CHAPTER 25

Town Meetings

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§25.1. Introduction: A perspective. *Town Meeting Time*[1] was written primarily for, and from the point of view of, the participants (the town officials and the voters) in "one of American democracy's oldest rites: the town meeting." It may not be amiss to discuss town meetings from the point of view of a city lawyer, born and bred, who suddenly finds that he has a client with a problem (probably zoning) involving town meeting action.

An attorney in this situation will find that he is dealing with an institution for which there is no real counterpart in city government. He should remember that the institution antedates the city form of government in Massachusetts by two centuries, going back to the very founding of the Plymouth and Massachusetts Bay Colonies.[2] Boston, the Commonwealth's first city, was a town until 1822. If he looks into the matter further, the city lawyer will find that city governments have gone out of style in the twentieth century. The last town to become a city was Gardner, in 1922,[3] although many towns now far exceed the size at which conversion to a city was once thought to be necessary or desirable.[4] The adoption of Mass. Const. amend. art. 70

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§25.1. [1] R. B. Johnson, B. A. Trustman and C. Y. Wadsworth, Town Meeting Time: A Handbook of Parliamentary Law (1962).

[2] See, e.g., the report submitted by the Legislative Research Council Relative to Town Meetings in Regional Schools, Dec. 27, 1961 (House Doc. No. 3687 of 1962), at 21.

[3] Kevin H. White, Historical Data Relating to Counties, Cities and Towns in Massachusetts 30 (1966). In 1964, Methuen elected as a town meeting member, with more than 1000 votes, a man who had died three weeks before the election. Yet they seem to be still satisfied with the institution. Boston Globe, March 4, 1964, at 10, col. 1.

[4] A joint order of the General Court (House Bill 5855, adopted by the House on June 22, 1970, and by the Senate on June 23, 1970) directed the Legislative Research Council to report not later than January 27, 1971, on the feasibility of constitutional or statutory changes which would require towns to become cities upon attaining a population of 20,000, or would permit such large towns to place certain legislative powers in the hands of their boards of selectmen. The council circulated a questionaire to the moderators of Massachusetts town meetings, seeking informa-

enabled towns that outgrew the capacity of their meeting halls to adopt, in lieu of a city charter, the representative town meeting, a device which adheres as closely as possible to the old tradition, within the limits imposed by the size of the hall, on a democratic rather than on a first-come, first-served basis.[5]

Most participants in a town meeting are well aware of the venerability of the institution, and are also aware (even if they cannot cite chapter and verse) of the many celebrated political philosophers, beginning with Thomas Jefferson, who have characterized town meetings as the epitome of democracy and the school of political liberty. It is desirable, therefore, to approach the town meeting diplomatically, as on a mission to an independent republic, avoiding any suggestion of bluster or condescension. In view of the presumption of legislative validity which applies to town meeting action, it is not likely that an appeal from its action will be successful.

In *Peaceable Kingdoms,* published in 1970, Professor Michael Zuckerman of the University of Pennsylvania has made a substantial contribution to our knowledge of the history of the town meeting in Massachusetts.[6] His thesis is that in the eighteenth century the town meeting was not a majoritarian decision-making device; that, for lack of effective power to enforce a bare majority vote, the town meeting's primary object was a unanimous consensus. Professor Jere R. Daniell of Dartmouth reads this as an argument that the other-directed peer groups of David Riesman's *Lonely Crowd* are not a product of modern civilization but antedated the industrial revolution.[7] For the twentieth-century lawyer, this is principally of interest as it sheds light on the springs that motivate the participants in a modern town meeting. Are they inner-directed or other-directed? There is some evidence of the latter. Representative town meetings, which are usually reasonably cross-sectional of the community, are nevertheless subject to review by a referendum of all the voters if a petition is seasonably filed. So far as this writer is aware, no extensive tabulation and analysis of such referenda has ever been made. However, if it is reasonable to generalize from one not atypical town (the writer's), there is food

tion and views, to which this moderator returned a somewhat testy answer, advising the legislature to leave us alone.

[5] Dowling, Administrative Organization in Massachusetts Towns 8 (Bureau of Govt. Research, Univ. of Mass. 1960).

