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The Legal Powers of Town Councils in Rhode Island

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MASTER OF PUBLIC ADMINISTRATION

THE LEGAL POWERS OF TOWN COUNCILS
IN RHODE ISLAND

BY

STEPHEN ARONSON

Approved

Thesis Director

Chairman

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE
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1964

ABSTRACT

MASTER OF PUBLIC ADMINISTRATION

OF

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1964

ABSTRACT

The local governing bodies in Rhode Island are called town councils and are empowered to act as agents of the State in various municipal matters affecting their respective communities. This study surveys the powers of these agencies and attempts to determine the answers to the following four questions:

1. What are the sources of legal powers granted to local town councils by the state and how extensive are these powers?

2. What applicability, if any, does the separation of powers theory have in Rhode Island local government?

3. What legal factors distinguish the president of the town council from other members of the town council and make him a limited chief executive?

4. How have the legal powers and responsibilities of town councils grown as a response to increasing social complexities?

The sources of legal powers include the General Laws of Rhode Island, as amended in 1956, plus subsequent changes; the Public Laws; judicial decisions affecting

statutory legislation; limited constitutional provisions; and local home rule charters. The General Laws are the primary source because they enumerate powers delegated by the General Assembly (state legislature) to local municipalities and include many "Public Laws." The Public Laws issued for each General Assembly session contains legislative acts of private as well as general application that have become law. The General Laws are the statutes of general concern, many of which are found in the Public Laws. More than 1800 provisions of State law give town councils a wide variety of powers in the fields of general government, public works, finance, health, welfare, conservation, education, libraries, public safety, and business regulation.

An application of the "separation of powers" theory to Rhode Island town government indicates that in 28 communities the town council possesses and exercises legislative, executive and judicial powers. In the four home rule towns there is some evidence that powers are divided into administrative and legislative functions performed respectively by the town administrator or manager and town council. Although home rule charters prohibit

councilmen from interfering with administrative actions of the chief executive, the charter provisions do not appear to provide adequate safeguards against violations of this principle.

The Council President has appointing powers and some authority not shared with others. He may be compared with the mayor in a weak-mayor-council system, because as a limited chief executive he performs ceremonial functions, acts as presiding officer at council meetings, and does not possess a veto power. He is usually regarded as the spokesman for the town council as well as the town government on matters of public concern.

The Rhode Island General Assembly, like its counterparts elsewhere, has reacted slowly and cautiously in delegating more authority to the political subdivision of the state. Minimum housing enabling legislation as an example was not passed in Rhode Island until 1962 seven years after a national policy on the subject was defined and formulated. Problems of local taxation and historic zoning are other examples of matters of municipal concern that have received delayed treatment.

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TABLE OF CONTENTS

	Page
ABSTRACT	iii
ACKNOWLEDGMENTS	vi
CHAPTER	
I. INTRODUCTION	1
II. GENERAL GOVERNMENT	19
III. PUBLIC WORKS AND FINANCE	42
IV. HEALTH AND WELFARE	53
V. CONSERVATION, EDUCATION, LIBRARIES, PUBLIC SAFETY AND BUSINESS REGULATION	66
VI. CONCLUSION	90
BIBLIOGRAPHY	106
APPENDIX	108

I

INTRODUCTION

I. THE PROBLEM

In answering the following questions, this research hopes to broaden the understanding of local government in the State of Rhode Island and to provide background material for further local government studies:

1. What are the sources of legal powers granted to local town councils by the state and how extensive are these powers?

2. What applicability, if any, does the "separation of powers" theory have in Rhode Island local government?

3. What legal factors distinguish the president of a town council from other members of the council and make him a limited chief executive?

4. How have the legal powers and responsibilities of town councils grown as a response to increasing social complexities?

The Significance of These Questions

Fundamental to a sound understanding of local government is knowing where its authority comes from and how it may be exercised. If the source and extent of local govern-

ment power is known, it can pave the way for determining what new services will be needed in the future and how municipal operations can be improved.

No comprehensive study or even a survey of Rhode Island local government structure has been undertaken in some time. The studies that have been made were concerned with particular areas of local government relating to public services. No clear picture of what tasks or how these tasks are performed has been undertaken on a broad scale. Any investigation of local government in Rhode Island, as a prerequisite to improving its administrative structure, must consider the influence of the separation of powers theory if valid conclusions are to be drawn.

The president of the town council is worthy of consideration in this study because until now no research has attempted to identify him as a factor influencing the course of action in town government. This paper, of course, can give only limited treatment to this subject but some treatment is necessary for a broad understanding of how town councils function.

Each year the General Assembly passes local government legislation, to be administered by local governing bodies, affecting thousands of Rhode Island residents. The rate of enactment of this legislation over time is one measure of the response of state (and local) legislative bodies to the

growth of social complexity.

Methodology

The starting point for any research project of this kind is the basic source of information, in this case, the General Laws of Rhode Island, 1956, and their amendments. For the purpose of this inquiry, all provisions applicable to town councils, no matter how remote, were investigated and recorded. Eight bound volumes, one of which is the index, comprise all the statutes of general concern. The State Constitution is found in the first volume. All index entries for town councils, towns and cities, and other municipal subject areas were investigated.

Each of the 47 titles, with its chapters and sections, was carefully reviewed several times. Subjects having only an indirect effect on this study were recorded for their possible future value. Title 33, "Probate Courts", is concerned with the law of descent and describes the procedures to be followed in handling probate matters. Only those provisions outlining town council authority in this area are treated in this discussion. Title 17, "Elections", underwent an extensive revision in 1958 that reduced the influence of the town council in dealing with election matters. Town councils, prior to the 1958 change, were permitted to act as local canvassing authorities.

Legislative action which amends, repeals, or annuls any part of the General Laws is recorded in the Public Laws and in an annual supplement to the General Laws. The latest supplement is distributed shortly after the beginning of the new year and covers all legislative sessions held in the past year as well as all enactments since 1956. Each new supplement supercedes the previous one. The supplements also contain judicial decisions concerning the contents of the General Laws.¹

The research was not without its problems. The first difficulty encountered was in the index to the General Laws. The municipal categories of the index offered only small insight into the contents of the text. Further checking indicated that provisions that might have value in this study gave no hint of their content either by their title, chapter, or section headings or the description found in the index. No abbreviated procedures could be used to extract this information, so each page was

1

The Public Laws are cross-referenced with the General Laws and vice versa. For example: to find when a public law is placed in the General Laws, it is necessary only to check the reference tables at the rear of the text. Each provision of the General Laws derived from Public Laws lists the Public Law source at the conclusion of the section.

individually examined.

The non-uniform terminology used in the text created a second problem to overcome. Although some common terms are defined and said to have a uniform definition throughout, some terms had conflicting definitions. Licensing authorities, local governing bodies, and local-legislative bodies were the most common terms having conflicting definitions. Most often, "licensing authorities" meant town councils in the absence of a board of police commissioners. In reference to the licensing of weapons, it meant chief of police, and for the registration of outboard motors, it meant town clerk. "Local governing bodies" meant town councils and town meeting. Conflicting meanings are pointed out later in this discussion, when the actual definition appears clouded.

The use of cross-references pointed out some weaknesses in coordinating subject matter within one chapter or title. Each cross-reference was checked and in some instances the subject of the cross-reference deserved to be placed in the same title rather than in several titles. For example: Titles 17 and 45 are both concerned with election matters affecting towns which could be combined into one title rather than two.

The other informational sources used in this study are: Materials extracted from judicial decisions (which

have been "Shepardized" for accuracy); local government texts; historical tracts; federal reports; research publications of university research agencies; professional association publications; and, periodicals as well as popular news media.

II. SEPARATION OF POWERS THEORY

The federal government and those of the states are based on a theory of separation of powers. The three branches of government, the legislative, executive, and judicial, function independently though cooperatively and each tends to check and balance the other to prevent encroachment in the other's jurisdiction. The significance of this theory lies in the idea that no one branch of government should exercise all the powers. In actual practice, the President may veto any Congressional legislation that he feels encroaches on his domain. The Congress can check the President's power by altering his budget. The Supreme Court's weapon is the power of judicial review exercised with moderation. There are other ways to counter-balance the three spheres of government but these are the most obvious.

In Rhode Island mayor-council cities, the separation of powers theory has some application because the mayor is

the administrative head of the government (except in council-manager cities) and assumes the usual administrative responsibilities including the preparation of a budget. The council acts mostly on legislative and licensing matters. In Providence, the licensing duty is delegated to the Bureau of Licenses. Council-manager communities, both cities and towns, have a noticeable division of authority that is also in evidence in other states where county government has a similar structure. Where county government exists it may be headed by a board of supervisors which in turn delegates administrative responsibility to a full-time administrator. County government in this state does not exist although special districts are numerous.

When one speaks of the separation of powers theory at the town level of government, it has limited application --the council is the sole governing body and functions are not separated.

In 27 Rhode Island towns, the town council acts as an administrative, judicial, and legislative body and it is frequently difficult to determine at a given point what function it is performing. Its primary purpose as an elected legislative body should be one of deciding policy, and enacting legislation to implement it. The content of some statutory legislation, however, permits or requires

the town council to act directly as an enforcement agency or administrative body. If the council accepts the provisions of certain permissive legislation, the councilmen assume the responsibilities of enforcement for the state as well as acting as administrators. Councils may appoint persons to public positions, fire them, and then act as an appeals board to hear the employee's grievances.

As the body responsible for control of town highways, it may purchase land for highway use, and, sitting as a probate court, it may decide on property questions of a decedent who was transacting a land sale with the highway commission. Acting as a housing board of review for minimum housing grievances against the inspector's decisions gives the town council another opportunity to perform a dual role. The council makes regulations on the subject, hires an inspector to enforce them and then sits as the appellate body on appeals.

The town council, acting as a licensing authority, may grant licenses for the sale of alcoholic beverages, terminate the licenses, as well as impose penalties and conduct hearings. The issuance and termination of licenses is part of its authority to regulate as an agent of the state. Its prerogative to legislate a beverage ordinance, as well as to levy penalties for violations of local regulations, is evidence of performance of judicial as

well as administrative and legislative tasks.

The four home rule towns, Barrington, North Kingstown, Lincoln, and Johnston,² appear to adhere to a part of the theory of separation of powers. In the council-manager towns, the administration of town government is delegated to the manager by the town council. The council is forbidden by charter from interfering with the manager's administration. The charter restriction against interference, however, fails to spell out how the council may be curbed if it should infringe on the manager's jurisdiction. The council may appoint the manager at will and may terminate his employment at any time. The manager is the chief executive officer of the town as well as the administrative advisor to the council; therefore, the manager is instrumental in policy formation as well as its enforcement. Only a gray area separates legislation from administration. An atmosphere of good relations between the manager and the council lends weight to the idea that separation of powers can exist if harmony prevails.

In Lincoln, an administrator-council town, the town

2

Johnston's home rule charter will not become effective until November, 1964, but its charter permits a moot analysis. Johnston will have an administrator-council form of government.

administrator performs functions similar to the manager, such as budget preparation, administrative supervision, and financial control. Unlike the manager, however, the town administrator is elected.

Where no single executive shares power with the council, it must prepare its own budget with the assistance of department heads, hold hearings on it, and defend it at the financial town meeting. In this situation, the town clerk usually acts as the council's "right-hand man". This situation compels the council to act in administrative and legislative matters without giving much thought to how it violates better public administration concepts.

III. THE BASIS OF LOCAL GOVERNMENT

Rhode Island local government, structurally speaking, consists of a government of towns since there are 31 towns and only 8 cities. The powers of local government derive from the state, since cities and towns have no inherent rights in and of themselves. As Professor Webber has said:

. . . local government in Rhode Island owes much of its definition to general law and special legislative act [which] demonstrates quite clearly that all forms of local government are

creations of the state.³

Any study of local government in this state must include a search of the General Laws, since this body of law is the primary source of powers granted to local communities through enabling acts and by statute. This statement is confirmed by Professor Webber who wrote:

The fact that the legal basis of local government in Rhode Island consists largely of the body of law contained within the general laws and special acts of the state suggests that any consideration of state-local relationships depends in large measure on an understanding of the degree and kind of control exercised by the state. This control is primarily legislative and fiscal in nature. 4

The sources of local government power, in addition to the General Laws, include the State Constitution, local home rule charters, judicial decisions and special legislative acts and resolutions. But it is the General Laws that provides the framework through which local government provides municipal services and acts as an enforcement agent of the State.

