

PCC Requests Investigation

(The unabridged version of the article that appeared in the October 15th edition of the PCC Newsletter.)

(Larry Fitzmorris & Joe Robicheau) –At the September 7th meeting of the Council, the PCC formally requested that the Council investigate what we believe were unauthorized increases in the budget totals for the town municipal departments and the School Department. At the August 2006 Town Meeting the electors set budget totals for the school and the town side departments, as well as the tax rate for the 2006-2007 fiscal year.

Our allegation of unauthorized activity caused a firestorm of protest among the Town's managers and some elected officials. As Portsmouth's tax watchdogs, we are determined to defend the authority of the Town's electors, exercised at the Town Meeting, against encroachment by anyone in town government. At this point no one disputes that the town side department budget total was raised \$384,077 above the levels set at the meeting with the adjustments of the subsequent Caruolo suit added. On the School Department side of the budget, the totals were increased by at least \$150,000 above the amount authorized in Judge Indeglia's ruling. Property taxes were not increased beyond the supplemental tax increase resulting from the Caruolo case because the funds were transferred from reserves.

The Town Charter is very clear on this matter; the Council does not have authority to increase total spending after the Town Meeting sets budget totals. It also does not have authority to increase budget totals after the late June adoption of the final budget in any year.

Although everyone should be fully aware of provisions of the Town Charter, few of us are; however, all elected and appointed officials should be thoroughly familiar. I think you will agree they are not.

Pertinent sections of the Charter from the Portsmouth website are included below. The editor's notes were trimmed to exclude irrelevant discussion.

Section 208, Budget and subparagraphs 1 through 7 in italics below delineate the one and only Portsmouth budget process.

208. Budget. Upon the receipt of the consolidated Town and School budget from the Town Administrator, the Town Council shall:

1. Review the Administrator's recommended budget and within thirty (30) days adopt a provisional budget. The Council may only alter the total amount of the school department budget.

A copy of the provisional budget shall be filed with the Town Clerk.

2. Immediately following the adoption of the provisional budget, it shall be published in a newspaper having general circulation in the Town, showing the initial requested total amount of each department by the Town Administrator and School Committee and the recommended total amount of the Town Council.

3. Within thirty (30) days of the approval and publication of the provisional budget, public hearings shall take place. The Council shall have printed and available copies of the provisional

budget for public distribution at least five (5) days prior to public hearings. The time and place for holding of these hearings shall be included with the publication of the provisional budget. (Amended November 2, 2004, eff. date same.)

4. Upon completion of the public hearing on the provisional budget, take the results thereof under consideration and make such additional changes as the Council may deem appropriate.

5. Within one (1) month following the completion of the public hearings on the provisional budget at a regular Town Council meeting in June, adopt the final Town budget by ordinance, forwarding one (1) copy to the Town Clerk for public inspection and, as soon as possible, have the final budget (departmental total amounts) published in a newspaper having general circulation in the Town. (Amended November 2, 2004; eff. date same.)

6. Within two (2) weeks of the adoption of the final Town Budget, a Town Meeting of the duly qualified electors of the Town may be called, by petition of not less than ten percent (10%) of said duly qualified electors presented to the Town Clerk who forwards the petition forthwith for further action by the Canvassing Board; the purpose of said Town Meeting shall be limited to a reconsideration of the final budget of the Town as adopted by the Town Council and said Town Meeting may increase or decrease the total amount of either the School Department Budget, or the Town Budget, or both. (Amended November 2, 2004; eff. date same.)

7. In the event that a Town Meeting is called in accordance with the provisions of Section 6 thereof, the Town Clerk shall schedule the date, time and place of said meeting, which said date shall not be less than forty (40) nor more than fifty-five (55) days from the day upon which the Town Clerk is presented with the petition. A quorum for said Town Meeting shall be ten percent (10%) of the duly qualified electors of the Town. A moderator for said Town Meeting shall be elected by majority vote of the duly qualified electors of the Town in attendance at the Town Meeting. All business properly before said Town Meeting shall be conducted in accordance with established rules of parliamentary procedure. (Adopted November 7, 1972; as amended November 8, 1983; eff. date January 1, 1984; as further amended November 2, 2004; eff. date July 19, 2005 by General Assembly approval.)

(Ed. Note: Former Section 208 was repealed virtually in its entirety by the 1983 amendments. This new section sets forth the new budget procedures to be employed by the Council caused by the elimination of the financial Town Meeting. The 2004 amendments add language to section 6 to ensure the Town Clerk forwards the petition to the Board of Canvassers in a timely manner; and in section 7 changes the number of days from which a Town Meeting may be scheduled after receipt of the petition.) Editor's note: Portions Ed. Note removed.

Section 207, Powers and subparagraphs g. through i. delineate Town Council budgetary powers and constraints.

207. Powers. The Town Council shall be the policy-making body of the Town, and shall exercise all the powers of the Town, except as otherwise provided by this charter, or by the constitution and laws of this state. Among the powers of the Council, to be exercised in accordance with

relevant provisions of the Charter and of the constitution and laws of this state, shall be the power:

g. To adopt all Town budgets:

h. To levy Town taxes in the amount necessary to implement the adopted budget:

i. To transfer appropriations within the Town budget (exclusive of the School Department budget) not to exceed the total appropriated:

(Ed. Note: The 1983 amendments eliminated the financial town meeting (Sec. 102) and vested full fiscal power in the Town Council. The amendments to this section reflect the changes authorized by the voters on November 8, 1983. Thus subparagraphs g, h and i are wholly new to this section.) Editor's note: Portions Ed. Note removed.

It should be noted that the Charter Review Committee of 1983 was charged with eliminating the annual Town Meeting and delegating budgetary authority to Town Council. Close scrutiny reveals that the Charter Committee and the voters were not entirely comfortable with this new arrangement. Given recent events, who could blame them? Why else would they have included Section 208, Subparagraphs 6 and 7?

It is irrefutable that the Charter allows for one and only one town budget each year. The Town Council has no authority to increase the budget unless so ordered by a state court.

The fundamental dispute in all of this is who the ultimate authority over the Town Budget is going to be; the electors and their Town Charter—or its government. The Council voted to request the State's Auditor General to investigate the issue. That is a good start, but this matter must be resolved. The authority of the citizens of Portsmouth and the primacy of the Town Charter over the government must be reaffirmed.