

Bristol Town Administrator

From: Garrett Baxter <gbaxter@vlct.org>
Sent: Thursday, December 6, 2018 9:19 AM
To: Bristol Town Administrator
Subject: RE: Mt. Abe Environmental Club looking to take action >> process for petition?

Dear Valerie,

I'm not aware of any explicit grant of legislative authority for municipalities to regulate (i.e. "ban") the use of plastic bags by retail establishments. The only authority that I know of is that which is granted in 24 V.S.A. § 2291(14) to define and regulate public nuisances, however the Vermont Supreme Court has cautioned how indefinite a concept a nuisance can be. "We believe that the concept of public nuisance is vague and amorphous.to be considered a public nuisance, an activity must disrupt the comfort and convenience of the general public by affecting some general interest." *Napro Development Corporation v. Town of Berlin*, 135 Vt. 353 (1977). Adding to that consideration the recent results of communities trying to stretch that nuisance authority too far in trying to regulate other activities lacking an express grant of enabling authority (e.g. sex offender residency restrictions) and I'd probably be more than a little hesitant to hang my hat on that just that authority alone with a legal opinion from your town attorney.

The second issue raised by your email is that the selectboard has control over the contents of the town meeting warning and it is not required to warn an article unless it is submitted to them in the form of a voter-backed petition (with the signatures of 5% of the town's voters) AND the subject matter is one over which the voters have authority to vote upon. Vermont courts have repeatedly found that a municipality is under no obligation to warn a vote which is requested by a voter-backed petition if the petition is for a matter that is "frivolous, useless or unlawful" or is not "within the province of the town meeting to grant or refuse through its vote." *Royalton Taxpayers v. Wassmandsdorf*, 260 A.2d. 203 (1969). That case and its litany stand for the general principle that a municipality's selectboard can treat as advisory and non-binding or can deny any petition calling for an article to be placed before the voters if the Vermont Legislature has not conferred upon the voters the right to vote on the particular issue it raises. The Vermont Supreme Court has stated that a selectboard cannot be compelled to present a petitioned article if it does not "set forth a clear right which is within the province of the town meeting to grant or refuse through its vote." *Clift v. City of South Burlington*, 2007 VT 3, §6, quoting the *Wassmandsdorf* case. When it comes to ordinances, the voters do not have authority to create or demand an ordinance. As such, your selectboard would not be legally required to such an article even if presented in a voter-backed petition. Of course, the selectboard can choose to warn any article for consideration at town meeting under "non-binding" business, but we urge caution when doing so, since such practice creates political expectations that may not be met.

That being said, I would suggest directing this and any other questions from citizens concerning voter-backed petitions to Jenny Prosser, General Counsel and Director of Municipal Assistance at the Vermont Secretary of State's Office at (802) 828-1027 or at jenny.prosser@sec.state.vt.us or their Elections Division at (802) 828-2363.

I hope this helps.

Sincerely,

Garrett A. Baxter, Esq.
Senior Staff Attorney, Municipal Assistance Center Vermont League of Cities and Towns
1-800-649-7915

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-----Original Message-----

From: Bristol Town Administrator <townadmin@bristolvt.org>
Sent: Thursday, December 6, 2018 8:25 AM
To: Garrett Baxter <gbaxter@vlct.org>
Subject: FW: Mt. Abe Environmental Club looking to take action >> process for petition?

Hi Garrett,

Can you, or someone at VLCT, help me answer the question below? To what degree is an action to ban plastic bags an enforceable municipal function?

Many thanks,

--Valerie

Valerie Capels, Town Administrator
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-----Original Message-----

From: Cora Funke <19funkc@mausd.org>
Sent: Thursday, December 6, 2018 8:17 AM
To: Bristol Town Administrator <townadmin@bristolvt.org>
Subject: Mt. Abe Environmental Club looking to take action

Hello Valerie,

My name is Cora Funke and I am a member of the Mt. Abe Environmental Action Group and we are interested in starting a petition to create a law banning plastic bags in Bristol. What are the steps we need to take in order to create such a petition?

Thanks,
Cora