Police Power

It is the police power of the state which the

3

Edwin W. Webber, Rhode Island Local Government and Administration (Research Series No. 6, Kingston: University of Rhode Island Bureau of Government Research, 1962), p. 7.

4

Ibid., p. 9.

legislature possesses and which it delegates to the political subdivisions. What is the police power of the state? It is the inherent power of the state to enact laws for the safety, health, morals, convenience, comfort, prosperity or general welfare of the people. It means many things and can not be precisely measured. The justices of the Supreme Court of Rhode Island have said that the police power "is indefinable, because none can foresee the everchanging conditions which may call for its exercise."⁵ The court's opinion conveys the implication that the police power can be defined to meet new needs and new conditions in times of transition. It seems to be a miscellaneous category for justifying whatever cannot be supported by other concepts.

Permissive Legislation

The General Laws consist of permissive legislation known as enabling acts that allow towns, cities, and other political subdivisions to act in particular subject areas of local concern. This legislation leaves it to the municipality to determine for itself whether it needs to act or rather should it act. Although permissive legislation permits voluntary acceptance of its provisions, this acceptance is conditioned on adherence to the pro-

5

The police power is defined by Justice Paolino in his book Zoning: Its Growth and Development in Rhode Island, p. 2. See also: Opinion to the Governor, 24 R.I. 605 (1902).

cedural requirements of the law. Exceptions to this statement are enumerated later in this study.

The number of local governing powers derived from constitutional provisions is slight indeed, so it is to be expected that the General Assembly would carry on the task where the framers of the constitution stopped. Local home rule charters spell out in detail the functions of each unit of municipal government and carry on where the General Laws end. The numerous special acts in the Public Laws deal with situations of limited scope and are created as the need arises. The General Laws contain provisions applicable to all towns as well as some pertaining to one or a few. New Shoreham, the only island town, because of its distant location, adheres to different laws in some instances.

In Rhode Island towns, the town council for all intents and purposes is the town government possessing legislative, judicial and administrative powers blended together so that sometimes it is difficult to determine which "political hat" it is wearing. The smaller towns employing smaller work forces and part-time personnel render fewer services and must rely on the town council for assistance more frequently than in communities where there is a full-time chief executive. The council may be likened to a board of directors since the council is the

guiding body of a municipal corporation (town). One key difference in acting for a public versus a private corporation is the greater amount of actual detail imposed on the councilmen. In business, the board of directors is usually a management advisory group, but in a municipal corporation the town council may be the managers as well.

IV. PRESIDENT OF THE TOWN COUNCIL

In any discourse on the function of town councils, the president of the town council must be singled out for his special role. In addition to having the appointing power, being presiding officer of council meetings and probate sessions, he performs some administrative duties. The General Assembly has endowed him with special authority to act in certain subject areas; for example: only he may certify the election of a town clerk.⁶ It can be said that he acts as the chief executive in a limited way. The Council President may be compared to the mayor of a city, who, as the chief executive of the city government, performs ceremonial functions, speaks on public matters in

6

Rhode Island General Laws 1956 Title 45, Chapter 4, Section 5. Hereafter sections referred to in the General Laws will be cited as 45-4-5.

behalf of the municipality, and supervises administration. 28 Rhode Island towns operate without a full-time chief executive, so it is not uncommon for the president of the town council to assume responsibilities in addition to those provided by statute, even though he may not be endowed with legal power to do so.

Although the town council may act as a licensing board, there is an exception wherein the Council President, acting alone, can issue a permit to a child under sixteen years to give an artistic performance.⁷ The child must be accompanied by a parent or guardian while giving a dancing, theatrical or musical performance. A district court may issue a search warrant to detect suspected gambling, if a complaint is made by the president of the town council.

Usually, if the council is seeking state action on a pressing local problem, the council president is designated by statute, ordinance, or by the consent of the council as the person who files a complaint or initiates action. For example: to treat local mosquito breeding areas by the Department of Agriculture and Conservation, the president must request the Director of Agriculture

and Conservation to act on the matter. The law requires the Director to act at the request of the proper local authority.⁸

Either the Council President⁹ or the local health officer is empowered to authorize rabies treatment of any person bitten by a suspect animal. He has other powers which he alone possesses and seem to confirm that he is the head of the town government. The president of the council, the town clerk, and the town treasurer constitute the board of sinking fund commissioners where established by the local town council.¹⁰ In cities, the mayor is substituted for his town counterpart. The head of the local governing body is designated to draw the names of persons for jury duty¹¹ and those who serve on active duty with the unorganized militia.¹² He is also authorized to accept equipment, supplies, materials, or funds on behalf of the town for defense or wartime activities,¹³ and may designate persons to inspect all premises in his town for the purpose of discovering fire hazards under the State Emergency

8
23-7-1 to 23-7-3.

9
4-13-27.

10
45-12-12.

11
9-9-16.

12
30-5-2.

13
30-15-33.

Defense Act of 1950.¹⁴ In times of emergency the president of the town council, or two or more councilmen, may remove the town administrative offices to any other location within or without the state.¹⁵ If the Workmen's Compensation Commission decrees that compensation shall be paid to a town employee, the president of the town council must give his approval before payment is made.¹⁶ If there is a town auditor, he issues the approval.

A Council President can be fined and disqualified from acting as a council's presiding officer if he neglects to put to a vote of that body an appeal made by a councilman on a ruling of the presiding officer. A \$200-\$1,000 fine and a five year disqualification may be imposed.¹⁷

V. THESIS ORIENTATION

In the chapters that follow the thesis will consider the powers of town councils in the several areas of municipal concern. The next chapter includes a discussion of general government powers classified alphabetically.

14
30-15-26.

15
30-15-34 and 30-15.2-1 as added by P. L. 1963
Ch. 19.

16
28-31-6.

17
11-28-3.

Chapter III considers public works and finance with two major subdivisions, one public works, the other finance. Chapter IV is concerned with health and welfare. Public works includes those subjects most commonly classified under that title, whereas welfare powers is limited to matters affecting the general welfare.

Chapter V includes a discussion of conservation subjects, education, libraries, public safety and business regulation.

The concluding chapter, Chapter VI, is concerned with the home rule towns and the adoption of home rule charters. Constitutional and statutory restrictions are considered along with the lack of public authority to deal with particular local problems.

II

GENERAL GOVERNMENT

The term "general government" has been chosen to categorize a number of powers and duties of town councils that cannot be easily classified under other headings. Therefore, General Government, as used here, does not necessarily correspond with the definitions of the term that are employed by fact-gathering agencies such as the U. S. Bureau of the Census or the Rhode Island Division of Local and Metropolitan Government.

For purposes of easy reference, these powers and duties have been placed in alphabetical order, as is the case with most of the other categories. Also, as is the case with the following chapters, the statutes have been paraphrased in a manner which, it is hoped, will convey the sense of the law without burdening the text with lengthy verbatim quotations. The reader wishing to use any of these materials for legal purposes is advised to turn to the specific statute, which he may find by referring to the appropriate citation provided in the footnotes.

Action Against Towns

Persons having money due them from any town may

present their claims to the town council for satisfaction. If the council fails to give satisfaction within forty days, claimants may commence action against the town treasurer to recover the amount of the claims.¹

The State Census

The agents for taking the census in the several towns will be appointed from among those nominated and recommended by their respective town councils, unless they are found to be incompetent or unsuitable.²

Cemeteries

Before building a mausoleum or columbarium in a town or city, the agency constructing it must file plans and specifications with the town or city clerk, and get the approval of the town or city council.³

Constables

Constables are elected by the town council⁴, which also determines their number and determines how many special constables shall be appointed.⁵

1
Title 45 Ch. 5.

2
42-25-5.

3
23-18-3.

4
45-16-7.

5
45-16-8.

Selection and Qualifications of Officers

Town councils may elect town officers not chosen at an election, or may be authorized by town meeting to elect any officers that towns may lawfully choose.⁶ As soon as the town clerk has been elected, the president of the town council shall send to the Secretary of State a certificate of the town clerk's election.⁷ Persons elected to town office by the town or town council must take an oath of office, which can be administered by members of the town council.⁸ The council may fill all vacancies in office until the next town meeting at which these posts are filled.⁹

If no one is certified as having been elected a state senator or representative at any election, by the State Board of Elections, then the president of the town council shall issue a warrant to the town moderator to hold an election ten days from the date on the warrant.¹⁰ If the Council President fails to act on this matter he may be fined \$500.¹¹

6

45-4-9. The town council cannot choose the town clerk, town treasurer or town council.

7

45-4-5.

8

45-4-11.

9

45-4-16.

10

17-2-3.

11

17-2-8.

The town council may fill the position of town moderator if that post becomes vacant for any reason.¹² The vacancy shall be filled from a list of party voters submitted by party chairmen under whose party designation the moderator has been elected.

Town councils were permitted to act as local canvassing authorities until 1958. The enactment of P. L. 1958 Ch. 18 section 1 terminated this authority. Now the president of the town council appoints three members of a bi-partisan canvassing authority subject to the approval of members of the council.

Unclaimed Estates

The town council may direct the town treasurer to take charge of the estate (real or personal), of any person who died having no known heirs or legal representative. The town treasurer shall take charge until an heir or legal representative calls for the same.¹³ The council may cite any person whom it suspects of possessing the personal estate of anyone dying without heirs to appear before it

12

The town moderator manages and regulates the business of each town meeting. He acts as the presiding officer and parliamentarian.

13

33-21-1.

to be questioned under oath concerning the matter.¹⁴ The town treasurer may commence action against this person to recover the estate.¹⁵

Use Impersonation

It is a criminal offense to impersonate a member of any town council.¹⁶

Holidays

Town councils may adopt a resolution to close town offices on Saturdays.¹⁷ The town council, acting as a licensing board, shall not be prohibited from granting a permit to hold athletic meets, contests, race meets, or athletic exhibitions on any holiday.¹⁸

Jurors

In the month of February in odd-numbered years, the town council is to prepare a list of qualified men and women electors to serve as jurors. State statute imposes a penalty of up to \$500¹⁹ against any councilman who fails

14
33-21-2.

16
11-14-1.

18
25-1-6.

15
33-21-3.

17
25-1-5.

19
9-9-9 to 9-9-11.

to act on this matter. The town council shall meet for the purpose of drawing names of grand and petit jurors, and the presiding officer of the council shall draw names by lot, read each name aloud, and then pass the paper containing each name to the other councilmen to read aloud. The council is not permitted to excuse any legally qualified person whose name is drawn.²⁰ The Jury Commissioner may excuse persons for good cause.

Military Affairs and Emergency Conditions

Whenever it is necessary to call out any portion of the unorganized militia for active duty,²¹ the Governor shall direct his order to the president of the town council. The Council President when notified shall proceed to draft by lot as many of the unorganized militia in his town, or accept as many volunteers, as the Governor may require.²²

In time of emergency resulting from the effects of an enemy attack, or the anticipated effects of a threatened

20

The procedure for drawing jurors' names is provided in 9-9-16 to 9-9-20 as amended by P. L. 1963 Ch. 56 and indicates the number of jurors to be selected in each city or town.

21

Town councilmen are exempt from militia duty (30-1-7).

22

30-5-2.

enemy attack, the town council may meet to act on the crisis. The councilmen may meet at some place in town or without, on the call of the presiding officer or any two members of the council. An alternate location may be established as the emergency temporary location of town government where public business may be conducted. The new site need not be within the town or state borders. Public business conducted at any emergency location is legal and the governing body and other officers of a political subdivision shall possess all powers conferred on them by state law. Time consuming procedures usually necessary to carry out their powers, duties and responsibilities may be disregarded and the acts performed shall remain valid.²³

Each city and town is authorized to make and enforce whatever provisions may be necessary to insure the success of local blackouts and other air raid protection measures ordered by the military forces or the state government.²⁴ No town shall be liable for any damage caused to persons or property as a result of acting in good faith pursuant

23

30-15.2-1 to 30-15.2-3 as amended by P. L. 1963
Ch. 19 S 1.

