

January 13, 2015

MINUTES OF THE FISCAL AND REGULAR MEETING OF THE TOWN BOARD OF THE TOWN OF THURMAN HELD JANUARY 13, 2015 AT THE TOWN HALL, 311 ATHOL ROAD, ATHOL NEW YORK, COMMENCING AT 6:30 P.M...

PRESENT: MRS. EVELYN WOOD, SUPERVISOR
MR. MICHAEL EDDY, COUNCILMAN
MR. LEON GALUSHA, COUNCILMAN
MR. DANIEL SMITH, COUNCILMAN
MRS. GAIL SEAMAN, COUNCILWOMAN

Recording secretary: **Cynthia R. Hyde**, Town Clerk

FISCAL MEETING: The Town Board reviewed all claims.

BOARD MEETING: The regular town board meeting was called to order by **Evelyn Wood, Supervisor**.

PLEDGE ALLEGIANCE TO THE FLAG

ROLL CALL

APPROVAL OF THE MINUTES:

Councilman Eddy made a motion to approve all the minutes from 2014 that hadn't been approved yet, **Councilman Smith** seconded that motion.

MOTION FAILED ~ ROLL CALL: WOOD ~NO, GALUSHA ~ ABSTAIN, EDDY ~ YES, SMITH ~ YES, SEAMAN ~ NO

DISCUSSION:

Supervisor Wood said that she would advise the board that she had been advised by the attorney that if there are items in there (in the minutes) that are incorrect and we approve them, you know he advised that we shouldn't approve them essentially.

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Councilman Smith asked do you know the items that are incorrect; I assume that you must have a list of the items.

Supervisor Wood said that I probably do upstairs, I know that in one set there is a vote that didn't happen, in another set there is who called the meeting the names are incorrect.

Councilman Eddy said that it is a consideration to approve the minutes not a necessity and I feel the past minutes are a good representation, I've read them all.

Councilwoman Seaman said that if it's not a requisite to approve those minutes why would you want to approve them now.

Councilman Eddy stated that it was to clean up the slate, a lot of times they (the minutes) weren't brought up correctly at past board meetings.

Councilwoman Seaman said that there were things that were incorrect and they haven't been fixed.

Councilman Eddy said that he didn't feel they were incorrect.

Councilman Smith said that we need to get a list of all these (mistakes) and get the changes that need to be brought to light at the next meeting.

Cynthia Hyde, Town Clerk said that if there are mistakes the town board is supposed to tell me exactly what those mistakes are but you don't go back and change those particular minutes. Since you are obviously not prepared to tell me what those mistakes are, at the next meeting you need to tell me exactly what mistakes are in those minutes that you have found and then we can amend the minutes. The next meeting is in February so when I write the February minutes I will include in there the mistakes that have been found by the town board members, but you have to find mistakes.

Councilwoman Seaman stated then Cynthia may I ask then before that happens and not a week before please, I would like a copy of the audio as well as the written minutes that you have made because you know it gets a little fuzzy that long ago, so I'd like to know exactly what the audio says.

Cynthia Hyde, Town Clerk said that it was very important to listen to the audio, when I go over my minutes I listen to the audio and read my minutes (at the same time), you'll see that I write accurate minutes.

REPORTS:

Councilman Galusha read the EMS report

Councilwoman Seaman said that a thank you goes out to Catherine Chambers and the youth court for their help with the youth parties. February 07, 2015 from 1-3 will be the assembling of valentines for vets, contact the supervisor's office to donate. March 28 from 1-3 is the youth commission Easter party.

Supervisor's Report:

Supervisor Wood reported that...

The AUD is started

The county is moving forward with the Combs Road Bridge

Wood was the temporary chairman at the county board of supervisors

Problems with trash pickup (ACE Carting) call Jerry Potts 221-8603

OLD BUSINESS:

Back in December the town board faced a dilemma. There was no money left in the highway fund and a pile of highway bills were still outstanding. The town board discussed their options for coming up with the \$101,335.68 needed to pay those bills. They decided to reduce the road repair reserve to \$10,000.00 and transfer funds from the reserve to pay the outstanding 2014 highway claims.

NEW BUSINESS:

Derrick Conine resigned from the board of assessment review chairman position and would like to recommend **Kathy Templeton** as his replacement. The town board will advertise to fill that position.

DISCUSSION SURVEILLANCE CAMERAS:

Councilman Eddy said that last month **Supervisor Wood** stated that she had purchased and installed the surveillance cameras using funds out of supervisor contractual.

Supervisor Wood agreed she had.

Councilman Eddy said that according to information he received from the association of Towns (attached) a town official (acting on their own) could not install video surveillance equipment on town property.

Supervisor Wood said that she did it on the advice of the sheriff's office.

Councilman Eddy asked the board if they had approved the cameras.

Councilman Galusha stated that it wasn't brought before the board.

Supervisor Wood said that it's under our procurement policy, spending under a certain amount doesn't need board approval.

Councilman Smith and **Councilman Eddy** both stated that that only covers the purchase.

