

Town Counsel's Opinion on Citizen Sponsored Articles for ATM 2016

Article 20		Not Legal
Article 21		No Comment
Article 22	Paragraph 1	Not Legal
	Paragraph 2	Not Legal
	Paragraph 3	No Comment
	Paragraph 4	Not Legal
	Paragraph 5	No Comment
	Paragraph 6	No Comment
	Paragraph 7	Not Legal
	Paragraph 8	No Comment
	Paragraph 9	Not Legal
	Paragraph 10	Not Legal
Article 27		Not Legal
Article 41		Legal
Article 43		Not Legal

VOTE TO APPROVE FULL-DAY, TUITION FREE KINDERGARTEN

Article 20 To see if the town will vote to raise and appropriate, or to transfer from available funds, or to authorize the Town Treasurer with the approval of the Board of Selectmen, to borrow (and to issue bonds or notes therefore) any sum or sums of money, or seek an Operational Override or by any combination of these methods of financing as may be necessary or desirable, make available funds for the purpose of providing Full Day Kindergarten for all eligible Canton children at no expense.

Expected first year cost is approximately \$750,000.00. The purpose of this article is to assure, for every Canton child, access to high-quality, tuition-free full-day kindergarten. Time is of the essence so that School Department can implement tuition-free full-day kindergarten at start of the 2016-2017 school year and start process of receiving state aid to cover majority of future costs. It is anticipated that increase in state funds will start in year two of implementation to significantly off-set costs in future years. One recent calculation projects increase in annual state aid to school department in amount of \$607,956.00 in year two of tuition free Full Day Kindergarten.

According to Massachusetts Department of Education: Full Day Kindergarten in Canton for all students will enhance the educational experience of children by ensuring access to high quality full-day kindergarten programs to assist in preventing and closing proficiency gaps through integrating curriculum across the content areas; increasing inclusion; promoting continuity of curriculum from preschool to third grade; and developing other program components.

Full-Day Kindergarten is defined as at least five instructional hours, for five days/week, for 180-days/school year.

Anthony Braconi and 17 others

Town Counsel Opinion:

Article 20

M.G.L. c.71, Section 34 states:

“[e]very city and town shall annually provide an amount of money sufficient for the support of the public schools as required by this chapter, provided however, that no city or town shall be required to provide more money for the support of the public schools than is appropriated by vote of the legislative body of the city or town. In acting on appropriations for educational costs, the city or town appropriating body shall vote on the total amount of the appropriations requested and shall not allocate appropriations among accounts or place any restriction on such appropriations. The superintendent of schools in any city or town may address the local appropriating authority prior to any action on the school budget as recommended by the school committee notwithstanding his place of residence. The city or town appropriating body may make nonbinding monetary recommendations to increase or decrease certain items allocating such appropriations.

The vote of the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation.”

In Counsel's opinion, as a general matter M.G.L. c.71, Section 34 requires the Town Meeting to vote upon the appropriations requested by the School Committee and does not allow Town Meeting to determine expenditures for particular purposes within the total appropriation for educational costs. In Counsel's opinion, Article 20 would violate M.G.L. c.71, Section 34 because it would require expenditures for full day, tuition free kindergarten.

VOTE TO APPROVE MUNICIPAL WIRELESS NETWORK

Article 21 To see if Annual Town Meeting will vote to authorize Town Meeting Moderator to establish a committee to examine and report on the feasibility of creating a Municipal Wireless Network for the benefit of public safety and assist town employees in their duties and be available by subscription to the public.

1. Said committee should file annual reports to each Annual Town Meeting and advise Board of Selectmen on feasibility and costs of building such a network town wide or in stages within the town of Canton. Said committee should investigate benefits to scaling the project to include partnering with neighboring towns.
2. Said committee should consist of not more than nine voting members with terms of one year appointed by Town Moderator and include as many as five ex-officio members who are town employees as appointed by the Board of Selectmen if they deem appropriate. All liabilities to the Town should be considered.
3. Said committee's role is exploratory for the Town to be ready in event that wireless technology industry events make it prudent for the Town of Canton to offer a municipal wifi system upon expiration of any telecommunications contracts. Primary goal: develop ideas enhancing quality of internet connections.
4. Said committee should examine municipalities offering Municipal Wifi networks: There are connection speeds offered to public of 1,000 mbps vs. current routine speeds in Canton of 25 mbps.
Or take any action related thereto.

Anthony Braconi and 17 others

Town Counsel Opinion:

Article 21

Town Counsel has no comments regarding Article 21: Municipal Wireless Network, as set forth above.