24

30-15-20. Local regulations must not conflict
with those ordered by the U. S. military forces.

to authorized blackout or air raid protection measures.²⁵

Whenever the federal government, or any person or corporation shall offer to give or lend equipment, supplies, material or funds for wartime or defense activities to the state, city, town or other political subdivision, and its acceptance is authorized by law, the political subdivision is authorized to accept the same, and in the case of towns, the president of the town council may authorize any officer of the town to accept the gift or loan of such goods on behalf of the town subject to the terms of the offer.²⁶

Every city and town may by ordinance create a veterans' retraining and unemployment committee and have authority to establish and maintain a veteran's information service in each municipality.²⁷

Cities and towns, through their governing bodies, are directed to prepare honor rolls containing the names of persons who were in the service of the United States in any war in which this nation participated. A committee shall be appointed by the town council in each town to

25

30-15-22. Liability can be incurred only if provided by this chapter, statute or common law of this state.

26

30-15-33.

27

30-23-2.

prepare the rolls of honor.²⁸

The governor may establish a special emergency health and sanitation area and the health authorities of municipalities containing such areas are to make and enforce rules and regulations designed to prevent disease and safeguard public health within the area. If local health authorities cannot or fail to act, the Governor, with the consent of the State Council of Defense, may make and enforce rules for public health within the area, and for this purpose he may assume powers and authority conferred upon town and city health authorities.²⁹

Legal Service for Municipal Employees

Town councils in behalf of their respective towns may enact ordinances providing medical and dental services in its broadest sense to any or all town employees and their dependents as the town council deems desirable. These benefits are to be provided under any non-profit plan maintained and operated by a non-profit hospital service corporation and/or a non-profit medical service corporation organized under the laws of this state. Councils

28

30-28-8. This section makes it a mandatory act to be performed.

29

30-15-31 and 30-15-32.

may also appropriate funds for this purpose.³⁰

Town councils shall appoint a physician who shall render his services to injured town employees.³¹

ment of Municipal Employees

Chapter 21 of Title 45 of the General Laws was enacted by the General Assembly for the express purpose of providing an actuarially financed retirement system for municipal employees, properly integrated with the federal social security system. Any municipality may accept this chapter by an ordinance or resolution of its governing body³² setting forth the group or groups of employees to be included.³³ Municipalities accepting the provisions of Chapter 21 do not have to comply with the procedure of sections 17, 26, and 41 of this Chapter and Title as it is presently amended. Town councils may pass a resolution to that effect and forward it to the Secretary of State. This action is not irrevocable on the part of cities and towns.

30

45-2-11. Retired town employees may be eligible for benefits as amended by P. L. 1962 Ch. 152.

31

45-2-11.

32

45-21-2 defines governing body in towns as the town meeting.

33

45-21-4. Nothing contained in Chapter 21 shall be deemed to impose any obligation upon any municipality for service which may have been rendered by an employee of one municipality in behalf of another.

Compensation for Municipal Employees

The provisions of Chapters 29-38 of Title 28 of the General Laws concerning workmen's compensation may be accepted by vote of the electors at town meeting or by vote of the town council authorized to vote on the matter by the electors.³⁴ The town shall designate the class of employees or the nature of the employment for which the provisions of said Chapters shall apply. After a town has accepted the provisions of Chapters 29-38 of Title 28, the town council shall appoint one to three persons who shall have authority and power to make and carry out an agreement for the settlement of any claim which an employee may have against such town under the provisions of these chapters.³⁵ The council appointees shall continue in force unless revoked by vote of that body. Any payments to a municipal employee determined by an agreement, as discussed above, or by decree of the Workmen's Compensation Commission, must receive the approval of the president of the town council before payment is made.

Towns seeking to become employers within the meaning of Chapters 39-41 of Title 28 inclusive, shall send a certified copy of a resolution or act of the legislative body

34
28-31-1.

35
23-31-4.

of the town to the Director of Employment Security.³⁶

Names

The names of various localities in a town may be determined by its town council.³⁷ A railroad corporation affixing a name or changing a present one on any railroad station must secure town council approval.³⁸

Nuisances

Town councils may suppress nuisances described in 11-30-1 or 11-30-2 of the General Laws by legislating an ordinance.³⁹

Ordinances

Through the passage of ordinances, a town council can legislate solutions to problems, as well as formalize public policy. It is a basis for implementing state enabling acts as well as regulating matters of local concern.

The town council may from time to time make ordinances and regulations which do not conflict with state law, or go beyond the content of any enabling act, for the purpose of

36

45-21-48 and 45-21-49 as amended by P. L. 1963 Ch. 212 for further information.

37

45-6-4.

38

45-6-5.

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23-19-7.

ensuring the safety of the inhabitants.⁴⁰ Penalties for the violation of ordinances may include fines up to \$20.00 or 10 days in jail for any one offense. A statute may impose other penalties, and if that is the case, the statutory penalty prevails.⁴¹ No ordinance or regulation may impose a penalty for the commission or omission of any act punishable by state statute.⁴²

The town council shall decide how its ordinances shall be printed and published.⁴³ If the law does not indicate the means for executing the provisions of ordinances, by laws and regulations, the council may appoint the necessary officers for this purpose. The state does not assume any expense for process, commitment or detention under these local regulations.⁴⁴

Unless a special court exists, or is created by charter or law for trying offenses against town or city ordinances, district courts shall try offenses in violation of local provisions.⁴⁵ A warden's court exists in the Town of New Shoreham and may try certain offenses in that town as enumerated by law. This court has been inactive for

40
45-6-1.

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45-6-6.

44
45-6-8.

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45-6-2.

43
45-6-7.

45
12-3-1.

some time, and there is some indication that the town council in that town could act as a warden's court. This is a clouded legal issue at the present time.⁴⁶

Planning

Town planning boards are elected at the financial town meeting, but town councils are not precluded from assuming this task.⁴⁷ If the town council is the plan commission, no board of appeal need be appointed and appeals from council decisions on planning matters should be directed to the Superior Court.

The planning board may make special studies, when requested by the town council, and shall report annually to the local legislative body. The board may make recommendations to the council on various matters referred to it by the town council. The council may enact ordinances for the purpose of making studies of the resources and needs of a town with reference to the physical growth and development affecting the health, welfare, safety and morals of the townspeople.⁴⁸

46

Letter from Hon. Louis W. Cappelli, Presiding Justice of the R. I. Superior Court, Providence, April 1, 1964.

47

45-23-19 as amended by P. L. 1961 Ch. 175 S 1.

48

45-22-1, 45-22-2.

The governing bodies⁴⁹ of two or more municipalities, by ordinance or resolution, can authorize and establish a joint municipal planning commission. This commission may provide planning services to the participating municipalities, administer federal and state grants, and work on mutual problems and projects such as proposed bridges, tunnels, land use areas, and zoning.

Probate Courts

In more than half the towns of Rhode Island, the town councils act as probate courts. The other fifteen appoint judges of probate. Unless the law or town charter provides otherwise, the town council shall be a court of probate.⁵⁰ In any town where the town council sits as a probate court, the council may appoint, annually, a member of the state bar to be available to sit as probate judge⁵¹ when a party to a contested probate matter so requests it, or at any other time the council may deem it appropriate. Town meeting⁵² may permit the town council, acting as a probate court, to keep the fees it receives or may provide a salary

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Chapter 45-22-1 as added by P. L. 1963 Ch. 206. Governing body in this context is not clear and might mean town council or town meeting.

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8-9-1.

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8-9-2.

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33-22-25.

to the council when it performs this duty. Unless otherwise provided, whenever a judge of probate in any city or town is a party to, or interested in any case in his town, the council shall perform his probate duties as if no probate judge had been elected.⁵³

Property

The governing body of a town may, by ordinance, designate any office holder or town employee to bid and purchase on behalf of the town any equipment, supplies or material belonging to the federal government that is put up for sale.⁵⁴

Town councils may sell, lease, convey or use for any public or municipal purpose, land or properties that are town owned and which were purchased, acquired, used or dedicated in any manner for municipal or other public purposes whenever, in the council's opinion, said lands or properties become unsuitable or have ceased to be used for such purposes.⁵⁵

53

8-9-5. Exception: Bristol. Town solicitors sometimes fill in as probate judge. Example: North Kingstown.

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34-3-5.

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45-2-5. For exceptions see 45-2-6.

Racing

Before a horse racing track can be established in any town, the question must be submitted by the town council to the voters at a general or special election. If the voters approve it, then the council shall give its consent and all further action, as well as regulations concerning horse racing, rest with the State Commission on Horse Racing and Athletics.⁵⁶

Redevelopment

The need to establish a redevelopment agency in any community must be determined by resolution of the town council, if the agency is to function.⁵⁷ After the council adopts the required resolution, the president of the town council appoints five electors of the town as members of the agency subject to the approval of the other councilmen. A member of the agency can be removed only after a copy of the charges against him are prepared and presented to him at least 10 days before a public hearing is held on the matter.⁵⁸ The council has firm control over this agency

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41-3-2.

57

45-31-10, 45-31-11.

58

45-31-12.

by the following means: (1) appointive power; (2) fiscal control; (3) policy determination; and, (4) approval of agency projects and other matters.

The redevelopment agency must submit its proposed budget to the council, which can change it as it may see fit.⁵⁹ The council, as the legislative body, may require periodic reports,⁶⁰ on agency activities. Redevelopment activities may be terminated after two years of operations if no redevelopment project has begun. A planning commission must exist if a redevelopment authority is created.

The minimum requirement to be met by a community desiring redevelopment projects is a master or general community plan adopted by the planning commission or town council. The areas to be redeveloped are to be designated by ordinance⁶¹ or resolution by the town council.

The enabling act permits this administrative agency to possess numerous corporate powers⁶² but it is firmly within the realm of control of the council, because the redevelopment plans of the agency must be submitted to the town council and the planning commission, which shall act

59
45-31-15.

60
45-31-21.

61
45-33-1.

62
45-33-2.

as advisor to the legislative body on these matters. Financial appropriations for these projects are allotted by the town council. If two or more towns or cities, as the case may be, desire it, they may jointly exercise their redevelopment powers to improve certain areas. The Rhode Island Development Council must cooperate with local authorities on these matters.

A redevelopment revolving fund⁶³ may be established by the town council after it has passed, by resolution or ordinance, a policy declaring the need for this agency. The council may also issue bonds to provide funds for carrying on the projects or programs in a specific redevelopment area.⁶⁴

Shipwrecks

All towns but New Shoreham may appoint annually a commissioner of wrecks and shipwrecked goods.⁶⁵

Subdivision of Land

Town councils may by ordinance authorize and permit the plan commission to adopt, modify and amend rules and

63
45-33-1.

64
45-33-2.

65
46-10-1, 46-10-6, 46-10-12.

regulations governing and restricting the platting or other subdivision of land in a town.⁶⁶ A municipality adopting a subdivision ordinance shall create a board of review by ordinance.⁶⁷ The town council may act as a planning commission and if it does, then no board of review need be created since any appeals on planning decisions would be presented to Superior Court, in the county in which the land is situated.

Vital Statistics

Town councils may appoint the town clerk or another person as local registrar for the purpose of recording births, marriages and deaths.⁶⁸ The compensation for the performance of these duties is decided by that body.⁶⁹

Weights and Measures

The president of the town council may perform the duties of sealer of weights and measures, if that post is vacant.⁷⁰

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45-23-2.

67

45-23-14. Board of review can be the zoning board of review, or platting board of review, but in West Greenwich the town council shall be the zoning board of review.

68

23-3-6 as amended by P. L. 1961 Ch. 87 S 1.

69

23-3-36.

70

47-6-3.

Windmills

Town councils may authorize or continue the location of any mill at any place within the limits of the town⁷¹ upon receipt of a petition in writing, but can also remove any windmill that is located within 25 rods of any travelled road or street.⁷²

Zoning

There are three zoning categories defined in the General Laws. They are: (1) zoning in its usual sense; (2) airport zoning; and, (3) historic zoning.

A municipality has no power in and of itself to enact zoning ordinances. The original zoning power of the state resides in the state legislature. The basis of zoning power is in the police power of the state, which the state delegates to the municipality by means of an enabling act. To understand zoning, it must be defined in reference to its purpose, which is the "regulatory legislation of property by a local government."⁷³

71

11-22-7.