Councilman Smith said that the board needs to approve changes and set policies and procedures to protect themselves because the board is liable.

Supervisor Wood asked **Smith** what kind of policy he would like.

Councilman Smith said that a policy for the usage of is what is needed.

Supervisor Wood stated that this is a public meeting and anyone can bring in audio or video equipment.

Councilman Eddy added that the sheriff doesn't run this board.

Supervisor Wood agreed the sheriff doesn't run the board however the sheriff does make recommendations for the safety of the public. **Wood** said that as far as regulating, she didn't know if the board could regulate.

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Councilman Smith said that we can't regulate private cameras but anything installed in the building, because it's town property, we have a responsibility to regulate.

Councilwoman Seaman read from the paperwork about surveillance Councilman Eddy brought in (see attached), it says expectations of privacy is not unlimited and video surveillance does not in itself violate the 4th amendment. There is no reasonable expectation of privacy in an open space like a conference room or hallway. So in order to avoid constitutional claims video surveillance, the town may want to limit it's surveillance to areas like hallways, entrances and other areas considered open and accessible to most. **Seaman** added, and that covers this.

Councilman Smith said that AKA policies and procedures, that does not cover us, we cover us.

Councilwoman Seaman said that no video surveillance is ok in an open...

Councilman Eddy said read the first paragraph. This is town property.

Councilwoman Seaman said that it says on town property they're talking about surveillance of workers.

Councilman Galusha asked if someone rents the hall we're not obstructing their privacy.

Supervisor Wood stated that, right, that's why it's only recording during meetings.

Councilman Smith said that we need to vote on whether we want them or not and if we want them set policy. **Smith** added that what is recorded is foible.

Councilman Smith said that it needs to be put under board resolution for the town to operate it.

Councilwoman Seaman said no.

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Supervisor Wood said that she didn't know if it does or not (need a resolution), that's an Attorney question. **Wood** said we had used surveillance in other cases without board policy (when garbage was being dumped).

Councilman Smith said that that doesn't mean its right.

Supervisor Wood stated that according to the attorney it was completely legal because it's public property and there is no reasonable expectation of privacy.

ITEMS OF INTEREST:

The town hall will be closed for Martin Luther King day.

PRIVILEGE OF THE FLOOR:

The following people spoke during privilege of the floor.

Delbert Chambers, Sally Wallace, Marilyn Youngblood, Barbara Farrell, Joyce Eddy, Joan Harris and Mary Eddy

RESOLUTION #8:

Resolution to Amend Snow & Ice Contract

WHEREAS the Town of Thurman contracts with Warren County for the maintenance of county roads and

WHEREAS Warren County has resolved to increase the rate of payment for the maintenance of county roads,

BE IT RESOLVED that the Town of Thurman agrees to amend its contract with Warren County to reflect the increase in rates and authorizes the Supervisor to take any necessary steps to effectuate this resolution.

On a motion by **Councilwoman Seaman**, seconded by **Councilman Galusha**, Resolution #8 was approved.

MOTION CARRIED: 4 AYES ~ WOOD, GALUSHA, EDDY, SEAMAN

1 ABSTAIN ~ SMITH

RESOLUTION #9:

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Resolution to Amend Occupancy Tax Contract with Warren County

WHEREAS the Town of Thurman has a contract in place with Warren County wherein Warren County provided funding to the towns for the promotion of tourist activities, conventions, trade shows, special events, and other directly related and supported activities, and

WHEREAS Warren County has made certain changes in regards to the amount and procedure it employs with regard to the towns, and

WHEREAS these changes include an additional \$10,000 disbursed to the town in January or as soon thereafter an amendment agreement is executed, and

WHEREAS it is now necessary to amend the town's agreement with the county to reflect these changes,

BE IT RESOLVED that the Town Board approves these changes and authorizes the Supervisor to take any actions necessary to effectuate this resolution.

On a motion by **Councilman Galusha**, seconded by **Councilman Smith** , Resolution #9 was approved.

MOTION CARRIED: 5 AYES ~ WOOD, GALUSHA, EDDY, SMITH, SEAMAN

RESOLUTION #10:

Resolution to Amend Occupancy Tax Contract with Thurman Station Association

WHEREAS the Town of Thurman has a contract in place with the Thurman Station Association for the promotion of tourist activities, conventions, trade shows, special events, and other directly related and supported activities, and

WHEREAS Warren County has changed its procedure for the funding of such events and activities, so that funding of the majority of events and activities is to be done at the local level, and

WHEREAS the Thurman Station Association provides the promotion of tourist activities, conventions, trade shows, special events, and other directly related and supported activities for the town, now therefore,

BE IT RESOLVED that the Town Board increases the amount of its contract with the

Thurman Station Association by ten thousand dollars (\$10,000.00) and authorizes the supervisor to take

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Any necessary actions to effectuate this resolution.

On a motion by **Councilman Galusha**, seconded by **Councilwoman Seaman**, Resolution #10 was approved.

