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September 10, 2010

Finance Committee  
Plympton Town House  
5 Palmer Road  
Plympton, MA 02367

Re: Finance Committee

Dear Finance Committee Members,

You have asked for an opinion as to the role of the Finance Committee in the budget process.

Finance Committees play an essential part in Massachusetts communities because the Finance Committee is a standing committee of Town Meeting, the legislative branch of government. The permanently sitting Finance Committee overcomes a weakness in the Town Meeting form of government - the infrequency of meetings and the concomitantly diminished ability of voters to keep current on town affairs. In most towns, Town Meetings seldom convene more than half a dozen times a year. This can cause problems for the orderly conduct of municipal business, e.g. accounts become depleted, emergencies occur, and emergency responses are unfunded, thus becoming difficult or impossible to effectuate.

Some communities have addressed this perceived shortcoming by adopting the Town or City Council form of government. Those that shun this solution rely instead upon the permanently sitting committee of the legislative body - the Finance Committee - to provide an effective cure. This is Plympton's approach.

You are most interested in the Finance Committee's role in the budget process. The question arises in the context of the age old battle that occurs in governments wherein power is split between different branches of government. In Town government, the Board of Selectmen, the executive branch, enjoys a considerable advantage over the legislative branch of government. This is not merely a function of the sweeping and wide range of powers conferred upon the Board of Selectmen by the General Laws, but also the practical consequence of the fact that the Selectmen meet regularly all year. As the executive branch of government, the Selectmen are responsible for the day to day operation of the town. This executive branch advantage becomes even more pronounced in communities that retain professional management in the form of Town Administrators, who are more or less omni-present, allowing the Selectmen to retreat to a policy-making rather than an administrative role. (Sometimes this "retreat" is forced by a charter provision that excludes the Selectmen from day to day operations, which are reserved to the Administrator.)

So what role does the Finance Committee play when the executive branch seems to enjoy many advantages? General Laws, Chapter 39, Section 16 is the wellspring of Finance Committee authority. It allows a Town that exceeds a certain tax threshold to adopt a by-law providing for the appointment or election of such a committee. In common with at least 26 other communities,

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Plympton has carried out this provision by adopting Article IV, Section 1 of the Municipal Bylaws, which provides for the election of the Finance Committee. In other communities, the Finance Committee is appointed, usually by the Moderator.

Chapter 39, Section 16 states that the Finance Committee “shall consider any or all municipal questions for the purpose of making reports of recommendations to the town (meeting)”. It further provides that the Finance Committee “shall submit a budget at the annual town meeting”. The Finance Committee’s recommendations have no executive or legislative force. “The town budget is, in effect, only the compiled recommendations of the committee under chapter 41, section 60, ‘for the proper information of the inhabitants’”. Illig v. Plymouth, 337 Mass.239, 242 (1958). It is Town Meeting’s vote, not the recommendations of either the Finance Committee or the Board of Selectmen, that has legal force. Id. Nonetheless, Town Meeting members recognize the Finance Committee as their advisor and rely on the Finance Committee’s financial expertise, giving the Finance Committee a powerful moral authority as opposed to a legally binding one. This is a significant power. Although the Finance Committee cannot order executive branch agencies to cooperate absent a by-law or charter provision, those that do not cooperate run the risk of a negative Finance Committee recommendation. See Clinton Housing Authority v. Finance Committee of Clinton, 329 Mass. 495 (1952). It is this power of persuasion and professional expertise that gives the Finance Committee its greatest budgetary authority, an authority that should not be underrated by Committee members who might despairingly ask “why are we doing this?”

In contrast to playing a persuasive role, the Finance Committee’s control over withdrawals from the reserve fund is of a binding legislative character. Pursuant to G.L. c. 40, §6, it is the Finance Committee, standing in for the more numerous (but difficult to assemble) Town Meeting members, which issues its declaration as to what constitutes an “extraordinary or unforeseen expenditure” for purposes of the statute. Its decision is final.

The question sometimes arises as to who may make the first motion on the budget. The language of G.L. c. 39, §16, which states that the Finance Committee “shall submit a budget”, implies that the Committee must at least be allowed to present a budget motion or recommendation at Town Meeting. But does this mean that the Finance Committee must speak first? Section 16 is silent on speaking priority, and the Town lacks a bylaw that sets out the speaking order. Accordingly, it is my opinion that, because the Moderator determines the rules of order under the authority conferred by G.L. c. 39, §15, the Moderator chooses who will present the budget first. The Moderator’s exercise of that discretion is virtually unfettered, absent both a contemporaneous objection coupled with clear evidence of willful misconduct on his part. Village Houses, Inc. v. Town of Kingston, 77 Mass. App. Ct. 1116 (2010) (Rule 1:28 Decision). In choosing who to recognize, the Moderator may allow himself to be guided by custom, exigency, or any factors he deems reasonable.

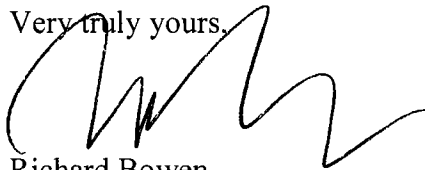
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Plympton's recent history has seen the Finance Committee play a significant role in budget preparation. The Finance Committee is not a substitute Board of Selectmen (nor does it claim to be) because its powers relate to the function of Town Meeting and are in large part advisory and persuasive in nature. Nonetheless, the Finance Committee is the bulwark that protects the Town Meeting form of government, and thus is integral to the system of "checks and balances" that underpins Plympton's current constitutional form.

As to the practical problems you may face, laws rely upon custom to fill the interstices between them. Plympton has evolved customs concerning the relations between the Finance Committee and the Board of Selectmen. These customs do not have the force of law, and so I offer no opinion as to their propriety or efficacy. However, such customs may be changed by agreement between the Finance Committee and the Board of Selectmen. To the extent that these customs no longer suit the parties or the parties do not agree on changes to such customs, Town government can effectuate changes through the adoption of by-laws or even a charter. Such local legislation can govern "who speaks first", or who must provide information, or who organizes the budget and when.

I would be happy to assist you in any way you require in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "Richard Bowen", written over the typed name.

Richard Bowen

RB/sjm  
cc: Board of Selectmen