72

11-22-6. Exceptions: 1. any mill located by decree of a town council, 2. any mill situated in New Shoreham or Jamestown, 3. any patented windmill or engine.

73

Thomas J. Paolino, Zoning: Its Growth and Development in Rhode Island (Providence: 1963), p. 1.

Zoning divides a community into districts, and regulates the use of land and buildings, the height and size of buildings and the balance between the size of the building on it. 74

Town councils, through the police power delegated to them,⁷⁵ may pass zoning ordinances with the approval of the financial town meeting. The town may be divided into districts to accomplish this purpose, and a zoning board of review appointed.

The Rhode Island Airport Zoning Act, as enacted by P. L. 1946 Ch. 1743, was designed to enable municipalities which have airports within their limits to enact zoning ordinances for the purpose of dealing with special problems arising from such operations. To date no cases of an airport zoning nature have come before the Rhode Island Supreme Court.

Airport zoning regulations cannot be adopted or amended under this chapter, except by the legislative body of the political subdivision in question, or by the action of a joint airport zoning board.⁷⁶ Municipalities may enact an ordinance or joint resolution creating a joint airport

74
Ibid.

75
Title 45 Chapter 24.

76
Title 1 Ch. 3.

zoning board when a public airport is located within a political subdivision, or partly within several. Each joint board shall have as members, two representatives appointed by the city council or town council of each participating municipality.⁷⁷

The legislative body of any political subdivision adopting airport zoning regulations may delegate its administration and enforcement to any existing administrative agency or may create a new agency for this purpose.⁷⁸

Historic zoning was enacted in Rhode Island in 1959⁷⁹ for the purpose of preserving structures of historic and architectural value. Ordinances may be created to regulate the construction, alteration, repair, moving or demolition of such structures within the limits of any town. Historic districts may be created in towns by the town council. An historic district commission may be created, the members to be appointed by the president of the town council.

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The Division of Aeronautics may have to give its approval to any changes or adoption in the regulations. See: 1-3-6.

78

1-3-11, 11-3-17.

79

P. L. 1959 Ch. 131 (45-24-17).

III

PUBLIC WORKS AND FINANCE

This chapter indicates how the town council may act in the areas of public works and finance as described in the General Laws. Local ordinances and special legislative acts often deal directly with specific matters in these areas of concern, but this chapter is concerned with general provisions of a fundamental nature.

The section on public works is composed of those activities usually regarded as a component of public works. Water has been included here because most municipalities place water service within the jurisdiction of the public works department. Although water is provided by some municipalities, others are serviced by private companies. South Kingstown, for example, is served by the Wakefield Water Company, which company is regulated by the State Division of Public Utilities.

Financial affairs are mostly ministerial in nature, once the policy decisions are made. The financial town meeting is the instrument of financial approval although the town council has authority to decide on the details of various financial matters. The abbreviated town meeting warrant reproduced in the Appendix is illustrative.

I. PUBLIC WORKS

1 Waters and Shore Development

The town council has authority to designate exposed beach areas needing protection from loss of beach materials and erosion.¹ The council may acquire or construct at the expense of the municipality any lands or interests or works required for this purpose and may assess the cost of such protective works upon the owners of property benefiting from the improvement. Bonds may be issued by the town council for this purpose.²

Ditches and Drains³

Whenever a landowner wishes to drain his land and cannot agree with the proprietor or proprietors of adjacent lands that will be affected as to the mode of draining, the former may petition the town council in the town in which the lands are located for power to drain across the land of another person. The council, after receiving the petition, holding a hearing, and determining bond, may appoint three persons to determine the best way of draining the affected

¹
46-3-7.

²
46-3-11.

³
Title 40 Chapter 20. See also: 5-20-11.

lands and to apportion the damages and benefits between the parties in interest. The persons appointed for this purpose must report their recommendations to the council, which is not obligated to follow them. Whatever the council's decision, either of the interested parties who feel aggrieved may appeal the council's action.

Local Flood Control Projects

Towns⁴ may negotiate, co-operate and enter into agreements with the federal government and the state to meet federal conditions in authorizing any project for the improvement of navigation of harbors and rivers and for the protection of property against damage by floods or erosion. If the project is located within two or more towns, the towns concerned may act jointly. Each town may, by condemnation, act to acquire land, easements, and rights-of-way needed for the project, and may issue bonds or other evidence of debt for the improvement or protection project. The local governing bodies may give assurances to the federal government that the United States government will be free of liability as a result of any such protective improvements.

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Town councils have the full power to manage the affairs and interests of their respective towns as provided in 45-5-1. This would seem to indicate that "town" used in this context would mean its proper officials, i.e., the town council.

Where an appropriation has been made by the town council, the state may provide for half the payment required by the United States government for the project.⁵ Each town shall prescribe regulations designed to prevent encroachments on improved channels resulting from the improvements.

Highways

Control over highways is an area of municipal as well as state concern. At the local government level, the town council, as the governing body of the municipality, is deemed to be responsible for highways within its territorial jurisdiction, generally speaking. The General Laws specify the procedures to be followed when a town council acts on highway matters.

Town Councils have the power to lay out highways, streets, parkways or drift ways and may acquire land by eminent domain for this purpose.⁶ When a Council lays out a highway, it may decide the procedure to be followed. It may mark out, relay, widen, straighten, or change the location of the whole of or any part of any highway or

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46-2-7 to 46-2-12; also 46-2-24.

6

24-1-1 to 24-1-5 as amended by P. L. 1962 Ch. 216.
24-1-1 to 24-1-13 in the bound volume of the general laws are still in effect regarding procedure for laying out highways.

drift way regardless of whether it was laid out by the state or otherwise.⁷ The local legislative body may also control highways and drift ways laid out by the General Assembly.⁸

Highways or parts thereof may be graded if a town council deems it necessary.⁹ After deciding to improve or grade any street or highway, the town council shall appoint three to five persons as commissioners of estimate and assessment to assess damages to property owners because of these improvements.¹⁰

A property owner in any town, owning land abutting on a plotted street, which is not a public highway, may compel the town council to define the grade on such street. The council shall then appoint three disinterested and discreet persons to perform this task.¹¹

Whenever a highway is graded or the grade changed, the council can order side walks to be established.¹²

A Town Council must maintain all highways, causeways

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tucket River. See: 24-3-1.

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24-3-2.

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24-3-23.

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24-3-3.

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24-3-18 to 24-3-22.

12
24-3-24.

and bridges within town limits (except when the law states otherwise), at the town's expense.¹³ Towns neglecting this duty are subject to fines of \$50.00 to \$500.00. Even if the electors of the town (entitled to vote on fiscal appropriations), do not appropriate funds for such purposes, the town council must make expenditures to carry out this purpose and to meet the requirements imposed by the state.¹⁴

The town councils shall divide their respective towns into not more than four highway districts or may designate the entire town as one such district and shall select a highway surveyor for the town-wide district or one each for every highway district in town. The highway surveyor shall be subordinate to the council and to any committee created to supervise this activity. They shall determine and appropriate the proportion of the annual expenditure for the maintenance and repair of highways and bridges which shall be expended in each highway district. The council may delegate to a council committee the responsibility of supervising this activity. The maintenance of

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24-5-1.

14

24-5-3 (to meet the requirements of 24-5-1). See also: Chapters 3, 4 and 5 of Title 24.

highway districts can be handled on a contract basis at the discretion of the town council.

Local legislative bodies may make ordinances and provide for penalties for snow removal from public highways. It would appear that if such legislation was passed by a municipality its purpose would be to compel a highway maintenance contractor to live up to the terms of his contract or to mitigate the circumstances if the town failed to properly maintain such roads and bridges according to state requirements.

The council may fix the corners and angles of all roads within its town at which it shall be necessary to erect and maintain guide posts.

A town council may decide that a highway or drift way is no longer useful to the public by order or decree and the title reverts to its owner. The town then has no further responsibility for its upkeep.

Sidewalks

Town councils of any town have the power to order sidewalks, including the curbing of stone or other material, made and laid in and upon the streets and highways of the town,¹⁵ and may make ordinances and regulations relative

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24-7-1 to 24-7-8. Towns shall pay half the costs of installing sidewalks.

to the altering and repairing thereof.

Water

Water may be provided by private sources and the town council may give permission to persons or a corporation to install water pipes in any town highway and to construct or maintain a reservoir within a town.¹⁶

The Kent County Water Authority, providing water service in the district whose boundaries are Kent County, is governed by a board, the member of which are persons living in the member communities appointed by their town or city councils.¹⁷

II. FINANCE

Public Finance

The towns of Rhode Island, except North Providence which has a budget commission, still retain the town meeting to make fiscal appropriations for local government in the old New England way. The electors at town meeting approve appropriations and leave it to their respective town councils to handle the details (budgeting, auditing, recording, etc.). However, there are safeguards to prevent abuses as well as to promote efficiency. For instance the

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39-15-11.

17
39-16-4.

State Bureau of Audits checks all town council accounts, if the council receives money belonging to the State.¹⁸

Each town is required to have a post audit of all town financial records, either by the State Bureau of Audits or a private firm of certified public accountants.¹⁹

Towns may invest funds within their control in bonds and other obligations,²⁰ and may, subject to provisions of law, issue bonds, or certificates of indebtedness. The town council, as the managing body of the community,²¹ acts as the fiscal manager of the town as well. The council may delegate to its subordinates, such as the town treasurer or town manager, certain financial responsibilities.

The electors at town meeting may petition the state Director of Administration for the installation of an accounting system in their town. The town council, too, may make this request and ask the Director to provide assistance in establishing this system.²²

Taxes

The electors of any town qualified to vote on a

18
35-6-20.

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45-10-4.

20
45-27-2.

21
45-5-1.

22
45-10-1 and 45-10-3.

proposition to impose a tax may vote to exempt, or authorize their respective town councils to exempt, from taxation for up to ten years, manufacturing property thereafter located in the town.²³ The council may also exempt idle manufacturing or mill property from taxation.²⁴ In order to provide temporary tax relief to interstate railroads, the General Assembly enacted P. L. 1961 ch. 46,²⁵ so that local communities in the state could provide tax relief to the financially depressed New Haven Railroad. This relief may take the form of deferred tax payments, cancellation of local taxes due, or other means at their disposal.

Town councils are also empowered to cancel, in whole or in part, taxes assessed upon personal, mixed or real property when there has been a mistake in the assessment of a tax, when in fact a tax is uncollectable, or when advised by the town solicitor that a tax is illegal.²⁶

Town Treasurer

The town treasurer shall give bond to the town for

²³
44-3-9.

²⁴
44-3-10.

²⁵
44-3-1 as added to by P. L. 1961 Ch. 46.

²⁶
44-7-14.

which he is appointed. The sum and surety are to be determined by the town council, conditioned for the faithful discharge of the duties of that office.²⁷

Town Meeting

Town meetings may be called at the request of town councils²⁸ and no special town meeting may be called without the consent of the town council.²⁹ The subject on the warrant for a special town meeting must not have been acted upon by the town at any time within six months previous to the time of the proposed call.

Whenever ten per cent of the electors request it, the town council shall call a town meeting upon receipt of a written request.³⁰ Town meetings are financial town meetings. An illustration of what is contained in a town meeting warrant is the 1964 warrant issued by the Town Clerk of North Kingstown from which selected material is reproduced in the Appendix to show what kinds of proposals may be acted upon by the electors at town meeting.

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45-8-1.

29
45-3-7.

28
45-3-6.

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45-3-6.

IV

HEALTH AND WELFARE

Spatial limitations of this study require that sanitation and health be grouped together under one heading.

In some towns, there are health officers and separate boards of health. Some towns have no sewers, so, naturally those provisions of the law are inapplicable. Sewers are classified here as a sanitary function although they can be categorized as a public works activity. Sewer operations, as far as the installation and maintenance are concerned, are usually under the supervision of the director of public works, but he often works in cooperation with health officials to deal with sanitary problems arising from the use or misuse of facilities.

Public welfare is administered through the state in cooperation with local welfare offices headed by locally-appointed directors. Only in Middletown does the town council act as a Board of Directors of Public Welfare. Since only one town handles the matter in this way and since welfare is mainly a matter of state control, it will not be included within the confines of this discussion. The discussion of welfare in this chapter is limited to

those provisions concerning the general welfare of the townspeople and the specific instances where town councils may act in the public interest under the police power of the state.

