



TOWN OF RANDOLPH, VERMONT

Office of the Town Manager

To: The members of the Randolph Selectboard

From: Trevor M. Lashua, Town Manager

Date: April 24, 2023

Re: The Town Attorney's Opinion/Analysis of the 1984 Articles of Merger and Police District Amendment or Dissolution

The Town Attorney was asked to analyze the 1984 Articles of Merger and offer an opinion on two primary questions: what is the process for amending the Police District's boundaries, and what is the process for eliminating those boundaries (thereby creating a townwide police service).

The attorney's opinion can be dense and technical, and contains the "process" through which each conclusion was reached. This memo summarizes the response by breaking the main questions into two sections, but does not give a detailed summary of the entire document. The goal is to keep the focus on the questions tied to the Town's ongoing policy conversation on the scope of police services.

Section 1. Amendment of the Police District Boundaries.

Amending the Police District's boundaries requires a vote of the registered voters inside the proposed, altered district boundaries.

To illustrate through the use of an (hypothetical) example of a potential amendment of the district boundaries: The Selectboard decides to extend the Police District in two directions – south of the village to include the shopping plaza on Route 12, and northeast to the park and ride on Route 66. The registered voters within the proposed boundaries would vote on the new Police District lines. A second vote would follow for approval of a budget for police services within the new Police District. If the expansion were approved, Police District costs would be assigned to the taxpayers living within the amended boundaries.

The vote to alter the boundaries would be conducted by Australian ballot, and could be done at a regular or special meeting called for the purpose.

Section 2. Dissolution of the Police District Boundaries.

The decision to dissolve is left to the Selectboard; voters enter the mix when it is time to consider a budget for a townwide police service. The police budget would be considered by all voters, and the tax rate set from the Town's entire grand list. The budget vote would be conducted by Australian ballot.

Where some complexity enters is when discussing timing and process. There is no mechanism in statute to re-open or otherwise amend the approved General Fund budget for FY24, which is where

police expenses would go for a townwide service. The next opportunity for voters to consider funding for a townwide police service would be the FY25 (July 1, 2024 through June 30, 2025) General Fund budget, which is voted upon at Town Meeting in March 2024.

The path the community is on – wherein a foundational budget and level of service is established, a committee examines questions of police service and makes recommendations, and voters make the final determination through the budget approval or other process – is the clearest and cleanest one. This process involves ample opportunity for community involvement and engagement up to and through Town Meeting 2024.

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The Board chose to waive the attorney-client privilege noted and make the opinion available to the public; there are no alterations or redactions to note.

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**** CONFIDENTIAL ATTORNEY – CLIENT PRIVILEGE / ATTORNEY WORK PRODUCT ****

TO: Selectboard for Town of Randolph and Town Manager
FROM: Sarah Buxton; Michael Tarrant
DATE: April 13, 2023
RE: Police District

By e-mails dated March 28, 2023, the Town Manager inquired about the Town’s Police District, in light of its history and formation, and asked whether it can be altered or dissolved, and if so, how? He further inquired who would make such decisions? To answer these questions, this memo reviews the 1984 Plan of Merger between the Village and the Town and also looks to State law.

BACKGROUND

The Plan of Merger adopted by Randolph Town and the Village of Randolph in 1984 has two chapters, Chapter 1 laid out the Transition Provisions, and Chapter 2 laid out the Charter Provisions. The Transition Provisions describe discrete terms for handling specific matters of interest to either the Town or Village during and after merger, including transfer of property and liabilities, ordinances, finances, and water/sewer rates, etc. The Charter Provisions became permanent governing provisions for the newly merged municipality at midnight on December 31, 1984.

As to the Police Department, Section Five of the Transition Provisions describe the former Village as a “special service district” for the purposes of providing and paying for police services. But it directs the voters to determine the extent of services desired and directs the Selectboard to assess a tax to residents of the area to cover such costs. It also provides that the special service district will cease to exist “if and when the town desires police protection for the whole town.” At that point, the residents within the special district would no longer be the only municipal residents taxed for police services and “the entire cost of police protection will become part of the general budget expense of the town.” In other words, it contemplated termination upon a town-wide replacement being implemented.