MOTION CARRIED: 5 AYES ~ WOOD, GALUSHA, EDDY, SMITH, SEAMAN

RESOLUTION #11:

Resolution to Amend 2015 Budget

BE IT RESOLVED that the Town Board authorizes the following amendments to the 2015 budget:

Increase:

A1113 Occupancy Tax - \$10,000

DA2300 Serv. For Other Govt. - \$41,815.98

Increase:

A6989.4 Other Ec. Dev - \$10,000

DA5142.1 Snow Removal PS - \$15,000

DA5142.4 Snow Removal CE - \$26,815.98

On a motion by **Councilman Galusha**, seconded by **Councilman Smith**, Resolution #11 was approved.

MOTION CARRIED: 5 AYES ~ WOOD, GALUSHA, EDDY, SMITH, SEAMAN

RESOLUTION #12:

Resolution to Set Date for Annual Accounting

WHEREAS the town is required to conduct a meeting for the purposes of an annual accounting, and

WHEREAS at this meeting those officers or employees who receive and distribute funds, except the town justice, shall file detailed statements with the Town Board of all receipts and disbursements for the 2014 fiscal year, and the town justice shall produce their dockets for examination by the town board, be it

RESOLVED that the date for this meeting will be January 20, 2015 at 7 pm and be it

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FURTHER RESOLVED that the statements filed with the town board shall be entered into the minutes and it shall also be entered into the minutes of the meeting that the dockets of the town justice have also been examined.

On a motion by **Councilwoman Seaman**, seconded by **Councilman Smith**, Resolution #12 was approved.

MOTION CARRIED: 5 AYES ~ WOOD, GALUSHA, EDDY, SMITH, SEAMAN

RESOLUTION #13:

Resolution to Fill Position

WHEREAS the town has budgeted for a part time maintenance position at a rate of \$10.00 per hour, and

WHEREAS the maintenance position is currently vacant, be it

RESOLVED that the town board authorizes the filling of the part time maintenance position at a rate of \$10.00 per hour.

On a motion by **Councilwoman Seaman**, seconded by **Councilman Galusha**, Resolution #13 was approved.

MOTION CARRIED: 5 AYES ~ WOOD, GALUSHA, EDDY, SMITH, SEAMAN

RESOLUTION #14:

Resolution to Establish Machinery Reserve

WHEREAS the Town Board wishes to establish a machinery reserve for the purposes of saving for future machinery purposes,

BE IT RESOLVED that the Town Board hereby establishes a Machinery Reserve.

On a motion by **Councilman Galusha**, seconded by **Councilwoman Seaman**, Resolution #14 was approved.

MOTION CARRIED: 5 AYES ~ WOOD, GALUSHA, EDDY, SMITH, SEAMAN

RESOLUTION #15:

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Resolution to Reduce Reserve, Pay Bills, and Fund Reserve

WHEREAS the Town of Thurman needs to fund the payment of bills for the Highway Department for December 2014,

BE IT RESOLVED the Town Board authorizes the reduction of the funding in the Road Repair Reserve to \$10,000 (ten thousand dollars), and

BE It RESOLVED that the funds transferred from the reserve shall be used to pay the outstanding highway expenses for 2014, and be it

FURTHER RESOLVED that any remaining monies after the bills are paid will be placed in the town's machinery reserve.

On a motion by **Councilwoman Seaman**, seconded by **Councilman Smith**, Resolution #15 was approved.

MOTION CARRIED: 5 AYES ~ WOOD, GALUSHA, EDDY, SMITH, SEAMAN

APPROVAL OF CLAIMS:

On a motion by **Councilman Smith**, seconded by **Councilwoman Seaman**, the town board approved vouchers #'s 2015-4 thru 2015-50 for a highway fund, general fund and capital reserve fund grand total of \$60,149.08.

MOTION CARRIED: 5 AYES ~ WOOD, GALUSHA, EDDY, SMITH, SEAMAN

RESOLUTION #16:

Resolution to pay remaining 2014 highway bills, \$55,880.08.

On a motion by **Councilman Galusha**, seconded by **Councilwoman Seaman**, the resolution to pay highway bills was approved.

MOTION CARRIED: 5 AYES ~ WOOD, GALUSHA, EDDY, SMITH, SEAMAN

RESOLUTION #17:

Resolution to Adjust 2014 Budget

Highway Fund

Decrease:

Increase:

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5110.1	5163.37	5110.4	514.86
5120.2	2911.43	5142.1	12635.87
9030.8	953.05	5142.4	22667.30
9050.8	1000.00	5112.2	59196.96
9055.8	1976.03	5130.4	<u>20842.18</u>
9060.8	<u>2517.61</u>		115857.17
	14521.49		

The additional \$101,335.68 is to come from the transfer from the road repair reserve.

General Fund

Decrease:

Increase:

1910.4	<u>619.00</u>	1620.1	40.00
	619.00	8160.1	402.00
		8989.1	46.00
		5132.4	<u>131.00</u>
			619.00

On a motion by **Councilwoman Seaman**, seconded by **Councilman Smith**, Resolution #17 was approved.