I. HEALTH

1 Diseases in General

To prevent the spread of infectious or contagious diseases among animals, including cattle, within their jurisdiction, the local legislative bodies may pass ordinances for these purposes.¹ However, the Director of Agriculture and Conservation may supercede or suspend local regulations at his discretion.²

Garbage

No swine can be kept in any town, to be fed on swill, waste or other decaying matter brought from any other town, except in a location designated by the town council.³

Meats

Town councils may elect or appoint annually beef and pork inspectors and shall compensate them for their

¹
4-4-18.

²
4-4-24.

³
4-3-12.

services.⁴ These inspectors, as well as each meat inspector,⁵ shall destroy and dispose of tainted meat or fish found in their jurisdiction. It is their duty to act at the request of health authorities or town councils.⁶

Mental Health

Each town, before establishing a community mental health service program, shall establish a nine member community mental health board. The board shall be appointed by the chief executive officer⁷ of the town or the chairman of the governing body of the town. Whenever two or more towns establish this program, the chief executive officer of each participating town shall appoint two members to a selection committee, which, in turn, shall select members of the board representing the participating communities.

4

21-11-1 to 21-11-13.

5

The General Laws do not make clear who appoints the meat inspector. This may be a state post.

6

In some communities the town council may act as the board of health.

7

26-7-6 to 26-7-7. The chief executive officer in council-manager towns is the town manager; in administrator-council towns, the town administrator; and in cities, the mayor or manager.

Milk

The pasturization of milk, bacteria content and the premises where milk is produced, sold or kept may be regulated by town councils.⁸ The council appoints a milk inspector,⁹ determines his salary¹⁰ and must approve the hiring of any assistants¹¹ that the inspector appoints.

Local provisions regulating milk are permitted if they do not conflict with state statutory provisions and rules, which are paramount.

Pollution

The town council of every town may make available sufficient money to pay for the proper control of pollution of waters in their respective towns and may raise money by issuing interest bearing notes for this purpose. The issuance of these notes cannot be considered in determining whether the town indebtedness is in excess of the statutory limitation. The town council may also take steps to regulate pollution of air through the enactment of ordinances.¹²

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21-7-14.

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21-7-6.

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21-7-6.

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21-7-7.

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46-12-32.

Public Health

Town councils are the ex-officio boards of health unless provided to the contrary by charter or law. Councils may make rules and regulations, not inconsistent with the law, to preserve health, prevent and abate nuisances, promote cleanliness, remove causes and prevent introduction and spread of contagious diseases.¹³

Councils may make regulations pertaining to the importing of cattle and other animals into the state by rail, the health and safety of these animals, prevention of obstruction to public highways by animals, safety of people who use such cattle, and the slaughter and sale of such animals for human food.¹⁴

The health officer and members of the district health council are appointed by the town council. The district health council consists of as many members as there are members in the house of representatives in the General Assembly from each town in the district.¹⁵

The council shall provide annually for the free vaccinations of the inhabitants of the town. No hospital or

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The General Laws relating to public health have been changed by S1 (Substitute "A", 1964). The Act will combine all public health functions, now under town control, in the State Department of Health, although towns are not prohibited from appointing persons to enforce Chapter 9 of Title 23. Sections 23-3-1 and 23-3-2 are amended. Sections 23-2-1 to 23-2-15 and sections 23-8-2 and 23-8-3 are repealed. S1 approved April 22, 1964 will become law on July 1, 1966.

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23-2-2.

15

23-2-11. No district health councils have been established.

other place for the treatment of persons suffering from tuberculosis shall be established in any town unless the board of health authorizes it by resolution.¹⁶ The State Department of Health, to stop the spread or the introduction of contagious diseases, may assume all duties conferred by law upon local boards of health or the local health officer, but not before the local board has met and declared that this action is necessary.¹⁷

The General Laws grant extensive quarantine powers to the local governing body to prevent and eliminate the spread of infectious diseases such as distemper, smallpox, and tuberculosis.¹⁸ Their authority permits them to remove persons suffering the above diseases from their homes to other isolated areas, to post guards around houses under quarantine, post flags, and compel the owners of infected homes to cleanse them.

The local council's power to establish a quarantine extends to ships too,¹⁹ and it may appoint a sentinel to

16
23-6-8.

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23-1-1.

18
Title 23 Chapter 8.

19
Quarantine of vessels is in Title 23 Chapter 9.

hail all ships or vessels arriving in rivers, bays, or harbors and order them into quarantine areas. As part of its quarantine power, it may require ship's goods to be disinfected and aired before the goods can be unloaded, if there is reason to believe that they carry infection. The council may appoint persons to see that the cleansing and disinfection of cargo is carried out properly.

Sanitation Generally

The enforcement of sanitary regulations is a power that is shared by state and local authorities. The State Director of Health possesses this responsibility at the state level and town councils, as local authorities, may enforce sanitary regulations together with the State Department of Health.²⁰ At the local level, the problems encountered will be handled by the local health officer or health inspector to the extent that he has training, facilities and funds to deal with the problem. In most instances, in the smaller towns, these powers have limited or no application.

Towns may make sanitary regulations to control the construction and location of all places for keeping swine, privy vaults, cesspools and the like, including the location

of stables.²¹

Towns, through their governing bodies, may compel the owner or occupant of any premises to remove at his own expense any nuisance, source of filth, or cause of sickness within 24 hours after giving notice.²² If the owner or occupant fails to act, the town council may act to have the matter removed, and the expenses of removal charged to the owner.²³

Slaughterhouses may be established with local consent²⁴ and the local authorities may withdraw or suspend the right to operate with the approval of the State Director of Health and after notice had been given.²⁵ Councils may also regulate the business of expressing oil from fish.²⁶

Sewage Charges

In addition to authority already granted to each town or any agency thereof, town councils may enact ordinances to assess users of sewers or sewer systems for disposal purposes. The charge for their use must bear a relation

²¹
23-9-1.

²²
23-19-4.

²³
23-19-4.

²⁴
23-24-6 but subject to provisions of Title 21
Chapter 27.

²⁵
23-24-7 to 23-24-11.

²⁶
23-24-12.

to the cost to the town of the services rendered.²⁷

II. WELFARE

Buildings

Towns may establish, by ordinances and regulations, the manner of constructing and equipping all buildings and structures which may be erected, altered, or repaired after the passage of the ordinances.²⁸ To enact, amend, or repeal these provisions, a public hearing must be held before the town council, after proper notice has been given.²⁹ The enforcement of the ordinance and the issuance of building permits shall be powers of the building inspector, whom the town council shall have power to appoint and fix his salary. Aggrieved parties may appeal the inspector's decisions by appealing to the council, which shall act as a board of appeal. The council's rule making authority on this subject, however, is subordinate to that of the Attorney-General. Penalties for ordinance violations are determined by the council.³⁰

27
45-14-1.

29
23-27-2.

28
23-27-1.

30
23-27-3.

Town councils may require the repair or vacancy of unfit dwellings and prescribe penalties for violations. The Department of Health, at the request of a town council, shall examine hotels and boarding houses for purposes of sanitary compliance.³¹ Chapter 29 of Title 23 of the General Laws imposes a duty upon the owner or lessee of any theater or dance hall to conform to fire regulations in public places. The licensing body, after a public hearing, may revoke or suspend any and all licenses for holding any shows, performances, exhibitions, dances, balls, or fairs in such buildings.

Burial Grounds

Burials in compact or thickly settled parts of a town may be prohibited by the town council, which may also hold and manage in trust all funds for burial grounds as provided for by law.³²

Burial of Veterans

Each year, the town council shall designate some proper person to inter the body of any honorably discharged military veteran, who may not have left sufficient means to pay his funeral expenses.³³

³¹
23-20-1.

³²
23-18-10.

³³
30-25-4.

Housing Authorities

Town councils may adopt a resolution declaring the need for a town housing authority in their respective towns if they find that conditions warrant this action.³⁴ A housing authority is created in each town by state law, but it cannot transact business nor exercise its powers until the town council activates it by a council-passed resolution.³⁵

Minimum Housing

The General Assembly, in 1962, declared it the policy of that body that the establishment of minimum housing standards for dwellings is essential for the protection of public health, safety, morals, and general welfare.³⁶

Title 45 of the General Laws was amended in 1962 and Chapter 24.2 was added giving power to town councils to establish and amend ordinances, rules and regulations for the establishment of minimum standards for dwellings.³⁷ The councils were authorized to provide the means to enforce and administer the powers and duties authorized by this chapter.

Towns may establish a five member housing board of review or authorize a now existing board of appeals to act

34
45-26-3.

35
45-26-2.

36
45-24.2-1 as added in 1962.

37
45-24.2-3.

as a housing board of review.³⁸ Penalties for minimum housing violations may be imposed, but fines must not exceed \$200.00 or imprisonment for more than 30 days. Each day's failure to comply with any provision of minimum housing requirements constitutes a separate violation.³⁹

Insane and Mentally Deficient Persons

Any insane pauper, locked up in any town custodial facility, for five days, shall be moved to the State Hospital after being ordered by the town council, unless the Director of Social Welfare is satisfied that adequate care is being provided locally.⁴⁰ If the town council fails to act, then the Director of Social Welfare shall remove the subject to the State Hospital and may recover the removal expense from the town.⁴¹

Juveniles in Court

The town council in towns where no other police authority exists may provide a suitable place where children temporarily detained,⁴² awaiting action of the Family

38

45-24.2-4.

39

45-24.2-7.

40

5 days. 23-3-13 requires the town council to act within

41

and 23-3-14. 23-3-14. Possibility of conflict between 23-3-13

42

14-1-23.

Court, may be kept as long as may be necessary.

THE BUSINESS REGULATORY

The growth of subjects under the title "Business Regulation" includes those subjects usually regarded as part of the national economic services. They include the law of the market, price, profit, distribution and the law of trade. The first and last foundation is discussed in the second division. Under the heading "Business Regulation" the author lists the subjects to be treated in this volume. The author's concern with public policy and regulation is noted in various instances, especially in the first division.

Attention is drawn to the fact that the author is not only a student of the law but also a student of the social sciences. This is shown by the fact that the author is not only a student of the law but also a student of the social sciences. Both subjects are equally treated with respect to their relation to the general welfare of the community. The author's concern with public policy and regulation is noted in various instances, especially in the first division.

The discussion of public policy matters shows that the author is not only a student of the law but also a student of the social sciences. This is shown by the fact that the author is not only a student of the law but also a student of the social sciences. Both subjects are equally treated with respect to their relation to the general welfare of the community.

The last volume concerns the business regulation of public policy and regulation. The author's concern with public policy and regulation is noted in various instances, especially in the first division.

CONSERVATION, EDUCATION, LIBRARIES, PUBLIC SAFETY
AND BUSINESS REGULATION

The grouping of subjects under the title "Conservation" includes those matters usually regarded as part of the natural resources category. They include hunting, fish and game, parks, recreation and the care of trees. The forest and park commission is discussed in two separate sections. Under the subheading "Conservation" the authority of the commission relates to land reformation. The commission's concern with public parks and recreation areas is noted in another subsection, because of its direct relationship.

Education and library provisions are included in this chapter; they are usually headed by public boards outside the realm of the general administrative structure. Both subjects are frequently grouped with conservation matters for fiscal purposes, when discussing the per cent of each tax dollar spent on municipal activities.

The discussion of public safety matters groups those subjects acted upon by town councils for the general public protection.

The last subdivision concerns the business regulation powers of local governing bodies.

I. CONSERVATION

Conservation

Local conservation commissions may be created by towns for the purpose of promoting and developing natural resources.¹

Any forest and park commission cooperating with the state in the reformation of any rural lands in its respective town must first secure the approval of the town council of the town concerned.²

Deer Hunting

Town councils may prohibit deer hunting in their respective communities by making an ordinance on the subject.³

Fish and Game

Any person wishing to dispose of fish waste or any water impregnated with fish in any of the state's tidewaters or upon its shores must secure the permission of and conform to the conditions set by the town council of the area where such deposit shall be made.⁴ The town council of New Shore-

1
45-35-1.

3
20-30-8.

2
32-3-11.

