such oversight functions to the town’s finance committee and, on occasion, to other standing committees of the town as well.

The idea of vesting town meeting committees with “legislative oversight powers” has encountered opposition from town selectmen and town managers in New England, who fear encroachment on their prerogatives and management responsibilities by such committees.¹ Some of this criticism may come from town managers who view the town meeting as obsolete as a municipal legislative body, as compared with a smaller elected town council. The concern of selectmen tends to center on any use of the “legislative oversight power” which would amount to

¹ Zimmerman, Joseph F., The Massachusetts Town Meeting – A Tenacious Institution, Albany, NY, State University of New York, Graduate School of Public Affairs Monograph Series, 1967, 137pp., at pp. 72-73; Massachusetts Legislative Research Council, The Form of Government in Large Towns, House, No. 5302 (1971), 247 pp., at p. 148.

a scheme, on the part of the town meeting, for the micromanagement or attempted micromanagement of operations of the executive branch, a possibility if the political leadership of the town meeting is at odds with the selectmen and/or the town manager on spending and policy issues. The selectmen warn that such a development could impair selectmen-town manager government and undercut the reasons for having created it.

This kind of town meeting versus the selectmen and/or the town manager, or legislative versus executive, conflict is probably to be expected, once a town outgrows the simpler past of yore under the pressures of change, and as various town administrative agencies, formerly a galaxy of independent entities usually headed by elected officers, are brought together in an identifiable executive branch under central direction of some sort.

Hence, in all likelihood, we face the challenging task of seeking a “middle ground” which accommodates all of these concerns, and serves the public interest in preserving town government as a viable institution.

“Legislative Oversight Power” Defined

Again, to be precise:

The power of a legislative body to conduct investigations and studies, and to monitor governmental operations in connection with the exercise of its fundamental and inherent legislative authority under constitutional and statutory provisions, and, in the case of municipalities, under its home rule charter from which that authority springs, is commonly referred to as that body’s “legislative oversight power”.

It involves the legislative body’s right, under law, to be informed, and to seek and/or require, information relevant to matters in which it is being asked or required to legislate, to the end that it may legislate in an informed and lawful manner. In seeking information from town officials, the town meeting is acting in the exercise of its rights under the State Constitution to hold such officials accountable to it.¹

This legislative oversight power does not extend to conferring upon the town meeting or any of its committees powers comparable to those of a grand jury, except as expressly prescribed by law. The only exception to this rule of which I am aware pertains to the five member Finance Commission elected by the voters of Norwood. In addition to performing the usual range of duties of a finance committee under the General Laws, that Commission has sweeping investigative powers, including powers to require by subpoena the production of records and documents by town agencies, to require the attendance of witnesses, and to take a testimony under oath under penalty of law.²

¹ Mass. Constit., Part I, Declaration of Rights, Art. V (1780).

² Norwood Town Manager Act of 1914, ss. 16-26.

Town Meeting Legislative Oversight Powers Generally

Powers Generally. In Massachusetts, town meetings have possessed legislative oversight powers in one form or another since Colonial Times. Such powers have been secured to them by the Massachusetts Home Rule Amendment which affirms to the people of every city and town their “customary and traditional liberties” with respect to the “conduct of their local government”.¹ The cities and towns further possess broad home rule powers under the Municipal Home Rule Amendment, already discussed earlier in this text. Subject to statutory restriction (few in number), town meetings have broad authority to regulate the activities of town administrative agencies, and to require of them information desired by the town meeting for its legislative purposes.

Powers of the Purse. The most ancient and most formidable power of the town meeting, from which much legislative oversight power springs, is its “power of the purse”, including the powers to appropriate money, authorize borrowing and/or the pledging of the faith and credit of the town for municipal purposes.

The General Laws state that:

“A town may at any town meeting appropriate money for the exercise of any of its corporate powers; provided, however, that a town shall not appropriate or expend money for any purpose, or on any terms, or under any conditions inconsistent with any applicable general or special law.”²

Many other provisions of the General Laws authorize municipal appropriations for specific purposes, subject to specific conditions or limitations.

By longstanding tradition, town meetings possess the power to attach to an appropriation any condition not inconsistent with applicable federal or state laws.

A town meeting may appropriate money, up to a specified point, to a reserve fund, as part of its budget, to meet extraordinary and unforeseen circumstances. The finance committee in towns having the same, and in others not having such a committee the selectmen, may make transfers from that fund to town spending agencies to cover extraordinary and unforeseen circumstances.³

A town meeting may establish a stabilization fund for purposes prescribed by law, and, by a two-thirds majority vote, may expend money therefrom.⁴

Municipal borrowing is heavily regulated by the Municipal Finance Law.⁵

¹ Municipal Home Rule Amend., s. 1.

² G.L., c. 40, s. 5.

³ G.L., c. 40, s. 6.

⁴ G.L., c. 40, s. 5B.

⁵ G.L., c. 44.

That statute enumerates 35 specific purposes for which a town, by vote of its town meeting, may borrow money within the statutory debt limit.¹ And it lists 31 purposes for which, by a like vote, the town may borrow money outside that debt limit.² Towns may impose additional conditions on such borrowings, consistent with the requirements of the Municipal Finance Law.³ All votes by the town meeting to borrow money require the affirmative vote of two-thirds of the membership present and voting.

The Contract Power. Most contracts entered into by vote of the Town are negotiated and signed by the officer or board heading the spending agency, without having to be submitted to the town meeting for approval. The spending agency is subject to any lawful conditions specified by the town meeting in its vote authorizing the appropriation or bond issue. In the case of agencies headed by officers or boards named by the Selectmen and/or Town Manager, the approval of the Selectmen is required. In the case of agencies headed by officers or boards elected by the people, the elected officer or board is responsible for letting the contract.