MOTION CARRIED: 5 AYES ~ WOOD, GALUSHA, EDDY, SMITH, SEAMAN

CORRESPONDANCE: A report was read from **Dexter Baker** and letters were read from **Marilyn Youngblood** and **Winifred Martin**. **Attached**

ADJOURNMENT: On a motion by **Councilman Galusha**, seconded by **Councilwoman Seaman**, the meeting was adjourned at 8:54pm.

MOTION CARRIED: 5 AYES ~ WOOD, GALUSHA, EDDY, SMITH, SEAMAN

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Respectfully Submitted:

Cynthia R. Hyde

Town clerk

01/27/2015

Attached: Information regarding surveillance equipment sent from a NYS Association of Towns Attorney to Councilman Eddy, an email between Councilman Eddy and a NYS Association of Town's attorney along with attachments sent by the attorney, a report by Dexter Baker, letters by Marilyn Youngblood and Winifred Martin and The Warrensburg EMS report.

January 13, 2015



Stephen W. Emerson
Operations Manager

Phone ~ (518) 232-0817
Fax ~ (518) 623-3651
Email ~ tek910@nycap.rr.com

*Our Patients Are Our First Priority
Our Members Are Our Greatest Asset*

January 13, 2015

Thurman Town Board Members,

Attached you will find the run totals for December 2014. We handled 5 calls in Thurman in December and our average response time was just over 15 minutes to arriving on-scene. We did have one call that we had an extended response time due to very poor weather and road conditions and waiting for police to secure the scene. Three (3) of those calls were ALS and two (2) of the calls were BLS. One (1) of those calls was a second out call for us. In 2014 we handled a total of 65 calls in the Town of Thurman.

I just wanted to remind everyone to please make sure that your homes are well marked so all emergency responders can find you when you need us. Also, if there are "landmarks" of any kind near you, please let the dispatcher know so they can relay that information to us. If you need help with this please let me know.

Please do not hesitate to contact me at any time if you have any questions, comments, or concerns. I can be reached on my cell phone at 232-0817. I would like to thank the Town Board and the Thurman residents for their continued support.

Respectfully Submitted,

Stephen W. Emerson

Stephen W. Emerson
Operations Manager
Warrensburg EMS, Inc.

THURMAN CALLS HANDLED BY WARRENSBURG EMS
DECEMBER 2014

DATE	PCR #	PRIORITY	CHIEF COMPLAINT	DISPATCH TO ENROUTE TIME	ENROUTE TO ONSCENE
12/1/2014	14-43490	BLS	BACK PAIN	2 MINUTES	16 MINUTES
2/11/2014	14-44693	ALS	OVERDOSE	4 MINUTES	35 MINUTES
2/29/2014	14-46758	ALS	DIFFICULTY BREATHING	2 MINUTES	9 MINUTES
2/29/2014	14-46840	ALS	HEAD INJURY (MVA)	6 MINUTES	14 MINUTES
2/29/2014	14-46840	BLS	SIGN OFF (MVA)	6 MINUTES	4 MINUTES

Warrensburg Emergency Medical Services Inc.
PO Box 157
Warrensburg, New York 12885

Information regarding surveillance equipment sent from a NYS Association of

Q: May a town official install video surveillance equipment on town property?

A: No, a town official, on his or her own, has no authority to install a recording device to monitor the goings on of town property. In other words, an individual town officer may not unilaterally manage and make changes to town property. On the other hand, Town Law § 64 (3) gives the town board control over town property. Therefore, a majority of the town board may determine to install video surveillance. There are, however, some considerations to review before doing so.

First, the town should keep in mind constitutional issues. The Fourth Amendment of the U.S. Constitution protects against unreasonable searches and seizures by the government, and the U.S. Supreme Court has said that public sector employees may enjoy a reasonable expectation of privacy at work against searches and seizures of their personal effects by supervisors (see O'Connor v Ortega 480 U.S. 709, 712-14 [1987]). However, this expectation of privacy is not unlimited and video surveillance does not, in and of itself, violate the Fourth Amendment. For example, there is no reasonable expectation of privacy in an open workspace like a conference room or a hallway. In order to avoid constitutional claims related to video surveillance, the town may want to limit its surveillance to areas like hallways, entrances and other areas considered open and accessible to most.

New York also has some state specific laws that address surveillance. General Business Law § 395(b) prohibits cameras "or any other instrument or method that can be utilized to surreptitiously observe a person" from being used in areas such as restrooms, showers or fitting rooms. Additionally, Labor Law § 203(c) states that an employer may not video record an employee in a restroom, locker room, or room designated by an employer for employees to change their clothes, unless authorized by court order. Furthermore, the ability to install video recording equipment does not authorize the town to record conversations. Under Penal Law § 250.00 and 250.05, it is a Class E felony to record someone when neither party to a conversation consents to such recording.