[6] The historically minded will also be interested in two articles that have recently appeared. Lockridge and Kreider, The Evolution of Massachusetts Town Government, 1640-1740, 23 Wm. & Mary Quarterly 549 (1966), is based on a study of the records of Dedham and Watertown for that period, from which they deduce that in the beginning the two towns delegated practically all of the powers of the towns to their boards of selectmen, but that gradually the town meetings resumed the major powers. Syrett, Town-Meeting Politics in Massachusetts, 1776-1786, 21 Wm. & Mary Quarterly 352 (1964) claims to find that town meetings were sparsely attended and were manipulated by the selectmen through irregularities in the warrants and in the counting of votes.

[7] XXV Historical New Hampshire No. 2, at 52-53 (Summer, 1970).

for thought in the fact that the issues on which the meeting has been reversed have been issues like education and conversation. Can it be that the publicly declared votes of the meeting are influenced by conscious or subconscious desires to be counted with the white hats instead of the black hats to an extent that does not apply to the secret-ballot referendum? The situation is complicated by the fact that rugged inner-directed individualism is one of the traditional values most widely accepted by this particular peer group.

§25.2. The warrant. What is the protocol by which one approaches this independent republic called the town meeting? The basic preliminary is an article in the warrant, covering the subject on which town action is anticipated. City lawyers will recognize the warrant as the equivalent of the notice of a meeting of stockholders in a business corporation. The warrant for a town meeting is issued by the selectmen and must be posted at least seven days before the meeting, in the manner prescribed by the town's by-laws or, if there is no by-law, in a manner prescribed by a vote of the town or approved by the attorney general.[1]

The selectmen may insert in the warrant whatever articles they please. They must insert such articles as are petitioned for by 10 or more voters for the annual town meeting, or by 10 percent of the voters but not less than 100 voters for a special meeting. The selectmen must call the annual meeting and may call as many special meetings as they see fit. They can be compelled to call a special meeting by a petition signed by 20 percent of the voters or 200, whichever is lesser.[2] Even if the city lawyer and his client can collect the necessary signatures, they must consider which is the lesser of two evils: to have their business buried in the middle of a long warrant for the annual meeting, with the consequent risk of hasty action; or to risk irritating the voters by calling them from their homes and television sets for a special meeting, with the ever-present possibility that a quorum may not attend.[3]

The optimum strategy is often to hook a ride on a special town meeting which the selectmen have already decided to call to consider other business which is important enough to insure a quorum but not to consume the entire evening. This strategy is not always easy to execute, unless one is in close touch with the doings of the selectmen, because of a mystery known as "opening and closing the

§25.2. [1] G.L., c. 39, §10.

[2] Ibid.

[3] The petitioners cannot specify the date for the meeting. This is within the discretion of the selectmen. Lyon v. Rice, 41 Conn. 245 (1874). It must be held within 45 days, however; G.L., c. 39, §10. In its 1971 election, Burlington will have an opportunity to vote upon an interesting novelty. Chapter 686 of the Acts of 1970 established, subject to acceptance by the town, a form of representative town meeting which contains, among other things, a provision that special meetings may be held on the call of the moderator, or ten or more members.

warrant." This sometimes happens all in one evening. What it means is that the selectmen have (a) decided to call a special meeting and (b) instructed the town counsel to send the warrant to the printer the next morning. A student of the subject will find that neither the quoted terminology nor anything like it appears in the statutes. "Opening the warrant" is really just deciding to call the meeting. The warrant is always "open," however, in the sense that one need not wait until the decision to call it has been made, but may petition for the meeting itself or for the insertion of the desired article "in the next special town meeting" whenever that may be.

"Closing the warrant" merely means that the selectmen and the town counsel have decided that the time required to prepare, print and post the warrant will not allow any additions. The writer is not aware of any case in which their judgment in this respect has been challenged, no doubt for the good and sufficient reason that it would be quicker and cheaper to petition for another meeting.