In Needham, contracts negotiated by the Town Manager, as purchasing agent for all Town Agencies except the School Department, are awarded by the Town Manager with the approval of the Selectmen.⁴ And sewer contracts are let by the Town Manager, conformable to law.⁵

All town contracts are let subject to the State's competitive bidding laws.

There are a small number of contracts which, by law, must be approved by vote of the Town Meeting.

Among these are collective bargaining contracts negotiated by the Town Manager and Board of Selectmen, with Town employee organizations, other than such contracts representing School Department employees. In the instance of the former contracts, the Town Meeting is limited to voting only to approve or reject the contract as presented, and may not amend it or attach conditions to its vote. Collective bargaining contracts with school employee organizations take effect when approved by the School Committee and do not require Town Meeting action.⁶

Contracts for the rental or sale of town-owned property also require Town Meeting approval.

Personnel Administration: Non-school. Under provisions of the General Laws, the Town Meeting is empowered to enact by-laws (1) classifying offices and positions in the Town service, other than those under the jurisdiction of the School Committee, for the purpose of compensating the incumbents thereof; (2) establishing a pay plan of such non-school personnel; (3) regulating paid leaves of absence of such officers and employees; (4) recognizing the length of service and

¹ G.L., c. 44, s. 7.

² G.L., c. 44, s. 8.

³ G.L., c. 44, s. 2.

⁴ Needham Charter, s. 20B.

⁵ Ibid., s. 30.

⁶ G.L., c. 150E, s. 7.

meritorious performance of their duties by these personnel; (5) establishing personnel policies, procedures and staffing controls in respect to these non-school officers and employees; and (6) establishing rules of procedure for the resolution of personnel grievances.¹ The Town Meeting also establishes annually the compensation of elected officials who receive compensation for their services from the Town.²

Originally, the Town Meeting had total control over the administration of this non-school personnel system, which reflected the highly decentralized nature of town government until the advent of the Collective Bargaining Act of 1966.³ The responsibility of designing such regulations, and monitoring agency compliance therewith, the Town Meeting entrusted to its Finance Committee in 1939. When that task became too burdensome for the Finance Committee, it was reassigned to a new standing committee of the Town Meeting, the Salary and Wage Committee which, after several name changes, became the present Personnel Board.

The Personnel Board, as presently constituted, consists of five members appointed by the Moderator for staggered three year terms. It serves as a standing committee of the Town Meeting, and its agent for exercising legislative oversight over the personnel system for non-school employees. It may initiate legislative proposals of its own, must make recommendations to the Town Meeting annually as to the compensation of non-school personnel and changes in the Town Personnel By-Laws pertaining to such employees, and it audits agency compliance therewith.

The Town Charter provides that:

(5) Subject to the approval of the board of selectmen, and with the oversight of the personnel board, as outlined below, the town manager shall adopt rules and regulations establishing a personnel system. The personnel system shall make use of modern concepts of personnel management and shall include, but not be limited to, the following elements: (i) a method of administration; (ii) personnel policies indicating the rights, obligations and benefits of employees; (iii) a classification plan; (iv) a compensation plan; (v) a method of recruiting and selecting employees based on merit principles; (vi) a centralized record keeping system; (vii) disciplinary and grievance procedures; (viii) a professional development and training program; and (ix) other elements that are deemed necessary. All town agencies and positions shall be subject to the rules and regulations adopted under this section, excluding employees of the school department, and as otherwise provided under chapter 150E of the General Laws.

Personnel policies referenced in clause (ii) or changes to such policies, shall not be submitted to the board of selectmen without the prior review and approval of the personnel board. Classification plans or compensation plan referenced in clauses (iii) or (iv), or changes to such plans, shall not be submitted to the board of selectmen for approval until as the town manager has submitted

¹ G.L., c. 41, ss. 108A and 108C.

² G.L., c. 41, s. 108.

³ G.L., c. 150C.

the plan or plan revision to the personnel board for review and comment and, provided the comments are made within 15 days of submission, has provided written response to any comment made by the personnel board. In all other aspects of the personnel system, the town manager shall confer with the personnel board.

(6) The town manager shall fix the compensation of all town employees except those under the jurisdiction of the school committee within the limits established by appropriation and subject to chapter 150E of the General Laws.¹

Originally, when the Collective Bargaining Law took effect, the Selectmen delegated to the Personnel Board the task of conducting collective bargaining agreements with organizations representing non-school employees of the Town. However, they subsequently exercised their option under that statute to conduct these negotiations themselves, aided by the then Town Administrator. The Town's Charter now mandates that such collective bargaining negotiations be negotiated by the Town Manager, with the approval of the Selectmen, and administered by the Town Manager.²

The effect of the Collective Bargaining Act, and the transition to Town Manager government, has been to shift the initiative in the process from the Town Meeting to the Selectmen and the Town Manager.

Personnel Administration: Public School Personnel. Except as to providing the School Department with appropriations to meet its operating costs, the Town Meeting has no role in respect to the compensation of the personnel of the public schools, to their regulation, or to educational and other programs conducted in the Town's public schools. These matters are the exclusive province of the School Committee.³ Collective bargaining with organizations representing employees of the School Department are exclusively the School Committee's function, and, unlike collective bargaining contracts re non-school personnel, do not require the approval of the Town Meeting.⁴

The above restrictions do not apply to the maintenance of school buildings, a responsibility of the Department of Public Facilities which functions under the supervision of the Town Manager, is not funded from the school operating budget, and the personnel of which are not school employees.⁵

The Town Meeting provides the School Department with an operating budget annually, and, in that connection, may increase or decrease the same above or below the figure requested by the School Committee. However, it must take care not to reduce the school operating budget below the minimum level of municipal support required by the Education Reform Act of 1993.