Moreover, installation of video surveillance equipment may violate a collective bargaining agreement. In 2011, the Public Employees Relations Board held that surveillance cameras in work area of the Town's highway garage violated the Taylor Law and found that the installation and use of video cameras to monitor employee performance and that the installation of such equipment needed to be negotiated as part of the collective bargaining agreement. Again, in 2012, PERB issued an opinion which stated that "in general, the decision by an employer to engage in videotape surveillance of a workplace for monitoring and investigating employees is mandatorily

negotiable under the Act because it ‘bears a direct and significant relationship to working conditions’ it requires employees to be video-surveillance participants, and it intrudes upon employee interests including job security, privacy and personal reputation” (see 45 PERB ¶ 3007)

Finally, surveillance tapes create another record subject to FOIL which is something that the town may want to keep in mind. The Committee on Open Government has said that if the location of surveillance equipment is in plain sight in public places and known to the public, there should be no grounds for withholding the surveillance record. On the other hand, if people are unaware that they are being recorded, there may be one or more grounds to withhold the tape or portions of it, for example if disclosure of the video would constitute an unwarranted invasion of personal privacy.

January 13, 2015

Thurman Town Board
PO Box 29
Athol, NY 12810

January 13, 2015

To the Thurman Town Board,

I believe that all Town Officials should show curtesy and act in a professional manor. This should be on a day to day basis but especially when acting in their official capacity and in the eyes of the public.

After attending a number of Town Board meetings and listening to the minutes on line, it is apparent that the Town Clerk's actions are unprofessional and her minutes are biased.

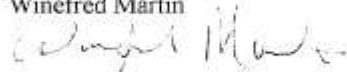
Yelling, arguing, and interrupting are not uncommon occurrences during the Town Board Meetings. This behavior is disruptive to town business and these actions are an embarrassment. I do not know the official duties of the Town Clerk, but I find it hard to believe that they would include questioning town board decisions and making demands during the meetings.

It is apparent whom she is sympathetic to while reading letters to the board. Her mannerisms and tone give little doubt as to where her feeling lie.

Her minutes are subjective with personal opinions woven into what should be an objective narrative of the facts and she is not consistent in the way she reports comments from the floor.

It is my hope that all of our elected officials show common curtesy to one another, following the guidelines of the meeting and that our Town Clerk act in a professional manor both for herself and for the Town.

Thank you,
Winefred Martin



Please include this in the board meeting minutes

January 13, 2015

From: Mike Eddy [mailto:eddysam@verizon.net]
Sent: Wednesday, December 31, 2014 9:58 AM
To: Sarah Brancatella
Subject: Fw: Highway & general funds

From: Mike Eddy
Sent: Tuesday, December 16, 2014 10:45 AM
To: sbrancatella@nytowns.org
Subject: Highway & general funds

Hi Sarah,

If the town highway runs out the money from their budget before the end of the year can money be transferred from the general fund?

Can money be transferred from the general fund to highway with out being paid back?

If the highway can borrow from the general fund – what are the rules for paying back the general fund?

How can a town highway continue to function?

What are the rules – Thurman is considered a 2nd class town.

If the highway crew members do other work in town for the town in other categories other than highway maintenance

such as:

work as attendants at dump and recycling center – should the labor be paid from the refuse budget line item?

grade area for salt shed, build salt shed – town has a designated capital project fund to build salt shed – should the labor be paid from capital project fund?

cemetery lawn maintenance – should the labor be paid from cemetery budget line item?

town building and grounds maintenance?

set up and remove tents for town functions?

Thank you,

Mike Eddy

Thurman town board member – Warren county

Mike Eddy

From: "Sarah Brancatella" <sbrancatella@nytowns.org>
Date: Wednesday, December 31, 2014 11:12 AM
To: "Mike Eddy" <eddysam@verizon.net>
Attach: § 113 Transfers from general purpose funds to other funds.pdf; Snowpocolypse.docx; Mr Drew A Outhouse Highway Superintendent Town of North Salem.pdf; Richard J Sherwood Esq Deputy Town Attorney Town of Lancaster.pdf
Subject: RE: Highway & general funds
Hi Mike,

I've attached the article I wrote for the upcoming magazine which addresses, among other things, the ability to transfer money from the general fund to the highway fund. I've also attached Town Law § 113 which states that a town board may transfer surplus money / unexpended balances from the general fund to the highway fund so long as the tax base is the same (which it would be in your town with all highway lines since there is no village within the town of Thurman).

As far as what funds highway laborers should be paid from, the town board may, under Town Law § 32 impose additional duties so long as those duties do not interfere with the performance of what is statutorily required by Highway Law. As per the various comptroller's opinions attached, the money for completed such tasks should not come out of the highway fund, the tasks should be a charge back to the general fund.

I hope this information is helpful.