Section 107 of the permanent Charter Provisions governs “special districts” in general and provides the process for how special service districts are to be created, approved, and operated. It’s not very detailed. The Selectboard has the power to designate a special district, in geographic scope and services to be provided, and collect taxes from the residents of the of the district to pay for services. However, before any special district is created, it must be approved by a majority of voters residing in the proposed district as to the selectboard’s proposed “solution.” Section 107(B) authorizes discrete ballots / votes solely for the voters within a special district on properly warned articles related to the special district at future annual or special town meetings.

Title 24, Ch. 55 (“Police”) authorizes municipal legislative bodies or town manager, in some circumstances, to establish police departments, and appoint police officers and a chief of police. The direction and control of the entire police force is granted to the chief of police when a town exercises this power. State statute sets out qualifications and powers of officers, organizing and management requirements, and methods for creating reciprocal assistance and intermunicipal police service agreements. If such a police department is created, the Town must report the

creation of the new police force, or also the elimination of an existing police force, to the Vermont Criminal Justice Council within five (5) working days of such action.

DISCUSSION

The aforementioned Transition and Permanent Charter provisions and state statute cited above do not clearly answer how the Town could or would amend the boundaries of the current special police district or how it would dissolve it entirely. Nor do they give us a crisp answer as to who would do it.

It appears the concept at the time of the merger was that the Legislatively pre-approved special police district would continue to exist until such time that the Town as a whole would have a police force and it would then be dissolved by virtue of being subsumed. This may have been a presumption that the Town would not choose to operate without a police force at all. Because the Transition Provisions created a special service district for police services at the time of merger, the only item for the voters to approve at the time was the extent of police services to be provided for that geographic subset. The Selectboard then had only to fund it via a tax assessed to that portion of the Town's grand list.

After merger, Section 107, provides for how new special districts are created—i.e., their boundaries and services. But Section 107 is not a model of clarity. Section 107(A) provides that the Selectboard “may designate areas apart from the rest of the town as a special service district” and that the Selectboard “may provide that said area of the voters therein shall be provided with special services not common to all the voters of the town” so long as “the majority of the voters residing in the respective designated area and present and voting at the Town Meeting on the subject shall have approved of such solution.” So, the Selectboard picks the proposed boundaries and the proposed services, and the voters within vote.

Section 107(A) further provides the factors the Selectboard must consider in creating the boundaries of a special district area. And it also provides that there will be a tax on the grand list, to be assessed annually, “or in such other manner as the [Selectboard] determine[s].” The funds collected, regardless of manner, are to be held separate and only used for the special district. But it goes no further.

Section 107(B) authorizes discrete warning of articles solely as to residents of special districts.

Once designated in geographic area and extent of services, and the “solution” approved by the voters, there is no affirmative guidance under Section 107 or other aspects of the Permanent Charter as to how they would be modified or terminated.

From what we know, when it comes to special service districts, it appears that voters only approve geographic scope and extent of services, but the Selectboard makes the proposals for each. We also know that after these are created, there can be discrete articles warned solely for such special district voters to vote on. Thus, it appears the Legislature contemplated future special district voter involvement in selectboard proposals on existing special districts, but it would appear to be related solely as to the things voters are entitled to approve under Section 107(A), e.g., limited to geographic scope and extent of services questions. There is no indication that voters have any rights to request votes on such items, or otherwise vote on other matters, like funding schemes or provision of any given particular service, which are generally provided solely to the legislative body. See Skiff v. South Burlington School District, 2018 VT 117, ¶ 14, 208 Vt. 564 (explaining that “a municipality has discretion to refuse to include a petitioned article in a town-meeting vote if the subject matter of the article concerns a matter outside of the voters’ authority”); see also 24 V.S.A. § 872 (“The selectboard shall have the general supervision of the affairs of the town and shall cause to be performed all duties required of towns and town school districts not committed by law to the care of any particular officer.”).

Thus, certainly, should the Selectboard implement a town-wide service which had been previously relegated to a special service district, it would necessarily obviate the need for the district, akin to how the Legislature envisioned the termination of the Legislatively imposed special police district stemming from the Village at the time of merger. As such, one way to eliminate a special district would be to apply the service town-wide.