4
20-3-1.

ham is permitted to regulate the shell fisheries in Great Salt Pond in New Shoreham by leasing them in the name and for the benefit of the town.⁵ No fish may be taken with nets within one mile of the shore of Block Island between June 1 and November 1 without securing permission of the New Shoreham town council.⁶

Parks and Recreational Areas

The chief of the Division of Parks and Recreation, in behalf of the state and in consultation with local town and city councils, may acquire, through eminent domain, open spaces for recreational use to be made available to the inhabitants of the metropolitan park district.⁷

Ordinances may be passed to deal with the care, management and use of the public parks, squares, or grounds in the towns of the state. The ordinances may provide penalties for violations thereof.⁸

A public recreation system may be established by the town council and the school committee, or the board

⁵
20-17-3.

⁶
20-19-6.

⁷
The towns in the district include: Johnston; North Providence; Lincoln; Barrington; and parts of Cumberland (voting districts 3, 4, and 5).

⁸
32-3-1.

in control of public parks. A board of recreation may be vested with authority to establish, construct, equip, control and maintain public playgrounds, athletic fields, swimming pools, bathing places and other community recreation centers.⁹

A board of recreation may be established by the town council which can specify the number of members of the board, the manner of their appointment, and the term of office, and may provide that a member of the school committee, the town council, and a member of the board in control of public parks be ex-officio members of this board.¹⁰

The town council may appoint five persons to the forest and park commission of the town.¹¹ This commission shall from time to time make recommendations and plans relative to the improvement and beautification of public parks and places in the town, which they shall submit to the town council for their consideration.¹²

Soil Conservation

The board of supervisors of the soil conservation district may invite the legislative body of any municipality

9

2-4-11.

10

2-4-2 as amended by P. L. 1962 Ch. 150.

11

2-14-2 to 2-14-8.

12

31-26-13.

within the district to designate a representative to advise and consult with it on all questions of program and policy which may affect the property, water supply or other interests of the municipality.

Tree Warden

The town council appoints the tree warden subject to the approval of the Chief of the Division of Forests who shall supervise, along with the town council. The warden's duties include the care of trees and shrubs in public places as well as other duties defined by statute.

II. EDUCATION

Vacancies existing in the membership of local school committees may be filled by the town council until the next regular election or town meeting. The president of the town council, if a regional school district planning committee is established in his town, shall appoint a member of the school committee to serve on this three member committee, created by town meeting. The regional school district planning board studying the feasibility of a regional school district and its operations shall report its findings to the town councils of the participating towns who, in turn, if the regional board recommends a school district, shall place it on the warrant for the calling of a special or

annual town meeting.

III. LIBRARIES

Free public libraries shall be operated in accordance with council-imposed regulations. Town councils are authorized to accept funds and gifts for the establishment of a free public library or in behalf of the town. They shall elect the library board of trustees if the town establishes such a library, or if it is possessed of one. Vacancies on the board are to be filled by the council.

IV. PUBLIC SAFETY

Accidents

Any municipality may, by ordinance, require that the driver of a vehicle involved in an accident file with the designated city department a report of the accident or a copy of any report that is required to be filed with the State Registry of Motor Vehicles.

Civil Defense

Town officials (town councils) are required to cooperate with state officials in the discharge of civil defense duties.¹³ Town councils shall establish and

13

30-15-7.

appoint members to the local council of defense.¹⁴

Dogs

Town councils are permitted to make ordinances concerning dogs¹⁵ and to tax their owners for keeping them and may make laws to prevent damage to sheep and cattle by dogs,¹⁶ and may appoint persons to prepare a list of those persons who keep dogs.¹⁷ Town councils annually appoint a person or persons to appraise damage to privately kept and domesticated animals. The owners of the affected animals may recover damages from the council,¹⁸ and if the council fails to act, that body shall forfeit \$100.00 to the person who sues.¹⁹ The council may authorize an examination of the head of any dog suspected of being affected with rabies or hydrophobia killed within the town limits.²⁰ The Council President shall have the power to authorize the Pasteur treatment for the

14
30-15-8.

15
4-13-1.

16
4-13-2.

17
4-13-11.

18

4-13-20. Jamestown, Little Compton, New Shoreham, and Tiverton are excluded from these provisions. Read 4-13-21 for procedure in Newport County (excluding Portsmouth and Middletown). The town in turn may recover from the dog owner in action of the case. See: 4-13-22.

19
4-13-24.

20
4-13-26.

prevention or cure of rabies of any person bitten by a suspect animal. The town council may appoint an agent of the Rhode Island Society for the Prevention of Cruelty to Animals as a special constable to enforce the dog laws.²¹

Elevators

Local legislative bodies may pass ordinances to adopt rules and regulations for the construction, location and operation of elevators and hoistways used to carry persons or merchandise.²²

Explosives and Fireworks

The town council of any town may grant a license for a fireworks display upon application of a municipality, fair association, amusement park or other group.²³

Fires

Towns²⁴ may annually appropriate a sum to be paid any fire-fighting organization within the respective towns of the state, for the fire-fighting needs of that group.

The town council may require the organization to present

21

4-13-33. In Middletown the town council may appoint an agent of the Robert Potter League for Animals for the same purpose.

22

23-33-28.

23

11-3-1.

24

45-8-1: It would seem that a town described in the provisions of this section means town council, although the town meeting appropriates funds for municipal operations, and town councils in some cases are required by law to appropriate funds for vital services.

the council with a detailed statement of its assets and liabilities and an estimate of the probable current or operating expenses for a given period. Other information concerning its financial condition may be required by the town council.

Councils may issue permits for bonfires in public areas, but unauthorized bonfires are subject to a fine of up to \$10.00. Permission to block a fire hydrant may be given by the town council or any other town officer duly authorized by law.

Forests and Forest Wardens

The town council appoints the forest warden who serves under the direction and supervision of the chief of the Division of Forests. The Division chief must approve the warden's appointment before it becomes effective. Town forest wardens are required to investigate the causes of forest fires and report back to the town council.²⁵ Town council approval is needed for the itemized account of all labor performed and all materials used in preventing and extinguishing forest fires before payment is made.²⁶ The town council may authorize payment for additional services for the prevention or extinguishment of forest fires over

25
2-12-15.

26
2-11-7.

and above the services provided to the towns by the chief of the Division of Forests.²⁷

gling and Lotteries

If a president of a town council makes a complaint in writing and under oath that he has reason to believe that illegal gambling is being conducted in any place in the town, the district court may issue a search warrant to find evidence of gambling.²⁸ Town councils may license and regulate bingo and beano games.²⁹

rbormasters

Town councils may appoint a harbormaster for the harbors within the confines of the town and may ordain and establish by-laws, ordinances, fees, and compensations for the benefit of the harbormaster that are deemed necessary for the carrying out of his duties.³⁰

tor Vehicles³¹

The provisions of the motor vehicle laws are found

27
2-11-8.

28
11-19-24.

29
11-19-30.

30

46-4-2 and 46-4-3. These provisions give Barrington, Little Compton and Warren the power to control the speed, management and operations of all vessels in the public waters of these motor vehicles.

31

See Title 31.

in Title 31 of the General Laws and are procedural in nature. They delegate to state agencies extensive powers over the operation of motor vehicles, traffic control, and speed limits.

Generally speaking, local authorities (town council) may regulate the speed of motor vehicles at intersections and on streets and highways subject to the provisions of Chapter 14 of this Title.

Local authorities may issue special permits authorizing the operation of tractors and similar vehicles upon highways³² in their respective towns, and may regulate or prohibit the operation of vehicles upon any highway; however, they may permit vehicles of excess size or weight to travel on a highway, subject to provisions of the General Laws.³³

Town councils may also regulate traffic subject to the provisions of Titles 12 and 31 of the General Laws.

Defectionable Publication and Shows

The president of a town council may make a complaint or file information that he has reason to believe that

32

31-23-21.

33

See Chapters 1, 25, 27 of Title 31.

certain contrivances are being used to produce and promote obscene shows. The alleged contrivances may be seized and destroyed after the complaint has been received.³⁴

Pedestrians

Local legislative bodies may pass ordinances requiring pedestrians to comply strictly with the directions of traffic signals. Towns may prohibit pedestrians from crossing any roadway except in a crosswalk.³⁵

Police

The police department in the towns of Rhode Island must look to their respective town governing bodies (town councils) for directives, appointments to the force, promotions, pay raises, and policy-making. The town council may appoint a police committee, consisting of part of the council membership, to concentrate on police matters, or the council may act as a police board or commission. In some of the smaller towns, police services are provided on a part-time basis or by request.

The functions of a police department are described in procedural sections of the General Laws and by special acts and charters. In this study, the concern is with police

34

11-31-5.

35

31-8-2.

Departments in their direct relationships with town councils.

Although policemen do not have the right to strike, as a matter of state policy,³⁶ they may organize and the towns are obligated, through their corporate authorities (town councils), to meet and confer in good faith with the designated representatives of the bargaining agent for the policemen. If the bargaining agent and the town council are unable, within 30 days of their first meeting, to reach an agreement on a contract, they shall submit unresolved issues to arbitration, but the arbitrator's decision is only advisory.³⁷

The governor, with the approval of the state council of defense, may assign police and fire personnel³⁸ of any city or town to serve in any part of the state.

Railroad Crossings³⁹

Town councils, to protect and ensure the security of townspeople, have been endowed with the power to promote safety at railroad crossings.

36

28-9.2-2 as added by P. L. 1963 Ch. 54.

37

28-9.2-1 to 28-9.2-14.

38

30-15-25.

39

39-8-1 to 39-8-8.

Railroads which fail to repair road beds crossing public highways, after being notified by a town council, can be fined for their failure to act. Local authorities may regulate the speed and mode of operation of railroads operating in the streets and highways of their respective towns. In addition they may determine the character of repairs to tracks in any street or highway.

State Police

The Superintendent of State Police may assign troopers to duty in any town⁴⁰ where the town council makes this request.

The state police operate a municipal police training school to train local policemen, and the local appointing authority may request the admission of candidates from its municipality, if the candidates meet the requirements.⁴¹

Television Aerials and Equipment

Councils may make ordinances regarding the instal-

40

42-28-12. During the period state policemen are on duty in a town at the town's request, state police salaries and expenses shall be paid by the town.

41

42-28-29 as amended by P. L. 1960 Ch. 122 S 1.

lation of television aerials and equipment in cities or towns.⁴²

Tramps and Drunkards

A town officer, such as the chief of police or director of public welfare, but not restricted to them, may be appointed by the town council for the purpose of making a complaint against common drunkards, brawlers, common prostitutes and the like for offenses enumerated in the General Laws. They may also appoint special constables to arrest and prosecute all tramps in their respective towns.⁴³

V. BUSINESS REGULATION

Alcoholic Beverages

Every city and town except Barrington⁴⁴ may license the sale of alcoholic beverages. The town council may act as the licensing board or commission.⁴⁵ The licensing authority may not prohibit the issuance of any particular

⁴²
23-27-6.

⁴³

⁴⁴
Barrington may issue beverage licenses if the voters in a referendum provided in 3-5-2 approve the issuance of licenses.

⁴⁵
In the absence of a police commissioner.

class of licenses.⁴⁶ The town council, as the local licensing authority, is permitted to limit the number of licenses granted by adopting a rule or regulation to that effect, but this does not firmly establish a maximum number.⁴⁷

Hearings on liquor licensing matters are a regular requirement.⁴⁸ Councils may rule on the transfer of licenses from one licensee to another or from one location to another and may prescribe conditions for such transfers.⁴⁹ Local boards make rules and regulations that are authorized by the Department of Business Regulation,⁵⁰ and may revoke or suspend the license for breach of the conditions on which it was issued, or for the violation of rules or regulations applicable to such license.⁵¹

The right, power and jurisdiction to issue Class G and Class I licenses shall be solely in the Department of Business Regulation, but the Department, before issuing any Class I licenses, shall confer with the licensing authority of the town in which the premises covered by a

46
3-5-15.

47
3-5-16.

48
Hearings are required to be held. See: 3-5-17.

49
3-5-19.

50
3-5-20.

51
3-5-21. Licenses may be revoked or suspended for unlawful gaming as well (3-5-23).

Class I license are located.⁵² Local authorities must approve the issuance of a Class I license.

