

May 6, 2022

**VIA ELECTRONIC MAIL ONLY – [adam.grandisle@gmail.com](mailto:adam.grandisle@gmail.com)**

Adam White, Selectboard Chair  
Town of Grand Isle  
P.O. Box 49  
Grand Isle, VT 05458

Dear Adam:

You requested our opinion as to whether the Selectboard has authority to use general fund surplus amounts to pay for an unbudgeted “forensic audit” without voter approval of the expense. We understand that the voters authorized the Town’s FY 2020-21 budget by approving an Australian ballot article on Town Meeting Day 2020. In our opinion, the Selectboard can expend such surplus funds on a “forensic audit” without voter approval of the expenditure, though the Selectboard is free to seek voter approval of an advisory article on the issue if it would prefer to call a special meeting to obtain the voters’ opinion. Generally, however, we do not recommend warning advisory articles since they may give the false impression that the Selectboard is bound by the result of the vote.

“In Vermont towns, absent some specific statutory limitation on their authority, the selectmen have the general supervisory power over town matters, including the annual budget.” *Mooney v. Town of Stowe*, 2008 VT 19, ¶ 6 (citations and quotations omitted). In addition to the Selectboard’s powers of general supervision of the Town’s affairs, it also is vested with all duties not specifically vested in another body or public officer. 24 V.S.A. § 872(a). Thus, it is the Selectboard’s responsibility, subject to the limits discussed below, to manage the affairs of the municipality and make decisions about the most prudent expenditure of the approved budget dollars.

The Selectboard is not obligated to spend every dollar budgeted. For example, it would not make sense to spend the entire road salt budget on salting roads in an unusually warm spring where there is little threat of freezing road conditions. Likewise, the Selectboard can determine to shift funds from one area of the budget to another to address a particular need or issue, subject to certain limitations described below. While the voters may express their displeasure at re-allocating funds from one area of the budget to the other at the next Town Meeting, this does not affect the Selectboard’s general oversight power and ability to re-allocate funds if needed to address an emergent situation.

As to the limits on the Selectboard's authority, the Selectboard is not free to expend more than the total approved budgeted amount except in emergent situations, and the amounts by which the expenditures can exceed the budget depend to some extent on the nature and threats posed by the emergent conditions. Here, the Town is presented with a somewhat emergent situation, of an allegation that the Town funds were not properly expended or invested. However, we do not yet know whether the allegations have merit. Instead of exceeding the total amount of the budget approved by the voters, the Selectboard is proposing to use surplus funds to fund what has been called a "forensic audit" that would directly address this situation.

Generally, with respect to unbudgeted surplus funds and notwithstanding the expenditure at issue with respect to the "forensic audit," there is no lawful authority for simply accumulating a general fund surplus. While the Town is not going to end each fiscal year on the budgeted penny, there is no statutory authority to accumulate a surplus or to fail to fund a deficit. Surplus general fund dollars are expected to be used to reduce the next year's budget requirements, unless the surplus arises from highway or water/sewer operations, which funds may only be used for those purposes. While it certainly is prudent for a municipality to maintain some type of "emergency" fund to account for unforeseen circumstances or address other unbudgeted needs that may arise, that emergency fund should not be maintained as a general fund surplus. Rather, the emergency fund should take the form of a reserve fund, approved by the voters pursuant to 24 V.S.A. § 2804. The purposes of such a fund, with voter approval, may be defined as broadly or narrowly as desired. An "undesignated fund balance," as exists in Grand Isle, may (again with voter approval) be transferred to and held in such a reserve fund, and, thereafter, those funds may be expended for the specific purpose for which the fund was created or for such other purposes as the voters may subsequently approve.

In addition to the foregoing limitation on its authority, the Selectboard also cannot re-allocate specific appropriations to fund non-profit/social support service offerings to local citizens that were approved by separately voted articles. *Addison County Cmty. Action Grp. v. City of Vergennes*, 152 Vt. 161 (1989). Also, the Selectboard cannot re-allocate funds raised by highway taxes since 19 V.S.A. § 312 requires that such funds only be used for highway purposes. Further, it may not expend federal or other grant funds on items that are inconsistent with the purposes for which such grant funding was awarded. Lastly, there are also provisions in Title 24 that control the raising and spending of funds to service debt obligations.

In conclusion and subject to the foregoing limitations on its authority, the Selectboard has the authority to expend general fund surplus on a "forensic audit" if

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it concludes that such expenditure is in the best interests of the Town to address an emergent situation. While it would be better to have a reserve fund set aside for emergency expenses, there is no prohibition on the Selectboard using surplus general fund monies or shifting funds from one area of the budget to another to address a particular need or issue. The Selectboard could also seek the voters' opinion by calling a special meeting and warning an advisory article on the question, although we do not recommend this and the ultimate result of such vote would be non-binding. Also, please feel free to contact us if you would like our assistance in developing a reserve fund for "emergency" expenses going forward.

Please let us know if there are further questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "DWR", with a long horizontal flourish extending to the right.

David W. Rugh, Esq.

DWR/gc