Best,

Sarah

§ 113. Transfers from general purpose funds to other funds, NY TOWN § 113

McKinney's Consolidated Laws of New York Annotated
Town Law (Refs & Annos)
Chapter 62. Of the Consolidated Laws (Refs & Annos)
Article 8. Finances

McKinney's Town Law § 113

§ 113. Transfers from general purpose funds to other funds

Currentness

Notwithstanding any other provision of law, the town board may, by resolution, authorize the transfer of surplus moneys, contingent appropriations, and unexpended balances

(1) from the fund maintained for general town purposes and comprised of moneys which, if raised by taxes, would be raised by taxes levied on property in the entire area of the town, to any of the funds or accounts authorized by section one hundred ~~forty~~-one of the highway law and comprised of moneys which, if raised by taxes, would be raised by taxes levied on property in the entire area of the town; and,

(2) from the fund maintained for general town purposes and comprised of moneys which, if raised by taxes, would be raised by taxes levied solely on property in the area of the town outside of villages, to any of the funds or accounts authorized by section one hundred ~~forty~~-one of the highway law which are comprised of moneys which, if raised by taxes, would be raised by taxes levied solely on property in such area.

Credits

(Formerly § 115-a, added L.1967, c. 12, § 1. Renumbered § 113, L.1969, c. 1049, § 30.)

Notes of Decisions (16)

McKinney's Town Law § 113, NY TOWN § 113

Current through L.2014, chapters 1 to 484, 486 to 488, 490 to 504, 506, 507, 510 to 513, 515, 519, 521 to 523, 525 to 533.

Richard J. Sherwood, Esq., Deputy Town Attorney Town of..., Opns St Comp, 1982...

Opns St Comp, 1982 No. 82-238 (N.Y.St.Cptr.), 1982 WL 20337

New York State Comptroller
NYCPTR Opn No. **82- 238**
September 10, 1982

TO: RICHARD J. SHERWOOD, ESQ., DEPUTY TOWN ATTORNEY
TOWN OF LANCASTER

***1 Town Law, § 32**

Highway Law, § 141

- 1. REFUSE AND GARBAGE—COLLECTION OF—EXPENSE CHARGEABLE TO GENERAL FUND**
- 2. SUPERINTENDENT OF HIGHWAYS—POWERS AND DUTIES—COLLECTION OF TRASH**
- 3. SUPERINTENDENT OF HIGHWAYS—POWERS AND DUTIES SALE OF SCRAP METAL**
- 4. STREETS AND HIGHWAYS HIGHWAY DEPARTMENT—SALE OF SCRAP METAL BY**

A town highway superintendent may be assigned the additional duty of collecting and disposing of refuse and trash if it does not interfere with the performance of his regular statutory duties. The expenses of refuse collection and disposal and the revenues from the sale of scrap metal and other items are charged or credited to the town's general fund and not to the town's highway fund.

Our opinion has been requested on the following questions:

- (1) May a town board assign to the town superintendent of highways the duty of collecting trash?
- (2) If so, may the highway department sell scrap metal and other items?
- (3) Should the expenses and revenues of trash collection be charged or credited to the town's highway fund or to the town's general fund?

The town board has authority to confer or impose additional powers and duties upon the town superintendent of highways "not inconsistent with law" (Town Law, § 32(1)). The town board, therefore, may require the superintendent of highways to collect and dispose of refuse or trash as long as these additional duties do not interfere with the performance of his regular statutory responsibilities (Opns St Comp, 1976, No. 76-19, unreported; 29 Opns St Comp, 1973, p 42).

In connection with its collection and disposition of solid waste, a town may sell scrap metal and other saleable items of trash (see Opns St Comp, 1981, No. 81-199; Opns St Comp, 1979 No. 79-146, unreported; see also General Municipal Law, § 120-w (4) (d); Opns St Comp, 1979, No. 79-110, unreported). The town board, therefore, may authorize the superintendent of highways to sell scrap collected by the highway department employees.

Since the collection and disposition of trash is not a regular statutory function of the town highway department (see, e.g., Highway Law, § 140 *et seq.*), the expense of performing this responsibility is not charged to the town's highway fund, but to the town's general fund (32 Opns St Comp, 1976, p 150; Opns St Comp, 1976, No. 76-19, unreported; 29 Opns St Comp, 1973, p 42). Similarly, revenues collected from the sale of scrap are credited not to the highway fund, but to the general fund.

Opns St Comp, 1982 No. 82-238 (N.Y.St.Cptr.), 1982 WL 20337

When I was growing up in West Seneca, a town just south of Buffalo NY, lake effect snow meant the following – a day off from school, spending several hours shoveling the driveway (because my parents were too cheap to buy a snowblower, why would they do that when they had perfectly capable children?), and cursing the plow which seemed to wait until I was done shoveling to come by to pile more heavy loads of snow and ice at the end of the driveway. For those who don't know, lake effect snow occurs when colder air moves across warmer lake water, the air picks up a bunch of that water, and then dumps it in the form of snow when it moves across cooler land temperatures. That's not the official scientific explanation, just one I picked up after living in Western New York for several decades.

