

## INFORMATION ON BOARD OF SELECTMEN AND PLANNING BOARD:

The Town of Gilford's website is [www.gilfordnh.org](http://www.gilfordnh.org). This will provide you with some general information on the Board of Selectmen and Planning Board.

The authority granted to the Board of Selectmen and Planning Board is governed by the NH Revised Statutes Annotated (RSA's). On the homepage of the Town website, if you go to "Links of Interest", you can go directly to the State of NH Website. ([www.nh.gov](http://www.nh.gov))

On the State's website, click on Laws and Rules, then State Statutes On-line.

From there, click on Browse Index, and you will see a Table of Contents. There is a great deal of information on the Planning Board under Title LXIV, Planning and Zoning. These Chapters are pretty self-explanatory.

As far as information on the Board of Selectmen, Title III, TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES has information on the duties of the Board of Selectmen in Chapters 41; specifically Sections 41:8 and 41:9.

I also have a copy of the NH Local Government Center's Chapter regarding "The Role of Town Selectmen", which is attached.

Each member of the three-person Board of Selectmen receives a yearly stipend of \$2,500.00.

Sandy Bailey  
Administrative Secretary  
527-4790

# Chapter Four

## The Role of Town Selectmen

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This chapter focuses on the role of the board of selectmen in towns with the town meeting form of government. Many of the powers and duties of the selectmen discussed in this chapter also apply to the town council in towns that have adopted charters under RSA Chapters 49-B and 49-D. In some of those towns, the council is the governing body as well as the legislative body. In others, the charter determines the authority of the town meeting as a legislative body. For example, in a town council-budgetary town meeting town, the authority of the legislative body may be limited to adopting the town's operating budget, while the council, as the governing body, retains all other governing authority of the town. It is important for officials in town council towns to understand the detailed provisions of the town charter in order to know who has authority to act and to what extent.

### I. What Do Selectmen Do?

#### A. Prudential Affairs

In Chapter Three, we learned that the general policy-making authority of a town meeting town rests with the legislative body—town meeting. Under RSA 41:8, the board of selectmen's duty is to "manage the prudential affairs of the town." Prudential affairs should be thought of as filling in the details. Thus, the selectmen are the executive, managerial and administrative body that does whatever is necessary to carry out the votes enacted at town meeting. For example, the town meeting appropriates money, but under authority given them in RSA 41:9, the selectmen spend it. If the town meeting votes to sell land, it is the selectmen who sign the deed.

This power to manage, while broad, is not unlimited. The selectmen are not the general agents of the town and therefore have no broad authority to act with the full power of the town. *Moulton v. Beals*, 98 N.H. 461 (1954). Thus, when challenges and opportunities present themselves during the year, the selectmen cannot proceed alone, and may be required to call a special town meeting to resolve an issue. See the discussion of this issue in Chapter Three. However, the board of selectmen does have some clearly assigned roles and powers, which are discussed below.

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## **B. Calling the Town to Meeting**

One of the main "governing body" functions of selectmen is to call the town to its annual or special meetings by drafting and posting the warrant. The warrant is the agenda for the meeting, and contains written statements of the issues to be considered by the voters. While some of the articles are placed to comply with state laws, or at the request of citizens by petition under RSA 39:3, most of the articles are created by the selectmen. The selectmen's authority over the warrant under RSA 39:2 and preparation of the budget under RSA 31:95 and RSA 32:5 allows the board to act as an advisory body to the town meeting.

### **1. Budget Advice**

In towns with budget committees, the selectmen's budgetary advice goes to the budget committee; and in town manager towns, the manager advises the selectmen on the budget. In towns with budget committees, the amounts shown in the warrant on the annual budget as "recommended" by the selectmen constitute their advice to the town meeting of the levels of funding required to deliver town services. RSA 32:5.

### **2. Reports**

As part of its advisory role, the board of selectmen prepares an annual financial report of the town and is responsible for publishing the reports of all other officers. The report must be available seven days before the annual meeting. See RSA 41:13 and 42:14. Specific reports to the state Department of Revenue Administration are required by RSA 21-J. The information is used by the state to administer various tax laws, and to assure that municipalities comply with the municipal budget law, RSA Chapter 32, and the municipal finance law, RSA Chapter 33.