Alternatively, if a full town-wide replacement is not envisioned, given that special service districts are proposed by the Selectboard in both geographic region and extent of services, subject only to approval of the plan by the voters within the proposed area, it is logical that the Selectboard would also retain the ability to altogether cease such functions without voter approval. The approval of the voters appears to hinge on whether they will agree to receive services for which they alone will foot the bill when a proposal to do so is made by the Selectboard. It does not appear to be a grant of authority to the voters as to whether services shall or shall not be provided and continued. This makes sense under the general scheme of municipal management. See 24 V.S.A. § 872; L'Esperance v. Town of Charlotte, 167 Vt. 162, 169 (1997) (“The selectmen’s general supervisory power is derived from statute and not from any vote of the electorate.”); see also 24 V.S.A. § 1236 (powers of town managers, including powers over police). While this is not the only possible interpretation, it makes sense given that the Selectboard is given authority to propose these districts, and also to fund them via a grand list tax or by another manner determined by the Selectboard.

If, however, the issue is a change of the geography, or a change to the extent of services, it would indeed appear that the voters would be required to approve—to the extent they are implicated in the new proposal. If the geography were to be changed, the new pool of voters would approve that, without comment from any voters who may have previously been in a special district but who might now find themselves outside. This is because there is no voter approval requirement for anything other than the imposition of a “solution” to a geographic region. If the services alone were at issue, then the same voter pool would vote. If the change to geography were to simply fold in a section of land without any new voters being added, it would just be the same voter pool.

One more point warrants discussion. It does not appear that the “extent of services” vote is a micromanagement vote. Rather, it would be a vote on a general category of services. For example, trash service or police service. It would not trigger, in our opinion, on a degree of service within the approved category. If, for example, district voters approved trash, and the selectboard implemented initially weekly pick up, but then changed to bi-weekly, this would not require a vote. But, if the selectboard proposed an addition, such as recycling, that would.

One potential limitation to this selectboard discretion may be if there were a function involved over which voters had been given authority, rather than the Selectboard. It would be a case-by-case basis to determine if such an issue were involved. Here, involving police, no such issue is raised because the Legislature has tasked the selectboard or town manager of a town with authority over police departments, not the voters. See Title 24, Ch. 55 (“Police”).

State law gives municipalities authority to provide police services for the whole town (see Attachment A). Randolph’s charter allows special service districts. If you establish a police department, appoint police officers, and a chief of police on behalf of the whole town, as the law allows, you would move from operating under a hybrid of the Transition and Permanent charter provisions because the “Village” special service district would cease to exist per its own terms. Randolph would be operating under legislative authority for municipal police departments. The funding would be part of your annual town budget. A vote of the town would not be required to establish the police department, nor would the town be required to annually vote on operational matters regarding the department – only the budget. The selectboard and police chief would make the decisions about the extent of services provided.

Happy to have further discussions on this matter, or address any follow up questions/comments/concerns.

_____/s/_____
Michael Tarrant

Attachment A

Title 24: Municipal And County Government **§ 1931. Police officers**

(a) The legislative body, and in its stead, the town manager, when appointed pursuant to chapter 37 of this title, of a municipality as defined in section 2001 of this title may establish a police department and appoint police officers and a chief of police who shall be a police officer. Such legislative body or town manager may temporarily appoint qualified persons as additional police officers when necessary, or appoint qualified persons as temporary police officers in the event no police department is established, shall specify the term and duties of such officers, and may fix their compensation, which may be paid by the municipality. They shall be sworn and shall hold office during good behavior, unless sooner removed for cause, or in the case of temporary police officers, for the term specified. Such appointment, oath, and removal shall be in writing and recorded in the office of the clerk of the municipality.

(b) The direction and control of the entire police force, except as otherwise provided, shall be vested in the chief of police. If the chief of police is absent or disabled, or if the office of chief of police is vacant, the appointing authority may appoint another officer to discharge the duties of the chief of police.

(c) The legislative body or town manager shall report the creation of a new police department or the elimination of an existing police department to the Vermont Criminal Justice Council within five working days of the creation or elimination. The report shall include the effective date of creation or elimination, the mailing address for the police department, and the name of the appointed police chief. (Amended 1969, No. 282 (Adj. Sess.), § 3; 1971, No. 194 (Adj. Sess.), § 1; 2009, No. 14, § 2.)