¹ Needham Charter, s. 20B.

² Needham Charter, s. 20B(7).

³ G.L., c. 41, s. 108A; G.L., c. 71, s. 37; G.L., c. 150E, ss. 1 and 7; Needham Charter, ss. 20(d)(2), 20B(5), and 20B(7).

⁴ G.L., c. 150E, s. 7.

⁵ G.L., c. 71, s. 68; Needham Charter, s. 20B(3); Gen. By-Laws, s. 2.6.

It may not attach conditions relative to school personnel to such operating budget appropriations.¹

Power of Town Meeting to Adopt its Own Rules of Procedure. As noted earlier, the Town Meeting has the power under the constitution² and laws³ of the Commonwealth to adopt its own Rules of Procedure governing the conduct and good order of the Town Meeting and the consideration of business before it. Such rules may take the form of (a) by-law provisions which are permanent until amended or repealed; or (b) standing votes which continue in force until amended or repealed; or (c) votes which are effective only during the life of the Town Meeting which has adopted them.

In Needham, the Town Meeting's permanent Rules of Procedure take by-law form.⁴ Its remaining Rules of Procedures, adopted at the beginning of each Town Meeting, take the form of a vote, based on recommendations of the Moderator.

Used in conjunction with other powers possessed by the Town Meeting, the Town Meeting's Rules of Procedure can be used as an effective legislative oversight tool, if prudent in nature and not used in a manner inconsistent with law.

The responsibility for interpreting and enforcing the Town Meeting's Rules of Procedure are vested in its presiding officer, the Moderator, his rulings being subject to appeal to the membership of the Town Meeting as provided in those rules, the Town Charter and/or the General Laws.

The Town Meeting's rule-making power may be used to require that petitions for articles to be placed in a Town Meeting Warrant be accompanied by certain written information, such as a statement of the reasons for the petition. The Town Meeting may even follow in the footsteps of many state legislatures which require some form of "fiscal note" to accompany each petition for legislation, estimating its impact on the operating budget and debt of the state if enacted, or its impact on the operating budgets and debt of local political subdivisions if enacted, as the case may be.

The Town Meeting in Needham has used its rule-making power to require its Finance Committee and Personnel Board to review collective bargaining contracts coming before that body for its approval, and to recommend whether or not the same be approved by the Town Meeting.⁵

Town Meeting Rules of Procedure may also require the proper identification of persons addressing the body as to a matter before it, as to their status as a sponsor of a warrant article, or as a representative or attorney for any person or party having an interest in the measure under consideration.

¹ Acts of 1993, c. 71; G.L., c. 70, s. 6.

² Municipal Home Rule Amend., s. 1.

³ G.L., c. 39, s. 15.

⁴ Gen. By-Laws, Art. 1.

⁵ Gen. By-Laws, s. 1.13.

It may also, through such rules, impose reasonable requirements upon the distribution of materials by parties of interest to Town Meeting Members at Town Meetings, and may require that any documents so distributed bear the identity of the responsible author. And the Town Meeting may establish requirements as to information it desires from Town agencies in aid of its deliberations upon matters before it, consistent with applicable provisions of state law, as a precondition to acting on a matter before it.

Members of Needham's Representative Town Meeting have been complaining of late about two aspects of documents being distributed to them at Town Meetings.

Firstly, they have been complaining about informational materials, placed upon the tables outside the entrance to the meeting hall for their use, which do not indicate who the authors of such material are.

And they have also been complaining about departmental reports and materials which could be sent to Town Meeting Members in advance of the Town Meeting, giving them time to read the same, but which, instead, are withheld from them until the session of the Town Meeting which is to vote on the matter concerned. In the hubbub of arriving for an evening's session of the Town Meeting, getting checked in, and holding discussions with fellow Town Meeting Members as the Town Meeting is about to get underway, its Members do not have much time to read documentation submitted to them at the last minute.

Town Meeting Rules of Procedure have to be confined to the preservation of order in the Town Meeting, to the handling of business before it, and to the provision of information the body desires. Such a rule cannot venture beyond procedural issues to regulate the manner in which Town agencies are managed or to the policies they pursue outside the legislative arena.

Practical Limitations on Town Meeting Legislative Oversight Powers

Any scheme for the exercise of legislative oversight powers by the Town Meeting, or by its standing committees on its behalf, must take into consideration the existence of practical limitations on such powers.

Firstly, the scheme must be carefully tailored to serve the legislative functions and needs of the Town Meeting, and to go no further than necessary to attain that end. The objectives and purposes of the scheme must be carefully defined and delineated with regard for the concepts of checks and balances, and the separation of powers. Where standing committees of the Town Meeting are to have oversight powers, their focus should be on the enforcement of conditions attached to appropriation and bond issue votes of the Town Meeting, on the gathering of information desired by the Town Meeting in the furtherance of its legislative functions, on monitoring (but not managing) the activities of executive branch agencies, and on community needs requiring, or likely to require, legislative attention either in the short run or the long run.

Secondly, recognition must be given to the fact that many Town agencies, especially department heads and boards elevated by the people, have autonomous policy-making powers

and functions under state law, and statutory mandates, which must be honored. The Town Meeting may not, except as otherwise authorized by law, use its legislative oversight powers in such a manner as to usurp or interfere unreasonably with the statutory prerogatives and missions of these agencies.

Thirdly, the legislative oversight scheme must be manageable and within the scope of resources that the Town is willing to devote to it. Town officials have a deathly fear of any arrangement which is likely to burden them with “too much paperwork”, or at least with more than is demonstrably necessary to achieve its purpose. Town agencies currently handle numerous requests for information and assistance from Town Meeting Members, Town Meeting committees, interagency study groups, and other Town agencies.