### **3. Land Use Protest Petitions**

If a proposed change to the zoning ordinance is protested, the selectmen are responsible for ascertaining the validity of the protest petition and warning the voters of the existence of the petition by posting it at the polling place prior to the beginning of the meeting. RSA 675:5, II.

## **II. Authority and Power of Selectmen**

### **A. One Selectman Has No Authority**

Authority rests with the board acting as a board. The same is true in council towns. An action taken by the selectmen or council members has no legal effect unless it is voted on by a majority of the board at a public meeting that complies with the Right to Know Law, RSA Chapter 91-A.

It is all too common for one selectman to think his or her action is final, as long as a second selectman is contacted by phone, or as long as at least two of three selectmen put their signatures on a piece of paper. This practice is legally incorrect because the third selectman's right to participate in decisions and the public's right, under RSA Chapter 91-A, to observe the decision being made at a public meeting is violated.

If two or more members of the board communicate by e-mail or instant messaging, on a conference telephone call or on a video conference, an argument can be made that there has been a meeting without prior notice to the public in violation of the Right to Know Law. See the discussion in Chapter Five. The text of on-line communications may be required to be disclosed, even from a member's home or business computer account, and the action taken may be challenged in court. Therefore, be conscious of the pitfalls of communicating in this manner. As this publication went to press, the state legislature was considering numerous amendments to the Right to Know Law to clarify its application to electronic records and communication.

## **B. Substantive Powers**

In addition to its advisory and prudential functions, the board of selectmen has some independent authority, meaning it can act without town meeting approval. Most of these substantive powers are set forth specifically in statute. They include:

### ***1. Regulation of Town Highways and Commons***

The power granted to the selectmen by RSA 41:11 includes setting speed limits (not below the statutory minimum found in RSA 265:60) and establishing parking zones. See Chapter Ten for more information about regulating highways.

### ***2. Layout of Highways***

Authority is granted in RSA 231:8 through 19 to the selectmen to create new highways by layout. See Chapter Ten for more information.

### ***3. Hazardous and Dilapidated Buildings and Excavations***

The selectmen can order dilapidated buildings repaired or demolished, or hazardous excavations filled or protected as provided in RSA Chapter 155-B.

### ***4. Licensing***

Selectmen issue licenses for many different purposes. These include community events (RSA 31:100), transient vendors (RSA 31:102-a), and parades and other types of shows (RSA Chapter 286). Anyone who wants to operate a junkyard in the town must receive a licensing permit from the board of selectmen as outlined in RSA 236:111 through 129.

### ***5. Health Regulations***

The selectmen and the health officer, acting jointly under authority of RSA Chapter 147, make up the town's board of health, which can enact health regulations without town meeting approval. This is a powerful tool for dealing quickly with health-threatening situations. It includes the ability to fix sewage systems that have failed, or remedy other health problems, and to collect the town's costs from a landowner in the same manner as taxes are collected. See RSA 147:7-a and 7-b for process details.

### ***6. Setting Fees***

If the town meeting has adopted the provision and granted the authority to the selectmen, RSA 41:9-a allows the board to set fees for regulatory programs such as building permits, or for revenue-producing facilities such as the solid waste facility.

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The selectmen must post notice of its proposed action and hold a public hearing before imposing or changing such fees.

### ***7. Establish and Amend Local Welfare Guidelines***

The board of selectmen adopts guidelines to administer the general assistance program as provided in RSA 165:1. The town can elect or appoint a local welfare administrator, but if it does not, this duty falls back upon the selectmen. See Chapter Seven for more details on the local welfare obligation of municipalities.

### ***8. Manage and Regulate Use of Town Property***

The selectmen's authority to manage land includes the authority to rent or lease town property for a public or private use for up to one year. See RSA 41:11-a. Leases of longer duration require a town meeting vote. Some statutes grant managerial authority over certain town property—library property or conservation land, for example—to boards other than the selectmen.