§25.3. Committee hearing. If zoning is involved, G.L., c. 40A, §6, imposes another preliminary: a hearing by the planning board (or the selectmen if there is no planning board) after fourteen days' notice. The hearing need not be held before the warrant for the town meeting is published, but it must be held before the meeting itself, as the meeting cannot act without a recommendation by the planning board following its hearing.[1] The recommendation may be no more than that the article be referred back to the board for further study, but that will suffice.[2]

Other matters may, under by-law, require a hearing and a recommendation by the town's finance committee or other board or official, such as the board of health, the surveyor of highways or the board of public works, which in many towns is succeeding to the functions of the surveyor.

Even if no by-law requires it, however, the city lawyer's proposal is not likely to receive the desired action by the town meeting unless it has had a favorable recommendation by the finance committee, sometimes called the advisory committee. This action is usually after a meeting, or even a series of meetings, which may be informal but are subject to the requirements of the Open Meeting Law.[3] He should bear in mind that "members of town finance committees perform a

§25.3. [1] Even if the planning board's report is unfavorable, the town may act favorably. Johnson v. Framingham, 354 Mass. 750, 754, 242 N.E.2d 420, 422 (1968); Noonan v. Moulton, 348 Mass. 633, 639, 204 N.E.2d 897, 901 (1965).

[2] Rousseau v. Building Inspector of Framingham, 349 Mass. 31, 34, 206 N.E.2d 399, 401 (1965). It will not suffice, however, if the board merely reports that it is evenly divided on the question. Whittemore v. Town of Falmouth, 299 Mass. 64, 12 N.E.2d 187 (1937).

[3] G.L., c. 39, §§16, 23A, 23B and 23C.

difficult public service, usually if not invariably without compensation."[4]

Further, it is usually desirable, as a practical matter, to meet the selectmen in advance and obtain their support, and it is far from unheard-of for the sponsors of an important article to hold a series of neighborhood meetings with groups of voters or town meeting members in order to convert them to the true faith. The assistance of architects, engineers, traffic consultants, professional city planners and landscape architects may be invaluable in these preliminary meetings and hearings.

§25.4. The meeting. Let us assume that our city lawyer has done all his groundwork and the night, or, more rarely, the Saturday morning, of the town meeting has arrived. He advises his wife again that he will not be home for dinner and arrives a little early at the meeting hall, partly to find a parking space within several blocks of the hall and partly to establish contact with his friends and allied experts before they are lost in the crowd.

If he has made a good impression on the town officials, one or more of them will be on hand to get him and his experts admitted to the hall by the checkers who will be subjecting the entrants to the test of the voting list. He will then be directed to the balcony or other section set aside for visiting nonvoters (or, in the case of the representative town meeting, nonmembers).

At this point, he may be introduced to one more town official, one who probably will have stayed away from the preliminary hearings and meetings in order to maintain his neutrality and the appearance thereof. This is the moderator, the gentleman who will preside over the meeting, decide all questions of order, regulate the proceedings and declare the vote.[1] Sharing the platform with him will be the town clerk, who keeps the records of the meeting.

At or near the appointed hour, the moderator will rap his gavel and announce that a quorum is present.[2] This may astonish the city lawyer, whose homework will have included ascertaining the quorum required by the town by-laws, and who may not find the quorum present as visible as the moderator does. The latter, however, aided by the clerk's consultation with his checkers, will have calculated that the number of voters necessary to complete the quorum is just outside the hall, having the last-minute smoke which is usually forbidden inside the hall, and the rap of the gavel brings them streaming in.

After the meeting has been called to order, the constable's return of

4 Finance Comm. of Falmouth v. Falmouth Bd. of Pub. Welfare, 345 Mass. 579, 585, 188 N.E.2d 848, 852 (1963) (citing Town Meeting Time, §25.1 *supra*, note 1).

§25.4. 1 G.L., c. 39, §15.

2 If he is too high-handed, the meeting may walk out on him. See Lynn Daily Evening Item, Apr. 26, 1960, at 1 and 6 (Saugus).

the posting of the warrant is read. Then, if it is a representative meeting, the moderator will ask all members not previously sworn to rise and take the oath of office prescribed by G.L., c. 41, §107. This done, he solemnly declares, and the clerk solemnly records, that all the members present have been duly sworn. The possibility that a Quaker or other nonjuror has kept his seat and quietly refused is officially ignored.