Legislative Oversight Proposal to 2004 Annual Town Meeting

When the 2004 Annual Town Meeting was considering legislation proposed by the Board of Selectmen for a petition to the State Legislature to amend the Town Charter so as to create a Selectmen-Town Manager form of government in Needham, this Town Meeting Member from Precinct F offered a series of amendments, which if adopted and included in the proposed legislation, would have provided in the Town Charter for a legislative oversight system in Needham’s Representative Town Meeting. The proposed amendments, modeled on the state law creating legislative oversight committees in the State Senate and House of Representatives, failed of adoption.

The unsuccessful Powers amendments would have defined the proposed legislative oversight powers of the Town Meeting in these terms:

“Legislative post-audit and oversight authority”, the powers vested under the provisions of the town meeting to conduct performance audits of the efficiency of town government programs and operations, the effectiveness of programs administered by town officers, boards, commissions, committees, departments and other agencies in complying with the intent of federal and/or state laws and regulations, and votes of the town, pertaining to such programs and operations.

My amendments would have authorized the vesting of such powers in designated standing committees of the Town Meeting, defined thusly:

“Standing committee of the town meeting”, the finance committee, the committee on town administration, and any other committee, all of whose members are appointed by the moderator pursuant to this act and/or to votes of the town, to perform primarily legislative functions.

Such amendments would have added a new section to the Town Charter spelling out the legislative oversight powers of the Finance Committee in these terms:

“Section 20E. Finance Committee. There shall continue to be a finance committee, all of whose members are appointed by the moderator, said committee

to consist of such number of members serving for such terms as established by vote of the town. Said committee shall be a standing committee of the town meeting, and shall have the powers, duties and functions vested in it by M.G.L. chapter 39, section 16, by this act, and by votes of the town.

“The finance committee shall have the authority at any time to investigate the books, accounts, and management of any officer, board, commission, committee, department or other agency of the town. Except as otherwise provided by federal or state law relating to the confidentiality of certain public records, the books and accounts of all officers, boards, commissions, committees, departments and other agencies of the town government shall be open to inspection by the finance committee.

“Subject to appropriation, the said committee may employ an executive secretary and such expert and other assistance as it may deem advisable for the performance of its duties and functions.”

Finally, my amendments would have added a section to the Town Charter creating a standing Town Meeting Committee on Town Administration, with legislative oversight powers, as follows:

“Section 20F. Committee on Town Administration. There shall be a standing committee of the town meeting, to be known as the committee on town administration, all of whose members shall be appointed by the moderator, consisting of such number of members serving for such terms as established by vote of the town. Said committee shall have legislative post-audit and oversight authority as defined in section one of this act, to be exercised in such manner as provided by vote of the town.

The said committee shall study and report to the town meeting on articles appearing in each town meeting warrant which:

- a) affects functions performed by officers, boards, commissions, committees, departments and other agencies of the town government;
- b) proposed amendments to this act under the provisions of section four and eight of article LXXXIX of the articles of amendment to the constitution of the commonwealth, as from time to time amended; and/or
- c) any other matter specified by vote of the town.

Subject to appropriation, the committee may appoint such employees and expert assistance as it deems advisable for the performance of its duties and functions.”

In support of my proposal, I argued that I favored both a strong executive branch under the Selectmen and Town Manager, and a strong legislative branch designed in keeping with the doctrine of checks and balances, and strong enough to balance the executive power.

I further stressed that it is important for the Town Meeting to have adequate power of investigation, a necessity to an effective legislative branch. Both branches of government, I argued, have to be strong enough to meet the challenges of the 21st century.

The Selectmen were concerned about the concept of legislative oversight as it would possibly impact their proposed Selectmen-Town Manager plan, but did not voice their concern at that time. They urged that their proposed charter amendments be adopted without changes. The Town Meeting rejected my proposals accordingly.

ISSUES: STRENGTHENING THE STANDING COMMITTEE SYSTEM OF THE TOWN MEETING

Origins of Legislative Committee System

One of the most important features of legislative bodies in the English-speaking world – the legislative committee system – owes its birth to one of the ablest and most autocratic of medieval kings, Edward I (1272-1307). A shrewd and competent Norman administrator, politician and military commander, Edward had a passion for process and order, and was troubled that lawmaking in his English realm was a mess. The laws of England in those days were a jumble of Common Law, royal decrees, and laws and resolutions enacted by Parliament.

To bring order to English lawmaking, Edward, at the “Great Parliament” of 1295, decreed that thenceforth, all petitions to the Crown for the enactment of laws and the relief of grievances be submitted in writing, and that any resulting legislation take a proper written form. Faced with the necessity of sorting out all such petitions and considering and acting upon them, the House of Commons quickly created a few committees of its members to assist it in that process. Thus began, however tentatively, Parliament’s long slow march through history to its eventual status as an effective democratic legislative body.

Among the first three legislative committees so created by the House of Commons (using modern nomenclature) were the Committee on Rules, the Committee on Appropriations, and the Committee on Taxation.

Importance of Standing Committees of Legislative Bodies

In Great Britain, former British dominions which have remained democratic, and the United States, legislative committees have played a vital role in the functioning of national, provincial, state and local legislative bodies, and have been essential to such bodies in the exercise of their legislative powers, especially the “power of the purse” and the power to hear, investigate and act upon the grievances of the people.

In general, these committees include two types: permanent or “standing” committees with assigned topical or subject matter jurisdictions; and “ad hoc” temporary or “select” committees created to conduct studies or investigations into specific matters within a given time period, after which they dissolve.