VOTE TO AMEND GENERAL BY-LAWS – MUNICIPAL GOVERNMENT REFORM

Article 22 To see if Annual Town Meeting will vote to amend appropriate Town of Canton General By Laws to effect:

1. Expenditures from any “mitigation account” or revenue generated by negotiation shall not exceed \$20,000 without authorization of Annual Town Meeting or Special Town Meeting. In the event of an expenditure required by an emergency, a super majority vote of the appointed members of the Finance Committee shall allow the expenditure. The Finance Committee must first designate with a recorded vote that expenditure is an emergency. All other balances, debits, credits and expenditures from any “mitigation account” or revenue generated by negotiation, shall be posted to town website with note of explanation and detail of the vote which authorized the expenditure;
2. All revenue from “gifts” or “mitigation” exceeding \$20,000 shall be considered as General Fund revenue and appropriated only by Annual Town Meeting: The exception being gifts designated by the Grantor for a specific project or use with a clearly defined purchase, scope of work and timeline for the project that was previously approved by Annual Town Meeting or Special Town Meeting;
3. All departments shall notify Finance Committee within 72 hours of incurring expenses that will exhaust funds budgeted in that fiscal year for any line item in the Operating Budget of the town which may trigger a request for “emergency” transfer from Cash Reserve account;
4. Establish term limits for elected officials;
5. Move annual town elections from April to second Saturday in May beginning 2017 or as appropriate;
6. All contracts signed by town officials be posted to the town website within 2 weeks of signing;
7. No elected members of a board shall avoid compliance with Open Meeting Laws by meeting individually or in small groups for same exploratory or negotiation purpose with any party. Meetings for same purpose should be on-record in open meeting or executive session. There shall be an exception for site visits where defined purpose is to examine property for specific use or alteration;
8. All enterprise accounts shall be audited every 3 years both for financial review and compliance with generally accepted accounting principles, practices and procedures;
9. The awarding by the Town of the contract for posting advertised legal notices shall be alternated between local media on annual basis if alternating media agree to same or lower contractual cost. Legal notices shall also be posted in home page menu location on town website as regular routine;
10. That for the purpose of funding articles sponsored by citizens at Annual Town Meetings or Special Town Meetings, 10% of money allocated for Capital Expense Article be available to citizen articles;

11. Or take any action related to Government Reform, Transparency and Accountability.
Anthony Braconi and 17 others

Town Counsel Opinion:

Article 22

The following are Town Counsel's comments on Article 22- Municipal Government Reform.

Paragraphs 1 and 2

M.G.L. c.44, Section 53A states:

“An officer or department of any city or town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift ... in towns with the approval of the board of selectmen Notwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation. If the express written terms or conditions of the grant agreement so stipulate, interest on the grant funds may remain with and become a part of the grant account and may be expended as part of the grant by such officer or department receiving the grant or gift without further appropriation. ...”

In Counsel's opinion, Paragraphs 1 and 2 would violate M.G.L. c.44, Section 53A by requiring Town Meeting authorization for gifts and funds generated by negotiation.

Paragraph 3

No comments.

Paragraph 4

In Counsel's opinion, this article would require a home rule petition because the terms of many elected officials are established by state statutes.

Paragraph 5

No comments.

Paragraph 6

No comments.

Paragraph 7

In Counsel's opinion, Paragraph 7 conflicts with the Open Meeting Law, which regulates deliberation by a quorum of a public body and which already exempts on-site inspection of a project or program, as long as the members of the public body do not deliberate.

Paragraph 8

No comments.

Paragraph 9

In Counsel's opinion Paragraph 9 would violate M.G.L. c.30B, which regulates the awarding of municipal contracts.

Paragraph 10.

In Counsel's opinion, the decisions whether to fund articles sponsored by citizens at Annual Town Meetings or Special Town Meeting must be made on an article by article basis.

VOTE TO APPROVE TERM LIMITS FOR ELECTED AND APPOINTED BOARDS AND COMMITTEES

Article 27 Any member of a Board or Committee, elected or appointed, will not serve more than nine (9) consecutive years on the same board or committee if that board and committee is filled with appointments or elections for three year terms; or for ten (10) consecutive years on the same board or committee if that board and committee is filled with appointments or elections for five (5) year terms.

James R. Sims and 13 others

Town Counsel Opinion:

Article 27

In Counsel's opinion, Article 27, as set forth above, would require a home rule petition because the terms of many elected and appointed Board and Committee members are established by state statutes.