Lake effect snow was behind the historic snowfall that took place just south of Buffalo in late November; however, this was not like the snowfall from my childhood. My parents, still happily living in West Seneca, were on the receiving end of approximately 70 inches of snow and, thankfully, were simply stuck in their house for several days. For others, the snow was catastrophic. Drivers had to abandon cars or were stuck, sometimes for days, buried by mounds of snow, necessary medications were difficult to obtain, there were several deaths associated with the storm, roofs collapsed under the weight of the snow, not to mention other property damage from flooding. When faced with this natural disaster, local governments rose admirably to the challenge, plowing the roads as quickly as possible, sending out first responders, and doing everything they could to help to keep their residents safe. Of course, a storm of that magnitude is not an everyday event, but snowstorms can present a challenge to municipalities even if your town is not located near a Great Lake. Though the Association of Towns can't help dig out your driveway or plow town roads, we can offer some information on common issues that arise with snowstorms that hopefully will help you get through the winter.

Equipment Issues

There may be situations where your town might not own the necessary equipment to address an unusually large volume of snow or you might experience equipment failures. Thankfully, there are statutory options to help you address these situations. Among other things, municipalities may agree to share equipment with other municipalities. This should be done pursuant to a written agreement, referred to in statute as a "mutual sharing plan", in which the terms and conditions are spelled out (see General Municipal Law § 119-o). In addition to an intermunicipal agreement, your town can contract with a state agency, public authority or public benefit corporation to share equipment and services (see General Municipal Law § 99-r). Though less often employed, Highway Law § 143 authorizes a town highway superintendent, with the approval of the county highway superintendent, to rent or hire machinery or equipment for the repair and improvement of highways. The rental rate must be approved by the town board and cannot exceed the hourly rates fixed by the State Superintendent of Public Works.

Finally, Executive Law Article 2-B authorizes a municipality's chief executive, the town supervisor, to declare a local state of emergency in the event of a disaster, and to issue local emergency orders to protect life and property or to bring the emergency under control. A disaster is defined as the occurrence or imminent threat of wide spread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause. If a state of emergency has been declared, as it was with the November storm in Western New York, Executive Law § 25(3) states that a chief executive may request and accept assistance from any other political subdivision and may utilize real property from other political subdivisions upon "terms and conditions as may be mutually agreed to by the chief executives of the requesting and assisting political subdivision." Again, even though it may be a state of emergency and time may be of the essence, writing down the agreement and terms and conditions could save several headaches later.

Snow Plowing

As I grew a little older and wiser I recognized that snowplows were not simply instruments designed to ruin my snowday and that keeping roads clear from snow and ice is an important municipal function. However, there are limitations upon a local government's authority to do so which should be kept in mind. Most importantly, a town may not remove snow from private property (such as driveways, roads, parking lots) with its own equipment, by hiring privately owned equipment, or by paying for such removal. Doing so violates Article 8, § 1 of the State Constitution which, among other things, states that municipalities cannot gift or loans its property / services to private entities or individuals (see also 12 Op. St. Comp. 58, 218). Another way to think of it is that town property and services must be used for a public purpose, not to benefit a private individual or group. That being said, there are times when plowing may serve a public purpose and, incidentally, convey a private benefit. For example, the Comptroller's office has stated that a town may remove snow from private property in order to provide access to a town official's home which is also used as his or her official office(see 1977 Op. St. Comp. 77-672). Also, a town may plow snow from private roadways in emergencies such as illness, death or fire if it is necessary to render a property accessible. However this can only be done if an emergency actually exists, which means there is a serious and substantial threat to life or property ; plowing may not be performed as a precautionary measure in anticipation an emergency (see Op . St. Comp, 1979 NO. 79-62; Op St. Comp., 1990 No. 90-59).

Fund Transfers

Another issue towns are faced with when snowfall exceeds expectations is not having sufficient funds in the snow removal line of the highway fund. A general rule of any fund transfer is that the fund you transfer from and the fund you transfer into must have the same tax base. Under Highway Law § 141(4) snow removal is a town wide charge, though towns with villages have the

option of exempting village taxpayers (see Highway Law §§ 277; 285-a). This means that, if snow removal is a town wide charge, money may only be transferred from other town wide funds, such as the general fund or the line for bridge repair and construction under the highway fund (see Highway Law § 141[2]). However, if the town has exempted village taxpayers, then snow removal is a town outside of village charge, and money may only be transferred from other town outside of village funds, such as the repairs and improvements line in the highway fund (see Highway Law § 141[1]).

Closings and Cancellations for Municipal Employees

Town boards have the authority to close town buildings and may choose to do so when faced with inclement weather. General Municipal Law § 92 gives the town board discretion in allowing for paid leaves of absences for municipal employees, and this section could be used to authorize payment when town hall is closed. If a resolution is not passed pursuant to Section 92, the payment of salary may be considered a gift under the NYS Constitution, Article 8, § 1. If workers are unionized, the union contract should be referenced to determine whether workers get paid in this instance. If the contract does not cover this contingency, past practice should be reviewed to determine if unionized workers have been paid in other previous closures.

If you happen to have a town board meeting or public hearing scheduled and the town board finds it necessary to reschedule due to bad weather notify the public as soon as possible regarding the cancellation and be sure to provide new notice for the rescheduled time and location.