Of these committees, the standing committees are the most important and usually the most influential, as they develop expertise in their subject areas and become valuable repositories of experience over time. This is true of standing committees of town meetings as of such committees of legislative bodies of higher jurisdiction.

Since 1910, all but very small Massachusetts towns are required to have at least one standing committee – namely an “appropriation”, “advisory” or “finance committee”.¹ Today, some Towns, usually more populous ones with heavier Town Meeting work loads, have created

¹ G.L., c. 29, s. 16.

one or more additional standing committees in the exercise of their home rule powers. All Towns appear to make extensive use of temporary ad hoc committees, as desired, to address specific community problems.

Committee Structure in Needham Representative Town Meeting

Currently, the Representative Town Meeting in Needham utilizes a mix of standing committees to advise it as to the disposition of matters coming before it, and/or to serve simply as research committees.

Included are two standing committees all of whose members are appointed for staggered three year terms by the Moderator, namely the Finance Committee¹ and the Personnel Board.² By statute, the five member Planning Board, which is elected by the people, serves as standing committee to report to the Town Meeting in respect to all Warrant Articles pertaining to zoning and related matters.³

In addition are three other committees, whose members are named by a variety of appointing authorities, whose responsibilities include reporting and/or making recommendations to the Town Meeting as to Warrant Articles falling within their subject areas of jurisdiction. One of these, the nine member Future School Needs Committee,⁴ is responsible for providing only estimates of the Town's current and projected school age populations. A second, the six member Transportation Committee, is required to make special studies relative to the Town's public mass transportation problems as the Town Meeting or the Board of Selectmen may direct.⁵ The third, a statutory entity, the nine member Community Preservation Committee, is required to make recommendations to the Town Meeting as to community preservation projects to be funded by the Town from the proceeds of the special property tax levied under the Community Preservation Act.⁶

Such committees of mixed membership are favored as a means of involving the different authorities and groups having a role or interest in a committee's subject matter, to seek a consensus as to how a problem can be solved, thereby, hopefully, avoiding a battle royal in the Town Meeting. The democratic legislative process is about debate and compromise.

The Finance Committee

Statutory Basis and Mandate. State law ordains that

“Every town whose valuation for the purposes of apportioning the state tax exceed one million dollars shall, and any other town may, by by-law provide for the appointment or election and duties of appropriation, advisory or finance

¹ Needham Charter, s. 21; Gen. By-Laws, s. 1.11.

² Needham Charter, s. 21; Gen. By-Laws, s. 1.12.

³ G.L., c. 40A; Needham Charter, s. 35.

⁴ Gen. By-Laws, s. 2.7.2.

⁵ Gen. By-Laws, s. 2.7.1.

⁶ G.L., c. 44B; Gen. By-Laws, s. 2.7.3.

committees, who shall consider any or all municipal questions for the purpose of making reports or recommendations to the town; and such by-laws may provide that committees so appointed or elected may continue in office for terms not exceeding three years from the date of appointment or election.

“In every town having a committee appointed under authority of this section, such committee, or the selectmen if authorized by a by-law of the town, and in any town not having such a committee, the selectmen, shall submit a budget at the annual town meeting.”¹

Needham’s General By-Laws direct the Finance Committee consider “all matters of business included within any warrant for a Town Meeting, and shall, after due consideration, report thereon its recommendations as to each such article it finds to have a financial implication.”²

The “state tax” referred to above is the tax levied upon Cities and Towns since Colonial Times to pay the annual state deficit, if there be one. That tax, discontinued in 1948 but still authorized by the State Constitution, was apportioned to the Cities and Towns in proportion to their respective shares of the total value of property in the state. The State Revenue Department periodically recommends, and the State Legislature enacts, legislation updating and equalizing the property valuations of all Cities and Towns statewide for the purpose of allocating state aid to them, and for the purpose of assessing county and regional government costs to them. Property taxation, with certain exceptions, is required to be proportional.³

The above-quoted statute leaves cities and towns broad authority to define the jurisdiction of their Finance Committees, and does not limit them to warrant article subjects alone. Available information suggests that workload considerations, limitations on the time which volunteer committee members can give to service on the Finance Committee, and staffing considerations, have caused most Finance Committees to focus on appropriations and debt issues, and on articles likely to have a long-term financial impact on the Town. On occasion, some functions of a Finance Committee may be “spun off” to another Town Meeting committee, such as a capital outlay planning committee, or a personnel committee, when the duties involved with those activities are perceived by the Finance Committee to be overburdening its workload and to be distracting the Committee from responsibilities it deems of higher priority.

Towns vary in their practices as to what their Finance Committee must do in regard to one major fiscal issue, Property 2½ overrides.

In some Towns, the duty of the Finance Committee to report to the “town”, i.e. its voters, has been considered to mean that the Committee should evaluate the need for, and the prudence of, Proposition 2½ overrides, and that it should report thereon to the voters.

¹ G.L., c. 39, s. 16.

² Gen. By-Laws, s. 11.3.

³ Mass. Constit., Part II, c. I, s. I, Art. IV.

In other Towns, such as Needham, the policy of the Finance Committee is that whether or not a Proposition 2½ override is warranted or prudent is a decision the Selectmen should make, as that Board alone (with one exception) is authorized by law to place such questions on the ballot. The Finance Committee thus limits itself to advising the Town on the condition of its finances, and what can be accomplished within the limits of currently available Town revenues. Once the fate of a Proposition 2½ ballot question has been decided by the voters of the Town, the Finance Committee proposes a budget which is balanced.