The town council, on or before December 1, and at other times as required by the Department of Business Regulation, shall file an annual report and various other reports.⁵³

The closing time for Class B license establishments is set by the state, but local authorities may set an earlier closing time. Holders of Class B licenses must obtain from local licensing authorities permits if they wish to hold dancing on the premises. In towns of less than 2,500 inhabitants, the fee for the Class B licenses shall be determined by the town council, but the minimum license fee is \$300.00 annually. A limited license may be granted and the fee shall be less.⁵⁴ Class C establishments must stop serving beverages after midnight, but local boards may fix an earlier closing time.⁵⁵ Establishments in this class are required to have a clear view to the interior as viewed five feet from the curb by a passerby. A violation of this rule can cause the licensee to have his

52
3-5-14.

54
3-7-7.

53
3-5-27.

55
3-7-8.

licenses suspended or revoked by state or local authority.⁵⁶

Class I licenses may be revoked or suspended for sanitary violations only by the state, but if the local authority files a complaint on sanitary violations then the state can take action based on this locally originated complaint.⁵⁷

The State Liquor Control Administration, in the Department of Business Regulation, has the right to review the decision of any local board, and after hearing, to confirm or reverse the decision in whole or in part. The administrator may make his own decision as he sees fit. Appeals from local decisions to the administrator shall be made within ten days.⁵⁸

The town council or any officer specially authorized by it may enter upon the premises of any person licensed under Title 3 of the General Laws to determine whether the licensee's business operation is in the interest of preserving and maintaining order. Peace officers may make an arrest without a warrant for violation of this Title.⁵⁹

56

3-7-9. State authority is the state liquor control administrator as it applies to this subject.

57

3-7-16. Penalties for sanitary violations can be imposed only by the state authority.

58

3-7-21.

59

3-12-13.

The town council or board of commissioners issuing a license to a person convicted of violations of this Title shall be notified by the clerk of the court within 10 days after the court has convicted or sentenced the violator.

Bakers Bread

Town councils may, by ordinance, regulate the size of loaves of bread, but not contrary to state law.⁶⁰

Billiard Alleys and Billiard Tables

These activities may be regulated and taxed by town councils.⁶¹

Boxing Matches

The Commission on Horse Racing and Athletics cannot issue a license for a boxing match without the approval of the town council or police commission, as the case may be, in the town where the event is planned to be held.⁶²

Detectives

Towns may license private detectives for one year at a minimum fee of \$10.00, if the person requesting the license is a town resident.⁶³

60
21-24-1.

62
41-5-5.

61
5-2-1.

63
5-5-1.

Laundries

The local licensing authority must give a permit decision within forty days after it receives an application for a permit to carry on a laundry business.⁶⁴ The council, as a licensing authority, or its authorized representatives, must inspect a public laundry prior to issuing a license and may fix a permit fee not to exceed \$10.00 for one year.⁶⁵

Licenses Generally

In communities where no board of police commissioners or licensing board exists, the town council may act as a licensing board subject only to the limitations imposed upon it by law, local ordinances, or local charter provisions. The council, acting as a licensing authority, is permitted to license a wide range of businesses, professions and activities. In this section some of the most common illustrations are noted.

The council may license persons as keepers of employment offices⁶⁶ and as private detectives.⁶⁷ It may license and regulate various types of theatrical performances, shows, exhibitions, roller skating, dances, and

64
5-16-3.

66
5-7-1.

65
5-16-2 and 5-16-4.

67
5-5-1.

masked balls for a term of one year,⁶⁸ as well as regulating and licensing wrestling, boxing, sparring matches and the like. This list includes rope and wire dancing,⁶⁹ the keeping of taverns, victualling houses, cook shops, oyster houses, and oyster cellars.⁷⁰

It is permitted to regulate Sunday business operations, for which separate licenses are required. The town council may grant licenses for Sunday business by retail dealers who will be permitted to sell what are commonly referred to as necessities, including medicines and drugs, food, tobacco and other commodities as provided by law. The council may also license Sunday operations of bowling alleys and billiard tables and regulate the hours of these operations.⁷¹ Generally speaking, the council may fix the fees for licenses issued, although the state usually sets minimum and maximum rates for many subjects. When a license is granted for a period of more than thirty days, the licensing authority shall inspect and report the

68

5-22-5.

69

5-22-4. For masked balls see: 5-22-21.

70

5-24-1.

71

5-2-10. 5-2-9 as amended by P. L. 1960 Ch. 96 S 1 and

the condition of buildings in which licensees operate under the authority of the local body. The town council may delegate inspections and reporting of building conditions of local licensees to persons of its choosing.⁷²

Outdoor Advertising

Outdoor advertising may be regulated by local ordinance in addition to any powers granted otherwise.⁷³ Although a regulatory ordinance may require a town officer to certify that outdoor advertising complies with local provisions, his failure to approve it is not final, and an application may be made to the town council for its opinion and approval on compliance with law. If the town council approves the application, then the town officer who made the first decision does not have to be consulted again.⁷⁴

Parking Matters

Parking lot operators may be required by local officials to take out blanket insurance⁷⁵ so that the owner of a motor vehicle that is damaged or stolen in the lot can be compensated for theft or damage.

72
5-22-14.

73
5-18-2.

74
5-18-3.

75
31-35-1.

Local ordinances may be enacted authorizing the installation, operation, maintenance, policing and supervision of parking meters on the public highways and providing for the payment of a fee for parking. Parking meter zones may be established to regulate parking of motor vehicles on the highways.⁷⁶

Parking meters and parking fees may go into effect only after the voters, at a general election, have signified their approval.

Second-Hand Dealers

Town councils may license and regulate⁷⁷ dealers of second-hand merchandise for a term of one year.

Shows and Exhibitions

A town license is required from the town council if a person wishes to exhibit, promote or take part in any theatrical performance, rope or wire dancing, or other performance.⁷⁸

A license must be secured from the town council before any of the following activities can be held:

76
31-28-2.

77
Subject to the provisions of 5-21-1 and 5-21-2 as amended by P. L. 1963 Ch. 208.

78
5-22-4.

wrestling, boxing and sparring matches, indoor public roller skating, or any dance or ball.⁷⁹ The town councils may also authorize and regulate orchestral entertainments, vaudeville performances and motion pictures, subject to the provisions of the General Laws.

Sports, Racing and Athletics

Local licensing authorities authorized by the general laws to grant licenses to shows and exhibitions may also license and regulate athletic games on Sunday.⁸⁰

Telephone Booths

Towns may authorize and regulate the placing and maintenance of telephone booths on sidewalks or highways in towns.⁸¹

79

Title 5 Ch. 22 states restrictions in the various towns as well as license fees, exceptions, house of performance, etc.

80

Within the definition of 41-6 (41-6-1 to 41-6-4).

81

24-7-9 as enacted by P. L. 1961 Ch. 125 S 1.

VI

CONCLUSION

This chapter discusses the status of home rule in Rhode Island and the steps taken to adopt a charter. The constitutional and statutory restrictions imposed on local government plus the lack of authority to act must be considered in acquiring an understanding of the legal powers delegated to towns of Rhode Island.

I. HOME RULE TOWNS

Barrington and North Kingstown, the council-manager communities, and Johnston and Lincoln, the administrator-council towns, comprise the four home-rule towns in Rhode Island. Johnston's home rule charter will not become effective until November, 1964, although a few fiscal provisions are already operative.

Home rule for cities and towns is granted by Article XXVIII of the State Constitution, as amended in 1952. The amendment describes the procedure for achieving local self government. The purpose of the amendment is stated in Section One as follows:

It is the intention of this article to grant and confirm to the people in this state the right of self government in all local matters.

Adoption of a Home Rule Charter

The procedure for adopting a home rule charter in any town is provided in Article 28 (Amendment 28), of the State Constitution, which is discussed in this section. It is well to note the town council's active role in this matter.

Step I. The first step in the adoption of a charter is the circulation of a petition to be signed by at least 15% of the qualified electors of a town. There must be at least 100 signatures by persons qualified to vote on any proposition to impose a tax or for the expenditure of money. The signed petition should be filed with the legislative body of the town (town council), which in turn shall refer the petition to the canvassing authority. The canvassing authority, within 10 days after it receives the petition, must determine the sufficiency thereof and certify the results to the town council.

Step II. Within 60 days, the town council shall call a special town meeting and the qualified electors of the town will be asked to vote on the following question: "Shall a commission be appointed to frame a charter"?

Step III. The town council, if an affirmative vote is recorded, shall then by ordinance or resolution provide a method for the nomination and election of a charter

commission to frame a charter. The commission must consist of 9 qualified electors (who can vote at town meeting), who shall be elected at large without party or political designation. The candidates for charter commission may secure nomination papers at the Town Clerk's office and signed nomination papers, when returned, must contain the names of 50 qualified electors of the town. No elector may sign more than nine nomination papers. The candidates are listed alphabetically on the ballot, the same ballot being used for submitting of the question and the election of a charter commission. Upon approval of the question submitted, the nine candidates who individually receive the greater number of votes shall be declared elected and shall constitute the charter commission.

Step IV. Within one year from the date of election of the charter commission, the charter framed by the commission shall be submitted to the town council which shall publish the charter and provide for the submission of said charter to the voters at the next general election 30 days from the date of submission of the charter. The charter requires majority approval to be effective. It shall become effective on the date fixed therein.

Step V. Amendments to a charter are proposed by the town council and are submitted to the voters in the same manner provided for adopting a charter. Amendments may be

submitted at a special election, and, in the case of a town, amendments concerning a proposition to impose a tax or for the expenditure of money, shall be submitted at a special or regular financial town meeting.

This amendment permits the introduction of a charter petition in either branch of a local legislative body, if a two-house legislative body exists in any town. All local legislative bodies presently consist of only one branch. The adoption of a charter and the approval of any amendments are to be certified in duplicate by the local canvassing authority. One copy is sent to the Secretary of State and the other copy is inserted in the town records.

North Kingstown was the first town to adopt home rule, in 1954, followed by Lincoln and Barrington, in 1958, and Johnston, in 1962. Citizens in four cities and three towns voted on proposed new charters at the general election of November 4, 1952. They were adopted in three cities and defeated in all the towns. In 1954, there were two adoptions. At the 1958 elections, three communities out of five proposing charters adopted them. There was only one charter proposal in 1960 and it was defeated. In 1962 there were two communities that placed charter proposals on their respective ballots and the charters were adopted in both.

In its comprehensive sense, home rule can be defined as:

(1) the choice of the character of the municipal organization, that is the selection of the charter, (2) the nature and scope of the municipal service, and (3) all local activity, whether in carrying out or enforcing state law or municipal regulations, in the hands of city and town officers, selected by the community. 1

It is characteristic of the municipal organization of home rule charter towns in Rhode Island that they are headed by full-time chief executives, even though no mention of this characteristic is found in the 28th Amendment. Municipalities may or may not adopt a structure of government headed by a full-time chief executive when a charter is adopted.

II. CONSTITUTIONAL RESTRICTIONS

The Constitution of Rhode Island contains two amendments that are of concern in any study of town councils. Article XXXIII concerns development and Article XXVIII is the Home Rule Amendment. Since the State Constitution has little bearing on town government powers, it contains only limited restrictions upon local government, and these are such as to do little other than require specific conformity to the procedures that are allowed town councils by the Constitution.

1

Eugene McQuillan, The Law of Municipal Corporations (Vol. I, 3rd edition by Clark A. Nichols et al.; Chicago: Callaghan & Company, 1949), 1.93, p. 341.

III. STATUTORY RESTRICTIONS AND LACK OF AUTHORITY

The Dillon Rule that no local power exists unless it is expressly delegated or clearly implied is valid in all states except Alaska and Texas. This legal measurement supports the theory that local government can not act on a matter unless it has some sort of authorization to do so. It is not the Dillon rule that hampers local government where it needs to act most, so much as restrictions imposed by statute. The state legislatures (and Rhode Island is no exception) tend to act tardily and with uncertainty in delegating to town councils and other units of local government powers to act on matters of local concern. Either the power is hampered by unnecessary restrictions or its late passage aggravates an already pressing problem. The Advisory Commission on Intergovernmental Relations in a recent study pointed attention to the matter in their report:

Local officials come honestly by an uncertainty as to their authority to act and this may result in lack of enthusiasm for action. The law is much at fault. Often by the time communities get support for their problems and the legislature acts, the need may be far advanced.

