

Recently, questions arose about the Select Board's authority to spend money for items that were not specified in the budget. The Select Board asked the Vermont League of Cities & Towns and this was their response.

An Opinion on Line Items in Municipal Budgeting

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The authority of municipal legislative bodies to spend money derives from State law. Generally speaking, voter authorization (e.g. appropriation) is a prerequisite for legislative body expenditures. As for the Select Board's ability to move monies amongst line items after the budget has been approved by the voters, the town budget is probably better viewed through the lens of a plan than a contract. The Vermont Supreme Court has described the municipal budget as "a mere declaration, or resolution, on the part of the town alone, and not in the nature of a grant, or contract between the town and an individual it is merely a resolution to provide themselves with money." *Stoddard v. Gilman*, 22 Vt. 568 (1850). When the voters adopt the town budget, the voters cannot predict with perfect certainty what will happen during the year. The Select Board has the statutory authority to manage the budget by virtue of its responsibility to manage the affairs of the town pursuant to 24 V.S.A. § 872; and its authority to sign orders for claims made against the town pursuant to 24 V.S.A. § 1623(a). In carrying out these duties, the Select Board has some inherent authority to deviate from the plan and may even be legally required to do so in some instances (e.g. town highway maintenance). I would suggest that software updates to ensure the town can function and be guarded against malware is of sufficient importance and, therefore, a justified expense.

It is easiest to resolve if they can find another line item to reduce instead of overspending the budget. However, the Select Board also has some implied discretionary authority to exceed that budgeted by the voters by virtue of its ability to deficit spend. 24 V.S.A. § 1523. Sometimes the Select Board's authority to deviate from the plan is limited by law, but often the authority is limited by the town's politics and traditions. The more specific a budget is the more inclined the Select Board should be when deviating from their expectations to go back to the voters by placing the question before them at a duly warned special town meeting.