Committee Membership. The Finance Committee consists of nine registered voters of the Town, none of whom may be Town officers, agents or employees other than “Town Meeting Members” appointed by the Moderator for staggered three year terms. By By-Law, the Committee chooses its own Chairman and Secretary. Under its rules, it also designates a Vice-Chairman. If a vacancy occurs in the membership of the Committee, the Moderator may fill it with a qualified replacement at any time.¹

Committee Staffing. The Finance Committee is authorized by the Town Charter to appoint its own Executive Secretary; but any other employee or employees it may desire to hire in the future, aside from its Executive Secretary, must be appointed by the Town Manager.² This latter limitation on the Committee’s powers seems inconsistent with the principle of separation of executive and legislative powers, and possibly a source of conflict in the future. Currently, the Executive Secretary of the Finance Committee is employed on a part-time basis under Schedule C of the Town’s Salary Compensation Plan.

Currently, the Finance Committee relies heavily on the Town Manager, Assistant Town Manager – Director of Finance, and their staffs, for much of the critical fiscal information and analysis.

General Access to Information. The Committee’s research and investigative authority is spelled out in the Town’s General By-Laws in these terms:

“The Committee shall have access to all facts, figures, records and other information relative to all Town departments, boards, committees or officers; and when requested by the Committee, such information shall be furnished immediately by whomever it is requested, including the Town Manager and/or any department, board, committee, officer or employee. If not directly requested of the Town Manager, the Committee shall inform the Town Manager or the School Superintendent and/or their designees of such requests. The Town Manager shall report to the Finance Committee whenever the expenditures of any department are exceeding or are likely to exceed its appropriations.”³

The Town Manager is required, by Town Charter, to report to the Selectmen and Finance Committee as to the financial condition of the Town.⁴

¹ Gen. By-Laws, s. 1.11.1.

² Needham Charter, s. 20(d)(2).

³ Gen. By-Laws, s. 1.11.2.

⁴ Needham Charter, s. 20B(12).

Responsibilities as to the Operating Budget. These duties are spelled out in the General By-Laws, rather than detailed fully in the Town Charter. The former mandate that:

“The Town Manager shall issue budget guidelines and instructions for all Town departments to submit their spending requests for the ensuing fiscal year. The Town Manager shall consult with the Finance Committee prior to the issuance of said guidelines and instructions. The Town Manager and/or his/her designee and the Finance Committee shall consult with each other throughout the Budget process. The Town Manager and School Superintendent will provide the Finance Committee with copies of their respective departmental spending requests on or before the 2nd Wednesday of December. Following receipt of these spending requests, the Finance Committee may begin its consideration of same, including the commencement of budget hearings. The Town Manager, after consultation with the Board of Selectmen and School Committee, shall not later than the 31st day of January, present to the Finance Committee a balanced budget recommendation in the form of an executive budget, which shall include the spending priorities of all Town departments for the ensuing fiscal year, including in addition thereto, the voted School Committee budget request if different than that contained in the proposed balanced budget. The Town Manager’s executive budget recommendation shall not be binding on the Finance Committee. Said executive budget recommendation shall include the estimates of Town revenues and proposed expenditures of all Town departments, including debt service and other amounts required to be raised for the ensuing fiscal year. The Town Manager may amend or otherwise revise revenue estimates as may be warranted. All such revisions shall be provided in writing to the Board of Selectmen, School Committee and Finance Committee.”¹

The General By-Laws provide further:

“For the information of voters, the report of the Finance Committee to the Annual Town Meeting shall be printed, together with the motion substantially in the form to be proposed in connection with each article, in the warrant of said meeting. The Finance Committee’s recommendation on the operating budget shall be the Main Motion to be acted on by Town Meeting. In its motion, or motions, the Finance Committee shall divided the proposed appropriation for each department into a sufficient number of items to separate the major classifications of expenditures. The Finance Committee shall transmit to the Town Manager its initial draft proposed budget on or about the 22nd day of February, and its final proposed budget for publication in the Warrant by no later than the 15th day of March.”²

These procedures relative to the operating budget may need to be reviewed as to their time line aspects of the budget process as impacted by Proposition 2½ , when the placing of

¹ Gen. By-Laws, s. 2.2.1.

² Gen. By-Laws, s. 1.11.3.

operating budget overrides on the ballot at the Annual Town Election is being considered. State law imposes, directly or indirectly, deadlines as to (a) when public hearings are to be held by the Board of Selectmen in connection with such override proposals; and (b) by when decisions must be made by that Board to place such specific questions on the ballot prior to the election.

Responsibilities as to the Capital Improvement Budget. In keeping with provisions of the Town Charter¹ the Town's General By-Laws ordain that:

“All boards, departments, committees, commissions and officers of the town shall annually, at the request of the Town Manager, submit to him or her in writing a detailed estimated of the capital expenditures required for the efficient and proper conduct of their respective departments and offices for the ensuing fiscal year and the four year period following thereafter. The Town Manager, after consultation with the Board of Selectmen, shall submit in writing to the Board of Selectmen a careful, detailed estimated of the recommended capital expenditures for the aforesaid periods, showing specifically the amount necessary to be provided for each office, department and activity and a statement of the amounts required to meet the debt service requirements or other indebtedness of the Town. The Selectmen shall transmit a copy of the capital budget to the Finance Committee along with the Board of Selectmen's recommendations relative thereto. The Selectmen shall transmit the capital budget to the Finance Committee no later than the first Tuesday after the first Monday in January.”²

“A capital expenditure is defined as the acquisition, construction, renovation, betterment or improvement involving land, public buildings and facilities; water and sewer system laterals, mains and appurtenances; and equipment or vehicles; provided the cost is \$25,000 or more and the improvement will have a useful life of five years or more; or any planning, feasibility, engineering or design study in preparation for such capital expenditures...”³

“The Capital Improvement Plan shall include: (a) a list of all capital improvements proposed to be undertaken during the next five years, together with supporting data; (b) cost estimates, methods of financing, and recommended time schedule; and (c) the estimated annual cost of operating and maintaining any facility to be constructed or acquired. The first year of the Capital Improvements Program shall constitute the proposed capital improvements budget for the coming fiscal year and the ensuing four years of the plan are included for planning purposes.”⁴

Adjusting to a Sea Change in Town Government. With the advent of a Selectmen-Town Manager form of executive branch organization to the Town government in Needham, the

¹ Needham Town Charter, s. 20C.