January 13, 2015

Mr. Drew A. Outhouse, Highway Superintendent Town of..., Opns St Comp, 1981...

Opns St Comp, 1981 No. 81-345 (N.Y.St.Cptr.), 1981 WL 16916

New York State Comptroller
NYCPTN Opn No. **81- 345**
October 13, 1981

TO: MR. DREW A. OUTHOUSE, HIGHWAY SUPERINTENDENT
TOWN OF NORTH SALEM

*1 Town Law, §§ 32(1), 113(1)

Highway Law, § 140(17)

1. STREETS AND HIGHWAYS—HIGHWAY FUND—CREDITS TO WHERE HIGHWAY EMPLOYEES PERFORM WORK FOR OTHER TOWN DEPARTMENTS

2. SUPERINTENDENT OF HIGHWAYS—POWERS AND DUTIES—ASSIGNMENT OF ADDITIONAL DUTIES

A town board may require a highway superintendent to perform work for the recreation department and, after completing such work, the superintendent may submit an itemized bill for reimbursement to the town board which shall then make appropriate charges against the general fund and credit such moneys to the highway fund.

We have received an inquiry requesting our opinion as to whether a town superintendent of highways who performs work for the town recreation department at the direction of the town board, may authorize payment for materials and labor from highway department funds and then submit an itemized bill to the town board for reimbursement from the general fund.

Section 32(1) of the Town Law provides that the town superintendent of highways shall have such duties as are imposed on him by law and such further duties as the town board may determine which are not inconsistent with law. Since it would be a proper town purpose to perform work for a town recreation department, the town board may direct the superintendent to perform such work and charge the cost back against the recreation department (Opns St Comp, 1978, No. 78-712, unreported). This may be accomplished by having the superintendent present an itemized bill to the town board for the cost of the labor and materials once the work is finished. Th town board may then charge these costs against the appropriate item in the general fund and credit these moneys to the highway fund (24 Opns St Comp, 1968, p 408).

Therefore, it is the opinion of this Department that a town board may require a highway superintendent to perform work for the recreation department and, after completing such work, the superintendent may submit an itemized bill for reimbursement to the town board which shall then make appropriate charges against the general fund and credit such moneys to the highway fund.

Opns St Comp, 1981 No. 81-345 (N.Y.St.Cptr.), 1981 WL 16916

January 13, 2015

Dexter J. Baker
450 High Street
Athol, NY 12810

Dear Thurman Town Board,

The following is a report of animal control services for the year 2014. All together for the year 45 actual calls for service were reported. These 45 calls are broken down as follows:

- 18 Loose Dog Complaints.
- 14 Stray Dog Calls.
- 4 Dog Bite Cases.
- 1 Cat Bite Case.
- 1 Wildlife Call.
- 5 Animal Neglect Complaints.
- 2 Loose Farm Animal Complaints.

Of these 45 calls, 4 total tickets were written for last year, all for loose dog complaints. Also, 24 new dog licenses were created based off complaints. Of the 14 stray dog calls, 7 were unfounded due to not being in Thurman or the dog no longer in the area, 5 owners were located and 2 were adopted out. Of the two loose farm animal complaints, one was for a cow in the road and one for a goat roaming.

Once again I thank the board for continuing my services and look forward to serving again for the 2015 year. Thanks very much.

Sincerely,



Dexter J. Baker - 1-1-2015

January 13, 2015

To: Athol/Thurman Town Board

From: Marilyn Hoy-Youngblood

Date: 12/12/2015

Re: Property of Salem and Jay Zullo

Jay and Salem live at the corner of Rt 418 and Athol Road. Red Pitkin, when he was Supervisor, approached the Zullo's about moving their fence back a few feet in order to give better visibility at that intersection. Being the good people that Jay and Salem are, they did not hesitate to say "yes".

It is my understanding in talking with the Zullo's that the actual work was done by the Warren County Highway Department.

As many of you have observed, the fencing between their driveway and Athol Road is falling down. Jay indicated that the upright posts have rotted away at ground level. It has only been about 6 years since the fence was erected and we can probably assume that the County may not have used pressure treated lumber.

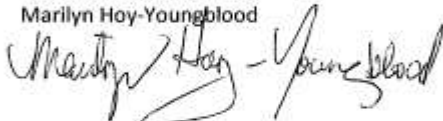
Jay is a very handy and talented man and, under normal circumstances, might decide to do this project himself. However, he is in his 80's and is sole caregiver for his wife, Salem, who needs 24/7 support and assistance for significant and chronic illness.

With Jay and Salem's agreement, I am writing this letter to request that the Board consider it a town responsibility to find a way to repair their fence since they have essentially given some footage of their property to help protect us.

They and I would appreciate a discussion of this matter and request that it be entered on the record.

Sincerely

Marilyn Hoy-Youngblood

A handwritten signature in black ink that reads "Marilyn Hoy-Youngblood". The signature is written in a cursive style with a large, stylized initial "M".