



SOULE, LESLIE, KIDDER, SAYWARD & LOUGHMAN

P.L.L.C. • ATTORNEYS AT LAW

Peter H. Bronstein
David W. Sayward
Barbara F. Loughman
Michael S. Elwell
Gordon B. Graham
Diane M. Gorrow
Peter C. Phillips
Anthony M. Muir

220 Main Street
Salem, N.H. 03079

Tel: (603) 898-9776
Fax: (603) 898-3418
R/E Fax: (603) 893-7678

www.soulefirm.com

Lewis Soule (1924-1986)
Robert P. Leslie (1932-2017)
Bradley F. Kidder (1939-2000)

22 South Main Street
P.O. Box 908
Wolfeboro, N.H. 03894
Tel: (603) 569-8044
Fax: (603) 569-2137

January 20, 2022

CONFIDENTIAL ATTORNEY
CLIENT COMMUNICATION

VIA E-MAIL ONLY (sally.theriault@comcast.net)

Sally Theriault, Administrative Assistant
Town Hall - Town of Hampstead
11 Main Street
Hampstead, New Hampshire 03841

Re: Town of Hampstead – Default Budget

Dear Sally:

The Select Board wanted to know whether it can include employee COLA and merit increases in the default budget. Those increases are based on the Town's Personnel Policy. You also wanted me to address the use of the raise and appropriate terms in Article 9 which seeks to transfer funds from the Town Forest Maintenance Account to the Conservation Fund. As explained below, the COLA and merit increases cannot be included in the default budget. The raise and appropriate language must be included in Article 9, but the article can be revised to make it clear the funds will not be raised by taxation.

The Personnel Policy which applies to all non-union employees includes COLA and merit pay provisions for employees. The Select Board has authority to determine whether non-employees receive COLA and merit raises and can include those raises in the operating budget. However, to include those raises in the default budget, the increases must come within the definition of the default budget in RSA 40:13, IX(b).

In 2018, significant changes were made in the definition of “default budget” with the purpose of reducing the amount that the governing body could include in the default budget. One change was to define the term “contract” for purposes of calculating the default budget. “Contracts” are defined in RSA 40:13, IX(c) as **“contracts previously approved, in the amount so approved, by the legislative body in either the operating budget authorized for the previous year or in a separate warrant article for the previous year.”** As you know, the default budget is calculated in part based upon the same appropriations in the operating budget authorized in the previous year reduced or increased by contracts, and other obligations previously incurred or mandated by law. The COLA and merit increases are not mandated by law or by the Personnel Policy.¹

Even if the Select Board considers the COLA and merit increases in the Personnel Policy a contract, the default budget definition of “contract” limits the amount that can be included in the default budget to the amount in last year’s operating budget. Therefore, the salaries and wages for non-union employees are frozen at the “amount” of those salaries and wages for those positions in the prior year’s operating budget, regardless of whether there are contractual increases owed in the upcoming fiscal year because only the amount approved by voters can be included in the default amount. Unless there is voter approval of a contract containing future increases as there is with collective bargaining agreements, the “amount so approved” is the amount in last year’s operating budget and that amount is the default amount.

If the Select Board need to amend the default budget number, they can do so at their next meeting before the warrant is posted. RSA 40:13, XI(b) permits the Select Board to adjust the default budget acting on relevant new information at anytime before the ballots are printed.

Even though the raises cannot be included in the default budget, if the default budget is adopted the Select Board can still provide employees with those raises. The default budget is a bottom line amount and the Select Board has authority to determine how to distribute the default budget into the budget lines. Sullivan v. Town of Hampton Board of Selectmen, 153 N.H. 690, 694, 695 (2006).

Article 9 seeks to transfer \$15,000 from the Town Forest Maintenance Account to the Conservation Fund. There appears to be confusion caused by use of the terms “raise and appropriate.” Some believe that the terms mean that the \$15,000 will be raised by taxation. The use of those terms does not mean that the money must be raised by taxation. “Raise” means to collect or procure a supply of money for use by the Town. Frost v. Hoar, 85 N.H. 442, 443 (1932). “Appropriate” is to set that amount apart for a specified purpose and to authorize the expenditure for that purpose. Id.; RSA 32:3, I. Those terms are used even when the funds already exist in a separate fund such as the Town Forest Maintenance Account. If the Select Board feels it needs to clarify that no amount will be raised from taxation, it could revise the article as follows:

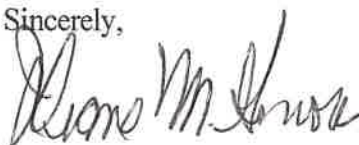
To see if the Town will vote to raise and appropriate \$15,000 and authorize the withdrawal of that amount from the Town Forest Maintenance Account to be deposited into the Conservation Fund. No amount to be raised from taxation.

¹ The Personnel Policy permits the Select Board to revise the policy at any time and to amend the Compensation Policy and Pay Plan. Personnel Policy, Sections 2 and 12.

Sally Theriault, Administrative Assistant
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If you have any other questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane M. Gorrow". The signature is fluid and cursive, with the first name being the most prominent.

Diane M. Gorrow

E-mail: gorrow@soulefirm.com

DMG:sds