² Gen. By-Laws, s. 2.2.2.1.

³ Ibid., s. 2.2.2.2.

⁴ Ibid., s. 2.2.2.3.

Finance Committee and the Town Meeting face a sea change in the governmental and political landscape of the Town.

Such a sea change must be evaluated not in the short-term impact it has on the political status and aspirations of present day political figures and interest groups active at the moment, but in the long-term impact it will have on the essential institutions and general public interest of the Town.

The structure of the administrative or executive agencies of town government, once highly decentralized, has been replaced by one in which the Selectmen and their Town Manager loom large politically and administratively, notwithstanding the fact that the School Committee remains totally independent of them and that the authority granted to the Selectmen and Town Manager in respect to agencies headed by elected department heads or boards is limited significantly. Gone is the old order in which the Selectmen had full control of only 25% of the operations of the Town Government.

The Selectmen and Town Manager will play a far more influential role in respect to municipal finance and the budget process than previously. They have a better mastery, administratively and politically, over personnel (other than school personnel) charged with collecting, analyzing, and making available statistical information about Town government operations. They have the capacity to organize these information gathering activities effectively. With a competent Town Manager to support them, the Selectmen are now a more formidable force on the floor of Town Meeting than their predecessors of yore. The public now looks to the Selectmen and Town Manager to lead an effective and efficient government and to “keep costs of Town government down”.

The Town Charter, and implementing by-laws enacted in 2005, have enlarged, and refined, the duties of the Finance Committee in ways that will require greater attention by it to details, increase its workload, and test the adequacy of its own independent staff. It will also face that Committee with the question as to how much reliance placed by it in the long run on data provided by Town Hall staff is too much reliance politically. Politics is politics through time. And it is not unknown in towns with town manager forms of government for “the boys in Town Hall” to try to “fudge” information sent to the town meeting or its committees in hot political situations. In Needham, a longstanding “good government” climate has spared the Town from such negative experiences. The Committee must be able to trust, but verify!

Currently, the Finance Committee, which has one of the heaviest workloads among our town boards and committees, has only one part-time staffer. It is responsible for monitoring town operations spending in excess of \$92 million, plus spending from bond issue proceeds which amount to millions more. That is no small challenge!

In general, it is a matter of reevaluating the Finance Committee’s approach to its tasks, with a view to adapting the same to the role it now faces, the better to serve the Town Meeting and to act as that body’s “fiscal watchdog”.

The Personnel Board

The Personnel Board, originally called “the Salary and Wage Committee” and then “the Personnel Committee”, consists of five members appointed by the Moderator for staggered three year terms. No appointed employee or elected official of the Town, other than a “Town Meeting Member”, may serve on the Board.¹

The Board is authorized to retain clerical and other assistance, and, subject to appropriation, to make such expenditures as it deems necessary to the performance of its duties.² The Charter provides that there shall be a Personnel Director appointed by the Town Manager with the approval of the Selectmen³ and that all other appointments of Board staff shall be made by the Town Manager.⁴ The duties of Personnel Director are performed by the Assistant Town Manager/Personnel Director, who, with his Personnel Department employees, are employees of the executive branch, under the supervision of the Town Manager, and who provide support to the Personnel Board as provided in the Town Personnel By-Law.

As noted earlier, the Personnel Board functions in a quasi-legislative, quasi-executive role. The General By-Laws provide that:

“The Personnel Board shall advise the executive branch on strategic human resources and collective bargaining matters. The Personnel Board shall report to the Board of Selectmen and/or Town meeting, as it deems appropriate as to the status of human resource administration in the Town. The Town Manager shall consult with the Personnel Board prior to appointing an assistant town manager/personnel director, or person performing said function regardless of title, in accordance with Section 20(d) of the Town Charter.⁵

“If an Article is inserted in the warrant for an Annual or Special Town Meeting with respect to the human resource system of the Town, a copy of such article shall be furnished to the Personnel Board by the Town Manager. The Personnel Board shall report its recommendation to Town Meeting with respect to such article.⁶

“The Personnel Board will consult with the Town Manager, the Board of Selectmen and the Finance Committee on a motion to propose appropriations to fund the cost items of collective bargaining agreements. The Personnel Board shall review such agreements and report its recommendations to Town Meeting. The Town Manager shall keep the Personnel Board informed as to the status of collective bargaining and the Personnel Board shall make recommendations to the Town Manager and the Board of Selectmen as it deems appropriate.”⁷

¹ Gen. By-Laws, s. 1.12.1.

² Gen. By-Laws, s. 1.12.2.

³ Needham Charter, s. 20(c).

⁴ Needham Charter, s. 20(d)(1).

⁵ Gen. By-Laws, s. 1.12.3.

⁶ Gen. By-Laws, s. 1.12.4.

⁷ Gen. By-Laws, s. 1.12.5.

The other duties of the Personnel Board re Town personnel administration have been previously described.