### ***9. Financial Accounting and Safeguarding***

A major role of the selectmen, as provided in RSA 41:9, is to establish procedures to receive and deposit town revenue and authorize the treasurer to pay town funds to accomplish the purposes appropriated by the voters. The selectmen prepare financial reports to the state and to the town meeting, and establish “safeguarding procedures” and accounting control procedures for all town assets. The selectmen are often the agents selected by the town meeting to authorize the expenditure of money from capital reserve funds.

### ***10. Cemetery Trustees***

RSA 289:6, II-a allows the town meeting to delegate the duties of the cemetery trustees to the board of selectmen.

### ***11. Election Duties***

Under RSA 658:9-a, the selectmen are responsible for the physical set-up of the polling place for town elections, including reserving the polling place, providing voting booths and making sure all of these comply with the requirements for accessibility for persons with disabilities and the elderly. For state elections, the New Hampshire Constitution, Part II, Article 32, requires the selectmen to be present at the polling place during the election. However, RSA 659:9 designates the moderator as the chief election official of the town.

### ***12. Adoption and Amendment of Town Codes and Ordinances***

Under RSA 41:14-b, towns with populations greater than 10,000 may give the selectmen the power to establish and amend town ordinances and codes after two public hearings. This power does not apply to zoning, historic district or building code ordinances adopted under the provisions of RSA Chapter 675.

### ***13. Taxation***

Selectmen are responsible to assure that all taxable property in a town is inventoried and appraised, and that a warrant is issued to the tax collector for the collection of

such taxes. See RSA Chapters 75 and 76. Once taxes have been assessed, selectmen deal with requests to abate the taxes when filed by taxpayers.

#### **14. Litigation**

The board of selectmen works to resolve claims made against the town, to defend the town when it is sued for the actions of its employees, departments, or boards, and to enforce the ordinances and regulations that have been adopted by the board or by the town meeting. The board selects one or more attorneys to assist in these cases and unless there is a town meeting vote to the contrary, has the authority to resolve pending disputes. *J.E.D. Associates, Inc. v. Danville*, 122 N.H. 34 (1982).

### **C. Appointing Other Officials**

The selectmen are responsible for appointing persons to serve in various town positions. They may supervise the work of these persons, and if specifically permitted by statute, the board may remove them from office under limited circumstances.

#### **1. Direct Appointment**

The town meeting has the option to create any elected (RSA 41:2) or appointed official it deems necessary to perform the work of the town. For example, many towns have an administrative assistant, even though there is no statute mentioning this position. The duties, pay and manner of selection of these optional officers are all up to the town meeting, and often the town meeting delegates the task of defining these duties and supervising the work performance of these appointed officials to the selectmen.

Note that some appointed positions, such as members appointed to a planning board, a zoning board of adjustment or a conservation commission have duties assigned by state law, and are not subject to the direct supervision of the selectmen when they perform their statutory duties. In addition, these persons are not treated as town employees.

#### **2. Approval**

The title and duties of some positions are defined by state statute. For example, a deputy tax collector is appointed by the tax collector subject to the selectmen's approval under RSA 41:38. The process is the same for the deputy town clerk (RSA 41:18) and deputy treasurer (RSA 41:29-a).

#### **3. Nomination**

The health officer is recommended by the selectmen to the state Department of Health and Human Services, but is appointed by the DHHS commissioner under RSA 128:1.

#### **4. Filling Vacancies**

A vacancy is defined in RSA 652:12 and results from, among other things, death, resignation and cessation of domicile in the town. Note that vacancy doesn't include a temporary absence from the town. RSA 669:61 through 75 spells out how vacancies in each office are filled by the board of selectmen or other board or officer empowered to deal with a specific type of official.

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## **D. Authority Over Other Officials**

### **1. Other Elected Officials**

For the most part, the officers the town is either required to elect or has the option of electing are independent of the selectmen and not subject to their control. These required or optional elected positions are summarized in RSA 669:15 through 17 and include town clerk, tax collector and treasurer. Their statutory duties are listed primarily in RSA Chapter 41, although some are elsewhere, including the trustees of trust funds, whose duties are found in RSA Chapter 31.