Next may come a prayer by a local clergyman. This venerable custom[3] has survived one attack based on school prayer analogies.[4]

Finally the moderator will read article one of the warrant. If this is not the city lawyer's article, he may as well settle down for a long dull wait. Like the court case just before his, the town meeting article before his is not likely to be very interesting to the lawyer from out of town. If this is an annual meeting, there may be, for him, an interminable series of uninteresting and incomprehensible articles dealing with salaries,[5] unpaid bills, unexpended balances, surplus revenue, or "The E and D Account" and the stabilization fund.[6] Yet, as in court, he dare not leave for fear that the list ahead of him will disappear and his article will be taken up without him.

§25.5. Motions. If the city lawyer has attended town meetings in a number of towns, he may observe that their procedures vary. In some towns, the moderator will, after reading an article, call first upon the chairman of the finance committee or the chairman of the board of selectmen to make the first motion under the article. In others, he will call first upon the sponsor of the article, taking the first signature on the petition for the article to be the sponsor's. If the selectmen or other town officials were sufficiently in favor of the proposition, they may sponsor the article and lead the debate. If it is a zoning article, the moderator is very likely to call first upon the chairman of the planning board to insure that the required report and recommendation is not overlooked in the excitement.

If the first motion is going to be favorable, the city lawyer has only two problems. One is to insure, as tactfully as possible, that the motion is properly worded. Usually, but not always, it tracks the language of the article, so that if the article is properly worded the motion is apt

[3] First officially mentioned in the records of the Boston town meeting of Feb. 27, 1701-2; unofficially mentioned in Samuel Sewall's Diary for Mar. 8, 1685-6, and probably going back even further. Seybolt, The Ministers at the Town Meetings in Colonial Boston 300-304 (Publications of the Colonial Soc. of Mass. No. 32, 1937).

[4] Lincoln v. Page, 109 N.H. 30, 241 A.2d 799 (1968).

[5] For illumination of the difference between fixing salaries under §4A and under §108 of G.L., c, 41, see Teed v. Randolph, 347 Mass. 652, 199 N.E.2d 683 (1964).

[6] If it is the 1972 annual town meeting, he will have the added pleasure of observing while the town copes with an 18-month fiscal year in order to shift from the calendar year to a fiscal year beginning on July 1 thereafter, as required by Acts of 1969, c. 849, as amended by Acts of 1970, cc. 52 and 194, both of which amended G.L., c. 35, §16.

to be. Sometimes the motion is merely "that the Town take favorable action on this article." However, if the article leaves blanks to be filled, as in the phrase "and appropriate the necessary money therefor," or contains alternatives, the brief affirmative vote will not suffice.[1]

Sometimes the motion departs somewhat from the language of the article. Then the traditional question arises: Is the motion within the four corners of the scope of the article? The meeting has no power to take action outside the scope of the article. What constitutes scope, however, has varied over the centuries as attitudes toward town meetings have changed. In the beginning, when attending the meeting was considered a civic duty, warning the voters of the precise action that might be taken was not so important. Professor Zuckerman has suggested[2] that it came to be considered important in the eighteenth century as a means of insuring, by discussion before the meeting, the desired consensus. When, in the nineteenth century, attending the meeting became a privilege instead of a duty, the concept of the warning became correspondingly refined. Now, with the revival of the belief that attending the meeting is both a privilege and a duty, and with means other than consensus for enforcing the decision of the majority, a more liberal attitude toward the scope of the warrant is apparent.[3]

The city lawyer's other problem, if things are going well, is whether to let well enough alone or to seek an opportunity to present his case, at the risk of alienating, by talking too much, more votes than he gains.