The arrangements concerning the powers and duties of the Personnel Board reflect a partnership and modus vivendi worked out between the Board of Selectmen, the Second Town Government Review Committee, the Personnel Board and Town Meeting in 1990, after a bitter struggle over a proposed reorganization of the Town's personnel system.¹ Through the Town Personnel Board, the Town Meeting retains a limited degree of control over decisions relating to the classification of non-school employees of the Town for pay purposes, grievance procedures and other personnel matters having an impact on the Town budget.

In some Towns, the Personnel Board or Committee is viewed primarily as an administrative agency, and is for that reason appointed by the Selectmen and/or the Town Manager, or by a mixed appointing authority. The decision on this score largely reflects local historical circumstances and interest group compromises.

Standing Committee Systems in Other Representative Town Meetings²

Preliminary information, summarized below, has been received in respect to five Towns concerning their use of standing committees. All are populous, and all but one (Reading) has a Selectmen-Town Manager form of executive branch organization.

Billerica. In addition to a Finance Committee and a Personnel Board appointed by the Moderator, Billerica's Representative Town Meeting has a Committee on Rules, reportedly chaired by the Moderator, who serves ex officio, and one member from each town precinct elected by that precinct's Town Meeting Members. This Committee on Rules has continuing oversight of all business of the Town Meeting, and considers and reports on changes in the conduct of the Town Meeting.

Plymouth. In addition to its Finance Committee, consisting of 15 members appointed by the Moderator – one member from each of the Town's 15 precincts – Plymouth's Town Meeting has a Committee on rules and a By-Law Committee. Details as to the memberships and functions of the two latter Committees had not been received at the time of the writing of this Memorandum.

Plymouth's by-laws also provide for precinct caucuses, composed of Town Meeting Members representing each precinct.³

Within 20 days following each Annual Town Election, the Town Meeting Members from each precinct must meet and elect from among their number a Chairperson, Vice-Chairperson,

¹ Special Town Meeting, 14 November 1990, Art. 2.

² In part, this text digests information in a report by the Massachusetts Department of Housing and Community Development titled: Summary of Home Rule Charter Provisions in Massachusetts Municipalities, Boston, Massachusetts, April 2003, 53pp.

³ Plymouth Gen. By-Laws, s. 11.

and Clerk, each of whom serves for a term of one year. Each such precinct delegation must promptly notify the Town Clerk that it has organized. If it fails to do so within that 20 day time limit, the Town Clerk must, on the 21st day following the Town election, reconvene the precinct delegation to organize.

Each precinct delegation is required to hold a caucus meeting for the purpose of reviewing and discussing the subject matter of the upcoming Town Meeting.

Reading. This Town's nine member Finance Committee is composed of appointees of an appointing authority consisting of the Moderator, the Chairman of the Finance Committee, and the Chairman of the Board of Selectmen. The Town Meeting also has a Committee on By-Laws composed of five appointees of the Moderator.

Reading's Town Meeting also has a system of precinct caucus committees, similar to that in Plymouth.

Stoughton. The Charter of this Norfolk County community provides for a sophisticated system of standing committees and precinct delegations to share the work of its 126 member Representative Town Meeting, elected from six precincts.

Stoughton's Charter requires that annually, on the Thursday preceding the Annual Town Meeting, that body be convened in an "organizational Town Meeting" for the sole purposes of (a) electing a Chairman and Clerk of each precinct delegation; (b) electing a Deputy Town Moderator; and (c) adopting Town Meeting Rules and Procedures.¹

A committee structure is mandated for the Town Meeting as follows by the Town Charter:

A Rules Committee. This Committee, consisting of the Moderator (who is Chairman), the Deputy Moderator, and the Chairman of the several precinct delegations, is responsible for referring all warrant articles to the appropriate committee or committees for a public hearing and for making recommendations thereon to the Town Meeting. The Moderator is authorized to designate a temporary Chairman for each standing committee to call it into session to get organized and to get on about its work.²

A Committee on Finance and Taxation. This Committee performs the functions common to Finance Committees generally, and performs budgetary and other fiscal functions detailed by the Town Charter. It has broad, specific investigative powers to scrutinize the finances and management of any Town department, and, subject to appropriation, to hire staff and consultants. The fifteen member Committee includes nine appointees of the Moderator, and one member elected by each of the six precinct delegations.³

¹ Stoughton Home Rule Charter, s. 7-11.

² Ibid., s. 7-14.

³ Ibid., s. 7-14.

A Committee on Municipal Regulations. The seven members of this Committee include one person appointed by the Moderator, and one member appointed by the Chairman of each precinct delegation. It is charged with studying and reporting to the Town Meeting on all warrant articles, by-laws, and zoning regulations of the Town.¹

A Committee on Municipal Operations. The members of this Committee, chosen in the same manner as members of the Committee on Municipal Regulations above, are required to study and report to the Town Meeting upon all warrant articles which affect functions performed by officers and departments of the Town government.²

A Committee on Intergovernmental Relations. Also appointed in the same manner as the Committee on Municipal Regulations, this Committee is directed to study and report to the Town Meeting in respect to all warrant articles which affect the relations of the Town with other municipalities, regional government bodies, and agencies of County, State and Federal government.³

Walpole. An amendment added to this Town's Home Rule Charter in 1999 established a committee system for the Walpole Representative Town Meeting. Detailed information about the same has not yet been gathered.

Commentary. Information must be gathered as to the following aspects of Town Meeting standing committees elsewhere:

Why were these standing committees, other than the Finance Committee, created, and with what expectations in mind?

Have they functioned as intended by the authors of the legislation which created them? If not, why not?

What has been their impact, if any, upon the relationship between the Town Meeting, on the one hand, and the Selectmen and Town Manager on the other?

Do such standing committees expedite or delay the work of the Town Meeting?

How many such committees are too many?

¹ Stoughton Home Rule Charter, s. 7-14.

² Ibid.

³ Ibid.