AMEND ZONING MAP BY CHANGING DESIGNATION FROM INDUSTRIAL TO GENERAL RESIDENCE

Article 41 To see if the Town will vote to amend the Zoning Map of the Town, as must recently amended, by changing the designation of four parcels of land located on Bolivar Street from Industrial to General Residence. Said parcels are described on the Board of Assessors' Maps as Map 42, Parcels 1,2,3 and 4 and are shown on the attached segment of the Assessors' Map 42, or take any other action in relation thereto.

Attorney Paul A. Schneiders and 14 others

Town Counsel Opinion:

Article 41

This is Town Counsel's opinion on Article 41, which would rezone parcels identified as Map 42, Parcels 1, 2, 3 and 4 from the Industrial Zoning district to the General Residence Zoning district.

The parcel addresses are as follows:

Map 42, Parcel 1

222 Bolivar Street

Owner: Stella J. Karavas

Area: 24,939 sf.

Map 42, Parcel 2

230 Bolivar Street

Owner: Stephen Blushi Realty LLC

Area: 19,105

Map 42, Parcel 3

220 Bolivar Street

Owner: Lewis Realty Trust

Area: 109,178

Map 42, Parcel 4

216 Bolivar Street

Owner: Lewis Realty Trust

Area: 150,737

These parcels are bordered by land in the General Residence district and by some land to the northeast in the Single Residence B district. The information provided indicates that the total area of the parcels to be rezoned is 303,959 square feet, or 6.97 acres.

The fact that these parcels border on other land in the General Residence district and that the area of the land to be rezoned is almost seven acres indicate, in Counsel's opinion, based upon the facts that have been provided, that this rezoning would likely be upheld if challenged.

VOTE TO APPROVE A TOWN-WIDE COMPREHENSIVE TRAFFIC STUDY AND REVIEW

Article 43 To see if the town will vote to raise and appropriate, or to transfer from available funds, or to authorize the Town Treasurer with the approval of the Board of Selectmen, to borrow (and to issue bonds or notes therefore) any sum or sums of money, or seek an Operational Override or by any combination of these methods of financing as may be necessary or desirable, to make \$450,000 available funds for the purpose of funding:

1. A town wide Comprehensive Traffic Study and Review of all existing infrastructure and components;
2. Study should include traffic flow from origination to town borders at peak and non-peak hours;
3. Study should assemble all available recent data collected from previous evaluations;
4. Study should be authored by vendor not associated with any previous evaluations;
5. Study should recommend any improvements or additions necessary to improve infrastructure;
6. Study should evaluate impacts from changes currently proposed to Canton roadways;
7. Or take any action related thereto.

Anthony Braconi and 17 others

Town Counsel Opinion:

Article 43

In Counsel's opinion, Article 43 is legal as to form, however an issue exists as to the override to fund any town meeting motion.

*An operational override might be authorized pursuant to G.L. c. 59, § 21C, paragraphs (f) and (g). Paragraph (g) is set forth in full below. However, pursuant to G.L. c. 59, § 21C, paragraph (g), **only the Board of Selectmen**, as the local appropriating authority as defined by §21C(a), may place a question on the ballot to seek voter approval of an override pursuant to paragraphs (f) and (g).*

Therefore, the article is legal as to form, and legally the Town can appropriate money subject to an override, however, no money would ever be available by that vote unless, separately, the Board of Selectmen decide to place an override question on the ballot, and do so - no vote of town meeting can accomplish this requirement.

G.L. c. 59, § 21C

...

*(g) **The local appropriating authority** [defined by paragraph (a) as the Board of Selectmen] of any city or town which is subject to the provisions of paragraph (f) may, by majority vote, seek voter approval to assess taxes in excess of amount allowed pursuant to said paragraph (f) by a specified amount.*

Any question submitted to the voters shall be worded as follows:

"Shall the (city/town) of ___ be allowed to assess an additional \$___ in real estate and personal property taxes for the purposes of (state the purpose(s) for which the monies from this assessment will be used) for the fiscal year beginning July first, nineteen hundred and ___?"

YES ___ NO ___"

Said question shall be deemed approved if a majority of the persons voting thereon shall vote "yes".

In addition, the following is Town Counsel's opinion on the language in Article 43 of the warrant (related to a citizen's petition for a Town-wide traffic study):

"4. Study should be authored by vendor not associated with any previous evaluations;"

Because a vote on a motion with the above language includes the word "should," it is a permissive request and not a legally binding directive to the Town's Board of Selectmen or chief procurement officer (CPO) inconsistent with the Board's executive powers to enter into contracts or the CPO's power to solicit bids. Accordingly, Counsel does not object to the above language.