If the initial motion is unfavorable ("to dismiss" or "to postpone indefinitely"), the first question is whether to accept the verdict and possibly prepare for another attempt later, or to fight it out on the spot. If discretion appears preferable to valor, and the subject is zoning, it is important to recall that in a town which has accepted G.L., c. 40A, §8, an adverse vote will kill the proposal for two years unless the planning board recommends favorable action. The strategy to avoid this predicament is, if possible, to persuade the town to refer the matter back to the planning board for further study.[4]

§25.5. 1 When the article reads "To see if the Town will vote to rezone the whole or any part of (certain tract)," it is undestandable if not excusable that the vote reads the same way: to rezone the whole *or* any part. The court will salvage this by construing it as meaning the whole *and* any part. Halko v. Board of Appeals of Billerica, 349 Mass. 465, 471, 209 N.E.2d 323, 327 (1965); Caires v. Building Commr. of Hingham, 323 Mass. 589, 597, 83 N.E.2d 550, 556 (1949).

2 Peaceable Kingdoms 161-162 (1970).

3 Compare G.L., c. 40, §30, before its amendment by St. 1933, c. 269, and Nelson v. Belmont, 274 Mass. 35, 174 N.E. 320 (1931), with G.L., c. 40A, §6, and Johnson v. Framingham, 354 Mass. 750, 242 N.E.2d 420 (1968). The subject, of course, is zoning and the preliminary hearing by the planning board, but the progression illustrates the point.

4 A motion "to refer it to the next meeting" was not good enough for Judge Forte in a Natick case or for the attorney general in a Norwood case.

To do this or to make a fight, the city lawyer must have at least two friends entitled, either as voters in an open meeting, or as members of a representative meeting, to be recognized by the moderator. They can make and second a motion either to refer the matter back to the planning board or to amend the initial motion into a favorable one. If a fight is to be made and the moderator will not accept the latter type of motion, they should urge the meeting to defeat the unfavorable motion in order to clear the deck for a later favorable one.

The city lawyer should not try to make such a motion himself or even speak on the subject. Someone is sure to raise the point of order (even if the moderator does not) that a nonresident has no right to address the meeting, let alone offer motions to be voted upon. A refinement of this is that in a representative town meeting any voter may address the meeting, but he cannot vote or make or second a motion unless he is a member of the meeting.

This should not mean that the city lawyer cannot be invited to speak. There was a time when it was thought that a single objection could prevent this, but it is now generally recognized that a majority of the meeting may decide whether a nonresident may address it (except, perhaps, in Stoneham).

It is usually desirable to consult the moderator in advance, in order to secure his benevolent neutrality to the idea that a stranger would like to address the meeting. If the moderator has, or thinks he has, his finger on the pulse of the meeting and advises against this, it is probably wise to accept his advice and enlist a native (not necessarily a lawyer) to express the city lawyer's ideas.

Parliamentary maneuvering will usually consist of motions to amend the main motion, or to refer the whole matter to some committee. These may be intended as polite methods of killing the proposition, or they may be more or less friendly offers of opportunities to salvage some part of it by way of compromise. It is important, of course, that they not so alter the main motion as to make it exceed the scope of the article. It is possible that conditions may be attached.[5]

A motion to lay the matter on the table is definitely unfriendly. It is not intended to defer action, but to kill the proposition brutally and immediately, without further debate, and the city lawyer should have some friend on the floor who is prepared to raise a point of order if the moderator does not require a two-thirds vote to lay it on the table. By the same token, the motion for the previous question, which also would terminate debate, should require a two-thirds vote, but it is not necessarily unfriendly. It may be designed to silence the opposition and to make way for a favorable vote on the merits.

§25.6. Voting. Eventually the moment will come when the de-

[5] Bob Ware's Food Shops, Inc. v. Brookline, 349 Mass. 385, 389, 208 N.E.2d 505, 508 (1965).

bate ceases, of its own accord or otherwise, and the moderator puts the question to a vote by voice, by show of hands, by a standing teller count, by roll call or (except in a representative meeting)[1] by secret ballot. In the first instance it will normally be a voice or show-of-hands vote. If the moderator is in doubt, or if his declaration is immediately doubted by seven or more voters or members, he will take the vote again by standing count, roll call or ballot.[2] The counted vote cannot be doubted.[3]

If the business being voted on is a bond issue, a zoning amendment, or any other of a long list of matters deemed by the legislature to be beyond the competence of a mere majority of the meeting,[4] affirmative action can be taken only by a counted or a unanimous vote. The city lawyer should remember that it is not sufficient merely to have such a vote; the moderator must declare it, and the clerk must so record it. A lot of work can go down the drain if, through inadvertence, the record later shows only that "the motion carried." Needless to say, there is more danger of such inadvertence in the case of a unanimous vote than in the case of a hard-fought and counted vote.