Example:

In the end of 1955 well after the crystallization of a national policy on the subject, only 29 states

had enacted urban renewal and slum clearance legislation. 2

The Rhode Island General Assembly did not pass a minimum housing enabling act until 1962, even though urban renewal and community renewal programs were already underway. Minimum housing standards are a preventive measure to safeguard against the return of slum conditions. The late passage of this measure permitted deterioration to expand further in communities where it was already a serious problem.

In 1962, Public Law 1962, Ch. 135, was passed enabling local governments in this state to grant tax exemption on property used for mills and manufacturing. On the surface this act appears to have great value and promise of future use, but it can be said "better enacted now than never". Since World War II, especially, many industrial firms have expanded their operations, new manufacturing facilities have sprung up, and new industry created to meet the needs of a nuclear age. These firms, often strapped for capital investments or for other reasons seek to settle or grow in communities where tax relief among other factors, will be granted during the years of struggle. Sometimes the taxation

2

The Advisory Commission on Intergovernmental Relations, State Constitutional and Statutory Restrictions upon the Structural, Functional, and Personnel Powers of Local Government (Commission Report A-12; Washington: The Advisory Commission on Intergovernmental Relations, October 1962), p. 58.

policy of one community over another is the determining factor of location. If town governing bodies had this advantage at their disposal earlier perhaps more industry could have been lured into a community bringing with it the sought after gain in local employment. On the other hand it is difficult to assess how much loss in revenues and other advantages were sacrificed because local government did not have the tools of authority to deal with a pressing local problem. If it is true tax relief holds and attracts industry to a community, then communities should have blanket authority to offer this assistance as the need arises.

This legislative act might be applied to advantage in reverse. If a local industry faced with declining profits and rising labor costs decided to relocate where labor, taxation and markets show some better advantage, the authority of local officials to grant tax relief coupled with a pledge of help from labor to aid industry during its struggle might be a factor to consider.

Public Law 1959, Ch. 131, permitted local governments to act in the area of historic zoning. Now, towns and cities, through their respective governing bodies, may act to preserve those remaining remembrances of early American heritage. Perhaps it is the earliest example of period architecture, or a house where George Washington

was reputed to have slept, or a building that withstood a battle that influenced the course of history. Until 1959, many of these historically significant landmarks were destroyed to make way for the coming of a new shopping center or recreation area or something that would destroy its architectural beauty. The municipal government, although sympathetic, had no authority to act in behalf of those supporting what is now called historic zoning. It will preserve American heritage for the Americans of tomorrow, but it is too late to save that which was destroyed.

IV. SUMMARY

The purpose of any thesis research is to attempt a solution to a problem by pursuing the problem and recording the results. Some efforts will not yield concrete answers but should uncover factors that will clarify to some degree the subject examined. Some theses studies are laboratory-oriented, while others involve interpretation, classification and examination to explain and clarify the subject matter. This study is an examination of selected legal materials for the purpose of identifying, examining and classifying the general legal basis of town council powers in Rhode Island. An attempt has been made to answer questions related to the theme of the problem to broaden the understanding of

the subject as a whole.

The first question framed at the outset of this study was to identify the legal powers granted to town councils by the state and to determine the extent of these powers. The research concentrates on an examination of the General Laws and selected supplementary materials. The major part of the text indicates that the General Assembly has granted broad general powers to local governing bodies (town councils). Town councils are empowered to act in a variety of subject areas, some in limited ways, but many matters are within the wide discretionary powers of town officials. The General Assembly is not the only source of legal authority for towns, and the other sources are also considered, but an examination of the general legal basis (General Laws) is a primary consideration in fundamental understanding of how grass roots government functions.

The second question explores the nature of the "separation of powers" theory and its relation to Rhode Island local government. The separation of powers theory, which underlies the very foundations of federal and state governments, has not quite caught on at the local government level. This study has pointed out: (1) that town councils perform legislative, executive and judicial functions without noticeable division of responsibilities; and (2) there may occur a noticeable separation of respon-

sibilities in town operating with home rule charters. Home rule communities operating town governments with responsibilities divided between administrative and legislative functions operate within a framework of legal boundaries and voluntary cooperation.

The third question concerns an inquiry into the legal factors distinguishing the president of the town council from other members of that body and projecting him as a limited chief executive. The president of the town council, although not a chief executive, has been delegated sole responsibility for matters which, in the opinion of the General Assembly, he alone is most suited to assume. This delegation of exclusive jurisdiction does not in any way decrease the powers of other councilmen but rather it appears to be for the sake of procedure. As the presiding officer at the council sessions, he is in a position to determine the order of business and to take charge of all business on the agenda. One of the most significant features of this office is its resemblance to the "weak mayor" form of government, as the council president performs some duties attributable to a chief executive. These duties include the appointment of office holders, authorization of payment, and the authority to issue orders in an emergency as well as to supervise the persons in the town employ.

The last question is: "How have the legal powers and responsibilities of town councils grown as a response to

increasing social complexities?" The General Assembly in framing the laws takes into consideration the application of laws enacted today for purposes in the future. Common sense as a legislative determinant provides broad powers where practical to permit flexible application to changing situations. The broad terminology is one factor that indicates a response to increasing social complexities. Another factor is the passage of new legislation to meet new needs. Urban renewal, as an example previously cited, cost a great deal of money to implement, and before new legislation is enacted there are several factors to consider. The need for new legislation, when existing law can not be extended to meet new ends, brings to light in addition to cost factors the seriousness of the problem, what it will accomplish, and how much support endorses its enactment. State legislators are reluctant to share their prerogatives with the towns if the state can act directly without delegating their authority any more than is necessary. Regulatory legislation which may strengthen enforcement measures reaches the statute books faster than permissive legislation granting authority to towns.

Rhode Island and the five other New England states are set apart politically from the other states because of their unusual local government structure. The New England town is the center of local government, especially in Rhode

Island where no county government exists. Elsewhere, the county performs functions that New Englanders delegate to their towns. Most municipal governments in the United States operate under the mayor-council system. In this area, a board of selectmen (or in Rhode Island the town council), act as the governing body of the municipality.

A city in Delaware might be classified as a town in Rhode Island, where form of government determines its status. 61% of the towns of this state have local populations of less than 10,000 with New Shoreham having a low of 486 and West Warwick having the largest population of any town, with over 21,000 inhabitants. Since 19 of the 31 towns of the state have less than 10,000 people each, and several under 5,000, the town councils naturally fulfill a multi-purpose role, because small towns do not support a large staff of civil servants.

The town council, as the manager of town affairs, can hire and fire, investigate, borrow, sell or lease and issue regulations. Its powers include the right to subpoena, to sue and be sued, as well as to legislate on matters it deems appropriate for the welfare of the townspeople. The powers conveyed to it by the General Assembly authorizing town councils to act on so many matters raises the question whether this broad delegation of powers permits a part-time

governing body to fully explore the consequences and the nature of these delegated responsibilities within the physical limitations of its office.

Almost every conceivable area of government authority is delegated to the town council to administer as it sees fit. The delegation of power varies from limited to very broad jurisdictions. Public Welfare, a ministerial matter, is mostly under state control, but authority to control local roads is an extensive and broad delegation of authority to local jurisdictions. Naturally, some power is delegated to other town officials, but it is the town council that assumes final responsibility for what happens as well as to claim credit for any achievements and improvements.

The second chapter on general government, while pointing out the general powers of town councils, indicates that considerable permissive legislation exists. The provision on windmills is indicative of those outdate legislative acts which remain on the statute books. Zoning, re-development and planning are the newest additions to the realm of local jurisdiction.

Public works and finance are broad areas of jurisdiction and this study, within the limits established for research, has not included many procedural provisions in these areas.

The selected portions of the North Kingstown town meeting warrant in the Appendix is illustrative of fiscal matters prepared by the town council and submitted to the electors at town meeting for approval. The cities are sharply distinguished from towns on financial approval. City councils approve fiscal and budgetary matters; but, in towns, the electors have kept this prerogative rather than delegate it.

There are several provisions in the chapter on health and welfare that have varying application depending on the town concerned. Pollution control is a good example of how cities and towns differ. While Providence has a program for air pollution little or no attention is paid to it in the smaller towns. The same applies to pollution of waters within town limits.

In Chapter V, the business regulation powers of town councils are shown to enable the councils to control businesses that come in direct contact with the consumer, sports enthusiast, and Sunday purchaser. Each town council may decide on whether to permit Sunday sales, and therefore the sale of merchandise on Sundays may vary in the towns of the state.

The need for state approval on matters of airport zoning, alcoholic beverages and forest wardens indicates the importance of state regulation in some matters as well

as the need for supervising activities that can not function independently without state aid.

The statutory restrictions show the effects of delayed legislation and the consequences that have occurred, as well as the possibilities.

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APPENDIX

TOWN OF NORTH KINGSTOWN

WARNING FOR

ANNUAL FINANCIAL TOWN MEETING

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Washington, Sc.

By the Town Clerk of the Town of
North Kingstown, County of
Washington, State of Rhode Island
and Providence Plantations.

SEAL

To T. Linwood Reynolds, Town Sergeant of the Town
of North Kingstown, or to any of the Constables of said
Town:

GREETING

Pursuant to Chapter 3 of Title 45 of the General Laws
of 1956, as amended, of the State of Rhode Island and Article
II of the Charter of the Town of North Kingstown and the
Ordinances of said Town, you are hereby required to post,
at least seven (7) days before the 31st days of March A. D.
1964, written notifications in three or more public places
in the said Town of North Kingstown, Rhode Island, notifying
and warning the electors of said Town of North Kingstown,
qualified to vote upon any proposition to impose a tax or
for the expenditure of money, to assemble in town meeting
at the . . . for the purpose of electing a Moderator, for
the purpose of hearing official reports, of ordering a tax
to be levied and assessed on the ratable property of said
town and the inhabitants thereof, for the payment of the
town debts and interest, for the payment of the town's
proportion of the State Tax, for the payment of the principal
and interest on outstanding School Bonds and Notes, for the
support of Schools, for the support and maintenance of the
poor, for the payment of the Wickford Harbor Parking and
Docking Notes and Interest, for the payment of principal
and interest on Water Bonds and Notes, for the payment of

principal and interest on Wickford Harbor Improvement Project Notes, for the building, repairing and amending of Highways, for the building, repairing and amending of bridges, for street lighting, for Hydrant Charges of the North Kingstown Water Department, for the improvement in any manner deemed fit and necessary of any property belonging to the TOWN, for all necessary charges and expenses whatsoever arising within said town whether incidental or not to the above, and for any or all other purposes authorized by law and to transact such other business as may legally come before said meeting.

. . .

TO ACT UPON THE FOLLOWING PROPOSITIONS:

- I. That the sum of Twenty-Four Thousand Dollars (\$24,000) be appropriated to be raised by long term financing and to be expended in extension of the water system of the Town.
- II. That the sum of Forty-Five Thousand Dollars (\$45,000) be appropriated to be raised by long term financing and to be expended in purchasing land and constructing a Fire Station in the Saunderstown area.
- III. That the Town Council be authorized to sell real property by way of granting perpetual easement to the Department of the Navy for the purpose of installing a water supply pipe line and appurtenances thereto on a portion of Davisville Road and a portion of Siding Court in the Town of North Kingstown, R. I.
- IV. That the Town Council be authorized to contract with the Town of Narragansett to furnish water to such town on such terms and conditions as may be approved by the Town Council.
- V. That the Town Council be authorized to expend out of funds within the operating budget of the Water Department Budget, Five Thousand Dollars (\$5,000), for the purpose of fluoridating the Town Water Supply.

- VI. That the Town Council be authorized to purchase on behalf of the Town Lots 13 and 14 on Assessors Plat No. 157 for the sum of Forty Thousand Dollars (\$40,000) pursuant to the terms of an option signed on September 30, 1963 and to agree upon the manner of payment with the seller, William P. Allen. Said option may be examined at the School Administration Building during usual business hours.

. . .

To make appropriations for any or all other purposes deemed necessary by the Electors for the maintenance of the Town during the fiscal year as authorized by law.