§ 1932. Negligence of officer; suspension; hearing

(a) Whenever it appears to the appointing authority by its own knowledge or when informed by a written petition signed by one or more responsible persons that any regular officer has become negligent or derelict in the officer's official duty, or is guilty of conduct unbecoming an officer, the appointing authority shall set a date for a hearing before the legislative body upon the complaint, and shall give at least seven and not more than 15 days, written notice to the accused officer stating particularly the complainant, the charges against the officer, and the time and place of hearing. The legislative body may suspend such officer from duty pending a hearing.

(b) The officer is entitled to be represented by counsel, to answer the complaint, and to be heard on the charges. He or she may waive in writing his or her right to a hearing.

(c) The officer may file with the Criminal Division of the Superior Court having territorial jurisdiction of such municipality and with the legislative body, at least 24 hours before the time set for said hearing, a notice of election to have the cause heard before said court. If such notice is duly filed, the Criminal Division of the Superior Court shall set the matter for hearing within ten days from the filing of said notice and shall give at least five days' written notice to the legislative body and the officer of the time and place of hearing. The court shall determine the facts and certify its findings, which shall be final, to the legislative body.

(d) If the legislative body or the Criminal Division of the Superior Court, as the case may be, finds after considering all the evidence offered in such hearing, that the officer is guilty of the charges as offered, the legislative body shall have the power by majority vote to remove the officer or to suspend him or her without pay for a period of time not to exceed 60 days.

(e) Any officer found not guilty of the charges offered against him or her by either the Criminal Division of the Superior Court or the legislative body shall have restored to the officer pay lost through suspension. (Amended 1963, No. 158; 1965, No. 194, § 10, eff. July 1, 1965, operative Feb. 1, 1967; 2009, No. 154 (Adj. Sess.), § 238.)

§ 1933. Policy

The provisions of sections 1931-1934 of this title affecting the tenure of such regular police officers and their removal from office shall apply to the chief of police. Such sections shall not apply to any police officer until he or she shall have served continuously for one year. Such sections shall not prevent a legislative body, or the town manager, from reducing the number of regular officers for reasons of economic necessity.

§ 1934. Construction

Notwithstanding any contrary provisions in any municipal charter, the provisions of sections 1931-1933 of this title shall control, unless a municipality has charter provisions providing for tenure of police officers during good behavior with removal only after hearing and for cause.

§ 1935. Powers

Police officers who are employed by a police department established under this chapter or pursuant to charter shall have the same powers as sheriffs in criminal matters and the enforcement of the law and the same powers, immunities, and matters of defense in serving criminal and civil process. The powers granted to police officers under this section may be exercised statewide. (Amended 1971, No. 194 (Adj. Sess.), § 2, eff. July 1, 1972; 1973, No. 114; 1987, No. 122 (Adj. Sess.), § 3, eff. Jan. 26, 1988; 2013, No. 49, § 7.)

§ 1936. Special police officers; qualifications

(a) If the legislative body of a municipality does not establish a police department or appoint a chief of police, temporary police officers appointed pursuant to subsection 1931(a) of this title shall serve under the direction of the legislative body.

(b) Persons appointed as law enforcement officers under the provisions of this chapter, before exercising any law enforcement authority, shall complete a course of training under 20 V.S.A. chapter 151. (Amended 1971, No. 194 (Adj. Sess.), § 3, eff. July 1, 1972; 1979, No. 57, § 10; 2003, No. 122 (Adj. Sess.), § 85c.)

§ 1936a. Constables; powers and qualifications

(a) A town may vote at a special or annual town meeting to prohibit constables from exercising any law enforcement authority.

(b) Notwithstanding the provisions of subsection (a) of this section, constables may perform the following duties:

- (1) the service of civil or criminal process, under 12 V.S.A. § 691;
- (2) destruction of animals, in accordance with the provisions of 20 V.S.A. chapter 193;
- (3) the killing of injured deer, under 10 V.S.A. § 4749;
- (4) provision of assistance to the health officer in the discharge of the health officer's duties, under 18 V.S.A. § 617;

(5) service as a Criminal Division of the Superior Court officer, under section 296 of this title;

(6) removal of disorderly people from town meeting, under 17 V.S.A. § 2659; and

(7) collection of taxes, when no tax collector is elected, as provided under section 1529 of this title.