On the other hand, at least one iron-fisted moderator has been known, when the nays were plainly less than seven, to look them

§25.6. 1 Chapter 320 of the Acts of 1963 added the following paragraph to G.L., c. 39, §15: "In any town having a representative town meeting form of government the town meeting members shall not use the secret ballot when voting in the exercise of the corporate powers of said town unless two-thirds of the town meeting members present and voting thereon vote that a secret ballot be used." It is not clear just what constitutes "voting in the exercise of the corporate powers of the town." It may mean every vote that is not a mere "sense of the meeting" sort of resolution, such as congratulations, memorials and testimonials; or it may mean only final votes on main motions, in which case it would not reach some of the most hard-fought issues, such as motions to amend the recommendation of the finance committee to increase or decrease the dollars involved, where everyone knows that at least some dollars are going to be appropriated.

2 G.L., c. 39, §15.

3 Walpole is about to embark upon an interesting experiment. That town has accepted Chapter 709 of the Acts of 1969, establishing a representative town meeting for it, and Section 27 recites that "A town meeting member shall be ineligible to vote on any matter in which he is deemed to be in conflict of interest." It does not tell us who does the deeming, or how, or what constitutes a conflict. Is it owning land in the district to be rezoned, or on the street to be repaved? If Walpole takes this section seriously, the next meeting might be a long one. G.L., c. 268A, the general conflict of interest law, expressly excludes elected members of a town meeting.

4 The Acts of 1970, c. 70, §1, now makes clear what everyone had hitherto taken for granted: that this applies when the required vote is four-fifths or nine-tenths as well as when it is two-thirds.

For a discussion of the possible unconstitutionality, under the "one man, one vote" doctrine, of any requirement in excess of one more than half, see Comment, Judicial Activism and Municipal Bonds: Killing Two-thirds with One Stone?, 56 Va. L. Rev. 295 (1970).

straight in the eye and declare "It is a unanimous vote." Lacking the seven required to doubt him, there was nothing they could do about it.

The record will show very little more than the bare minimum, as a rule. Professor Zuckerman found this[5] to be evidence of unanimity in the eighteenth century, but he acknowledged that the need for consensus, which was his thesis, required that no record be kept of any dispute. In the twentieth century the need for unanimity may or may not be as great as in the eighteenth. In our towns at least, if not elsewhere in our society, majority decisions are usually accepted by the minority, if only until the next town meeting. Nevertheless, the tradition persists of recording the results only, not the debates. Economy of effort is a great reinforcement to tradition in this respect.

In *Town Meeting Time,* it was recommended that if the yeas and nays in a counted vote do not add up to a quorum, the abstainers should be counted, in order to show affirmatively that a quorum was present (if that were the case).[6] This would be essential in Rhode Island.[7] In Massachusetts, however, it is now settled that if a quorum is once recorded as present it will be regarded as continuing to be present, with some abstainers, even if the yeas and nays add up to less, unless the point is raised and the presence of a quorum is affirmatively disproved.[8]

If the matter being acted upon is a by-law amendment (and a zoning amendment is a by-law amendment), it must be approved by the attorney general and posted by the town clerk before it takes effect.[9]

If the meeting is a representative one, the special act creating it (or the home rule charter governing it, if the town has adopted one) must be studied to determine whether the action taken is subject to a referendum.[10] If it is, the vote will not take effect until after a stated period (usually five days) after the final dissolution of the meeting. If,

5 Peaceable Kingdoms 185-186 (1970).

6 Johnson, Trustman and Wadsworth, Town Meeting Time 20 (1962).

7 Moore v. Langton, 92 R.I. 141, 167 A.2d 558 (1961).

8 Del Prete v. Selectmen of Rockland, 351 Mass. 344, 345, 220 N.E.2d 912, 913 (1966) (citing Town Meeting Time, §25.1 *supra,* note 1).

