August 8, 2005

Re: Procedures for considering and adopting a budget

Dear Madam:

I have reviewed the letter you sent to your MTAS management consultant and the accompanying DVD. The question presented appears to be “What procedures should the Town use in considering and adopting a budget?” The Town’s Charter speaks to this in several sections. The gist of those sections is that the Town Manager presents a budget document to the Town Council. The Town Council can then adopt the presented budget or amend it after first reading. I believe, however, that the charter leaves room for some interaction between the Town Manager and the Council before the budget is presented for passage on first reading. The extent of this interaction will be up to the Town Manager and the Council.

Section 6.04 of the Charter (Chapter No. 68, *Private Acts of 2000*) provides in Subsection (5) that one of the duties of the Town Manager is:

To coordinate and submit the annual budget and an annual capital budget to the town council at the appropriate time.

Section 11.03 under “Finance” is a little more specific:

At least sixty (60) days before the beginning of the fiscal year the town manager shall prepare and submit to the town council a budget for the ensuing fiscal year and an accompanying message.

The message must explain the proposed budget, point out differences from the current year, outline the Town’s financial policies, and summarize debt.

Section 11.05 provides for the first formal action by the Town Council:

After the first reading the town council may adopt the budget with or without amendment, but no amendment shall decrease expenditures required by law for debt service.

The Town Manager has fairly broad discretion in presenting the budget to the Council. There is no requirement in the Charter that says there must be any interaction between the Manager and the Council before Manager presents the budget for passage. The Manager is protected from interference by the Council in the performance of his duties except in certain circumstances. Section 6.05 of the Charter provides:

The town manager shall take orders and instructions from the council only when sitting in a duly convened meeting of the town council, and no individual member shall give any orders or instructions to the town manager.

Therefore, if the Manager wants to present the budget without interaction and he has received no instructions otherwise in a duly convened meeting, then he may present the budget he wants to submit. The Council would then have to propose and pass amendments to change it.

The wise manager realizes, however, that it is the Council that ultimately is in charge of the Town’s finances and that must adopt the budget. In workshops on the budget that take place before the Manager presents the budget for first reading, the Manager would be wise to make any changes for which there is a consensus. A consensus may be discerned without a vote when everyone on the Council speaks in favor of a change or does not object. For items on which there is not an apparent consensus, the Manager might want simply to stick with his recommendation since this would be an obvious topic for discussion and possible amendment once the budget has been submitted for first reading. So no matter what the Manager does when there is no apparent consensus, the particular item will likely be subject to a proposed amendment and no one has saved any time or discussion by the Manager changing his prior recommendation.

I hope this is helpful. If you have more questions, please contact us.

Sincerely,

Dennis Huffer

Legal Consultant