(c) A constable who is not prohibited from exercising law enforcement authority under subsection (a) of this section may transport a person arrested by the constable for a violation of 23 V.S.A. § 1201 (DUI) to a police department outside the town for the purpose of DUI processing and may complete the processing if he or she has been certified by the Vermont Criminal Justice Council to do so.

(d) A municipal legislative body may vote to allow a constable elected or appointed in another municipality to exercise law enforcement authority in its municipality, provided that:

(1) the constable is not prohibited from exercising law enforcement authority under subsection (a) of this section;

(2) the constable is certified to exercise that level of authority under 20 V.S.A. § 2358; and

(3) the exercise of law enforcement authority is conducted in accordance with policies and procedures adopted by the legislative body establishing the circumstances under which the authority may be exercised. (Added 1991, No. 177 (Adj. Sess.), § 3; amended 1997, No. 57, § 8, eff. June 26, 1997; 1999, No. 160 (Adj. Sess.), § 27; 2007, No. 195 (Adj. Sess.), § 9, eff. July 1, 2010; 2009, No. 108 (Adj. Sess.), § 11; 2009, No. 154 (Adj. Sess.), § 238; 2013, No. 141 (Adj. Sess.), § 19, eff. July 1, 2015.)

§ 1937. Reciprocal assistance agreements

(a) A reciprocal assistance agreement may be entered into between:

(1) the chief law enforcement officer of a municipality in a county of this State adjacent to a neighboring state, or the sheriff of such a county; and

(2) the chief law enforcement officer of a municipality in an adjacent county of the neighboring state, or the sheriff of such a county.

(b) The authority of a duly authorized and certified municipal law enforcement officer, sheriff, or deputy sheriff in a neighboring state shall extend to a municipality or county in this State if:

(1) reciprocal statutory authority has been granted by the neighboring state to the law enforcement officers, sheriffs, or deputy sheriffs of this State;

(2) a reciprocal assistance agreement under subsection (a) of this section has been executed which sets forth the terms and conditions under which assistance may be requested or rendered;

(3) the agreement is in writing; and

(4) in the case of an agreement by a municipality in this State, the agreement of the chief law enforcement officer of the municipality is approved by its legislative body.

(c) The reciprocal assistance agreement shall constitute authorization for every request for assistance, and for any assistance rendered, in accordance with the terms and conditions of the written agreement, regardless of whether the officer, sheriff, or deputy sheriff is named in the agreement.

(d) In either emergency or nonemergency circumstances, the ranking on-duty law enforcement officer, sheriff, or deputy sheriff may make an oral request for assistance to the ranking on-duty law enforcement officer, sheriff, or deputy sheriff in the responding jurisdiction, subject to the terms and conditions of the reciprocal assistance agreement. The agreement shall state the authority of the responding police officer in such circumstances.

(e) A reciprocal assistance agreement shall remain in full force and effect until terminated by mutual consent of the parties to the agreement, or until ten days after one of the parties has received notification from the other party of intention to terminate the agreement. (Added 1989, No. 92.)

§ 1938. Intermunicipal police services; purpose; agreements

(a) Cities, towns, incorporated villages, the University of Vermont, sheriffs, and State agencies may enter into agreements to provide for intermunicipal police services. Intermunicipal police services include general police services, emergency planning and assistance, task forces, and other specialized investigative units to provide police services within the boundaries of the participating municipalities and counties.

(b) The legislative body of each municipality may authorize the chief of police or other designee to provide police resources for intermunicipal police services. The participating municipalities, sheriffs, and State agencies shall enter into a written agreement, which shall provide for the scope of the mutual services, the powers, duties, and responsibilities of each participant, and the governing authority for officers called for duty under the terms of the agreement. The agreement shall also contain provisions relating to the use of equipment, supplies, and materials during the period of mutual service. Any employee covered by such an agreement shall remain an employee of the donor agency.

(c) Agreements entered into under this section shall not be subject to the requirement of chapter 121 of this title.

(d) Cities, towns, incorporated villages, the University of Vermont, sheriffs, and State agencies may enter into agreements under this section with municipalities in the same or adjoining counties and with municipalities in adjoining states. (Added 1993, No. 42, § 1; amended 2003, No. 121 (Adj. Sess.), §§ 82, 83, eff. June 8, 2004; 2003, No. 122 (Adj. Sess.), § 85d.)