### **2. General Guidelines**

The relationship between the selectmen and an elected town clerk, tax collector, police chief or road agent may be the subject of dispute and uncertainty if either the selectmen or the official fails to clearly understand his or her roles and responsibilities assigned by law.

**a. No Interference.** The selectmen cannot interfere with the exercise of functions that, by statute, are delegated to these other officials. The other elected officials are not present in the town offices as employees of the selectmen, and should not be asked to perform duties properly assigned to other town departments, such as secretarial duties for a land use board.

**b. Safeguarding.** On the other hand, the selectmen in the exercise of their budgeting, spending and asset-safeguarding authority under RSA 41:9 have the right to obtain information from these other officials, to hire personnel working under them, set the salaries of these additional persons (subject to the limits of town meeting appropriations), to approve purchasing of supplies and equipment and to establish internal controls and set rules governing the safeguarding of all town property and financial assets.

**c. Cooperation.** To the extent that elected officials can agree upon the hours of operation of town offices, and the nature of the duties that each should perform, the best interests of the public are served. The reality is that an elected town clerk will often help a town employee perform his or her duties when available, and the town employee will often help the elected official during busy times. This spirit of cooperation should be fostered where possible.

### **3. Supervisory Authority**

The statutes require the selectmen to supervise some positions directly. The job of supervising people at work is no less difficult in the field of public administration than in the private world of business. In most cases, the board will be most effective if it sets clear goals for employees early in the year, and measures performance toward the goals, rather than involve itself deeply in the details of the day-to-day tasks performed by the employees.

**a. Road Agent.** RSA 231:62 through 65 allows the selectmen to supervise the road agent, even if the position is elected. The selectmen adopt general policies, such as the winter maintenance snow and ice policy, as well as

specific regulations for certain locations, such as parking on a town street. They evaluate the work of the road agent in achieving the financial goals they set, the satisfaction of the public with the condition of roads, and the physical maintenance of town roads, bridges and sidewalks.

**b. Chief of Police.** According to RSA 105:2-a, an appointed police chief is “subject to such written formal policies as may be adopted by the appointing authority,” which is the board of selectmen unless there is a police commission or a town manager. Unlike other town employees, the police chief, whether appointed or elected, is subject to dismissal or suspension only for cause, justified in writing. After being suspended or dismissed, the police chief has the additional special protection of the right to receive a hearing in superior court. Because of the crucial role and political sensitivity of this position, any personnel actions involving the police chief should be taken only after review by the municipality’s legal counsel. These special protections do not apply to other officers in the police department, who are subject to the supervisory authority of the selectmen, as well as the chief.

**c. Appointed Fire Chief.** If the local legislative body adopts RSA 154:5, the relationship between a town and its appointed fire chief, is similar to that of the appointed police chief. An appointed fire chief has control over his or her department, but is subject to any written formal policies adopted by the appointing authority. Suspension or dismissal can occur only for good cause and only with a written statement of reasons. Although the dismissal or suspension can take effect immediately, without a local hearing, the fire chief has the right to a hearing in superior court if applied for within 10 days.

RSA 154:1 permits municipalities to organize their fire departments in other ways, including creating a fire commission or electing the fire chief. As with the police chief, LGC recommends that personnel actions be taken against a fire chief only following careful consideration of the issues with legal counsel for the municipality.

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### III. Role of a Town Manager

#### A. Hiring

The board of selectmen is responsible for hiring the manager in a town that votes to adopt the town manager law, RSA Chapter 37. In town council towns, the council-manager form of government is required and is adopted as part of the town’s charter.

RSA 37:3 requires a manager to be hired on the basis of “education, training, and experience to perform the duties” of manager and “without reference to political belief.” The manager serves at the will of the selectmen or council and can be terminated at any time for cause. A charter or contract may have other provisions affecting this employment relationship. The board of selectmen or council remains responsible for