9 See Tewksbury v. Thuillier, 343 Mass. 459, 179 N.E.2d 271 (1962). See also Doliner v. Planning Bd. of Millis, 343 Mass. 1, 175 N.E.2d 919 (1961) and Roland Lavoie Constr. Co. v. Building Inspector of Ludlow, 346 Mass. 274, 275, 191 N.E.2d 697, 698 (1963). A common error is the assumption, by analogy to special permits and variances, that there is an appeal period following the amendment of a zoning by-law, upon the expiration of which the amendment cannot be attacked. This is not so, of course. If there is any doubt about the validity of the amendment, on spot zoning or other grounds, it can be settled only by a declaratory decree of the Land Court under G.L., c. 240, §14A.

10 Changing an office from elective to appointive does not constitute the abolition or establishment of an office within the meaning of G.L., c. 43A, §10. Noonan v. Selectmen of Brookline, 343 Mass. 461, 465, 179 N.E.2d 332, 335 (1962).

during that period, a sufficient number of voters petition for it, a referendum will be held, and the matter will be determined by all the voters in the town, by ballot.[11]

If the city lawyer's clients are a group of town employees engaged in collective bargaining with the town, he will have, in addition to his other problems, one arising from the mechanics of the town meeting. The town employees usually like to have any wage increase made retroactive to the first of the year, but this can be done only at an annual town meeting.[12] An open town meeting may or may not be willing to keep adjourning from time to time until a satisfactory agreement is reached; but a representative meeting cannot, because, as indicated above, much of its business will not take effect until after the final dissolution of the meeting, and it would be highly impolitic to propose that other business be delayed until the employees got what they wanted. This is reflected in the acts of the legislature, which each year contain a number of special acts authorizing various towns to make retroactive appropriations for the current year at a special meeting, or validating such action already taken.[13] If the warrant for the meeting was posted before the authorizing or validating legislation took effect, then the early posting must also be validated.

One last caution: after obtaining a favorable vote on his proposition, the city lawyer should not relax without taking into account the possibility that someone may move to reconsider. The practice varies widely from town to town, depending sometimes on a by-law and sometimes on unwritten tradition. Some of these aspects of reconsideration were discussed in *Town Meeting Time*,[14] and it was stated somewhat smugly that "there are no reported cases, and probably no unreported cases, either, in which the moderator's refusal to permit reconsideration has been questioned, and there probably never will be."[15] This was erroneous. Eric Verrill, Esq., of Palmer and Dodge, Boston, has called our attention to *Mitchell v. Brown*,[16] a New Hampshire case in which a school district voted to raise $250 to build a school. At an adjourned session, a motion was made to reconsider, and the moderator refused to accept it. At a subsequent meeting, the vote was reconsidered, but the selectmen had already transmitted an assessment to the collector, and the latter had begun to collect. The court ruled that the moderator's refusal to accept the first motion to

11 See, e.g., G.L., c. 43A, §10.

12 G.L., c. 41, §108A.

13 See, e.g., Chapters 1, 555, 654 and 655 of the Acts of 1970, validating such action for the towns of Winchester, Westport, Plymouth and Swansea. See also an article by Herbert D. Gordon in the Boston Globe, Jan. 30, 1967, at 5, col. 1.

14 Johnson, Trustman and Wadsworth, Town Meeting Time 73-83 (1962).

15 Id. at 83.

16 18 N.H. 315 (1846). See also Jennison v. Oyster River Co-operative School Dist. 2, 99 N.H. 424, 113 A.2d 117 (1955).

reconsider was improper, but that the damage was done and it was too late to undo it.[17] The moral appears to be that errors of the moderator must be attacked speedily if at all.

[17] The converse of Mitchell v. Brown, an attack on the moderator's acceptance of a motion to reconsider, appeared after Town Meeting Time went to the printer. Walpole, that pioneer of parliamentary innovation, was experimenting with a device intended to eliminate reconsideration at a subsequent session by rejecting, at the end of the first session, a pro forma motion to consider all votes passed that evening. Notwithstanding this gimmick, the moderator did accept a motion, at the next session, to reconsider one of the earlier votes. In the Superior Court, Judge Paquet nullified the gimmick and sustained the moderator, in a decision which was not appealed.