

Opinions

Office of the Vermont Secretary of State



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April 2004



A Message from the Secretary

In Vermont we can feel proud that we have one of the highest voter participation rates in the nation. What many people don't know, however, is that we lag behind most of the nation when it comes to the participation of our young people. In the last presidential election only one in three Vermonters between

the ages of 18 and 24 cast a ballot. In the off year election fewer than 1 in 5 voted.

To stop this unfortunate trend we must be committed to bringing civic education back to our schools and we must remove barriers to voter registration.

It is not surprising that the young people are participating at about half the rate of young people of previous generations. Over the past two decades there has been a national trend to no longer teach civics in our schools. We cannot expect to graduate citizens who understand the importance of voting to democracy unless we teach them how their vote works – and how the people we elect impact the policy and direction of our government – and how our government directly effects our lives. We must also teach our children the mechanics of democracy - how to research candidates, how to register to vote, and what to expect on election day. To that end the Secretary of State's Office has the Vermont Votes for Kids program which has free curriculum materials on voting and democracy that can be used in schools prior to the November election.

While emphasizing civic education is important, in Vermont this may not be enough. Vermont's unusually low voter turnout may be due to an additional barrier to voter registration – the voter's oath. Vermont is the only state whose constitution requires voters to take an oath

before a notary in order to be eligible to vote. This means that it is harder to register voters in Vermont, and it means that Vermonters who leave their homes for college cannot register by mail.

Every other biennium the legislature can begin the lengthy process to amend Vermont's constitution (An amendment must be passed by two legislatures and then voted on by the people.) We are urging the legislature to consider making the voter's oath self-administered. A self-administered oath would allow citizens to register without involving the services of a notary to witness the oath. We think this will allow us to streamline the registration process and we believe it will enhance the opportunity for young people to participate in Vermont's election. If you think this is a good idea please contact your legislators!

Deborah L. Markowitz, Secretary of State

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Of Digitization, Dogs and Deities

By Gregory Sanford, State Archivist

Do you ever wonder why we do the things we do? This thought occurs to me regularly as I try to balance ancient responsibilities (preserving original acts, for example, dates back to 1782; with current statutes requiring the preservation of paper copies) with new (such as the 2004 mandate to digitize audio tapes of legislative committee hearings).

These thoughts were unleashed by dogs. In 1862 town listers had to enter dogs upon the list at the sum of one dollar; the same act allowed the killing of dogs running at large without a collar identifying the owner. An 1876 law removed dogs from the grand list, gave town clerks responsibility for licensing dogs, and allowed damages against the owners of dogs caught “worrying, maiming, or killing...sheep, lambs, fowls or other domestic animals.”

Clerks still license dogs but the rationale for such licenses has expanded to other concerns from rabies to doubts about the domesticity of wolf-hybrids. This, in turn, encapsulates changes to Vermont as we move from the concerns of a sparsely settled agricultural landscape to one that is more densely populated and residential.

All of which leads, of course, to thoughts on the role of religion in government. From litigation over use of “under God” in the Pledge of Allegiance to the possible embedding of the Sharia (the law system of Muslims) in the constitutions of Afghanistan and Iraq, we contemplate the balance of religious and civil commandments.

Strict segregation of religious and civic belief would have surprised Vermont’s founders. The preamble to the 1777 Constitution often seems to conflate religion and civics with its references to “the Great Governor of the Universe.”

Some early Vermont statutes were derived from biblical law. The punishment of inflicting 39 stripes upon the naked back of various criminal offenders, for example, is drawn from Deuteronomy 25:2-3, which states that “when a guilty man deserves to be beaten the judge shall make him lie down and have him flogged in his presence with the number of lashes he deserves, but he must not give him more than forty lashes. If he is flogged more than that, your brother will be degraded in your eyes.”

Municipal records also give evidence of the commingling of religious and civil belief. Within towns different sects competed for the economic and religious benefits of having the first settled minister and residents debated tax obligations to support a minister or church of a different sect (a 1783 law required a certificate from a minister of your denomination to gain an exemption from the tax).

Civil support of one denomination over another inspired hard fought battles. In a few cases irreconcilable differences led to divisions of a town; West Windsor, for example, broke away from Windsor along parish lines.

Discomfort with state and town support for religion found early expression within our public dialogues. In 1809 Samuel Williams of Rutland captured these tensions in his history of Vermont: “It is not barely *toleration*, but *equality*, which the people aim at. Toleration implies either a power or a right of one party, to bear with the other; and seems to suppose, that the governing party are in possession of the truth, and that all others are full of errors. Such toleration is the most that can be obtained by the minority, in any nation, where the majority assume the right and the power to bind society, by established laws and forms of religion. The body of people in this commonwealth, carry their ideas of religious liberty much further than this...all denominations shall enjoy equal liberty, without any legal distinction or preeminence whatever.”

Williams, of course, did not have the last word and every generation of Vermonters has sought that elusive balance between toleration and equality.



All this may seem a bit much for an *Opinions* piece, but over the years I have tried to convince Vermont educators to use their state and municipal archives to teach the larger issues of society. To me there is a value in letting students understand that such issues can be traced through the history of their own communities; that history is not something that happened somewhere else to someone else.

But there is another, more personal reason for such contemplations. I think it important to occasionally step back from the unending parade of deadlines and expanding responsibilities. Yes, there are dogs to license, an upcoming election to run, and tapes to digitize. But sometimes if you stand in the stillness of your vault you may be fortunate to hear the faint strains, some joyful, some cacophonous, of two centuries of self-government.



Mark Your Calendar with the Vermont League of Cities and Towns' Upcoming Events!

More information can be found at www.vlct.org, email us at info@vlct.org or call 800/649-7915 or 802/229-9111.

April 2004

Wednesday, April 7 Personnel #2: A Field Guide to Personnel Law

Suzanna's Restaurant, Berlin

Should this employee be exempt or non-exempt? Hourly or salaried? Which officials are employees and which are "officers?" This workshop will consider these questions and others in light of the Fair Labor Standards Act (FLSA) and other state and federal laws.

Thursday, April 22 Legal Aspects of Property Taxes

Capitol Plaza Hotel, Montpelier

This highly popular workshop will examine the legal issues and process requirements for assessing property, hearing appeals of assessments, and issuing a decision.

May 2004

Thursday, May 6 Municipal Attorneys' Forum

Capitol Plaza Hotel, Montpelier

This forum provides an opportunity for municipal attorneys across the state to gather and discuss the most pressing issues in municipal law.

Tuesday, May 18 Vermont Municipal E-government Conference

Howard Dean Education Center in Springfield, Lyndon State College in Lyndon, and UVM in Burlington

It is sponsored by both VLCT and UVM Center for Rural Studies.

Thursday, May 20 Clerks and Treasurers Workshops

Capitol Plaza Hotel, Montpelier

This annual workshop will focus on legislative and policy changes affecting the conducting of elections, municipal record keeping, and municipal finance.



Opinions of *Opinions*

1. **BCA may increase or decrease appraised value on appeal.** As tax appeal time nears, remember that on appeals from the listers' decision to the Board of Civil Authority, the BCA may increase, decrease or sustain the appraisal. 32 V.S.A. §4409. Once the taxpayer raises the issue of the property's valuation, the BCA must make findings to support what the BCA believes to be the correct valuation of the property, even if that is an increase. The same is true for further appeals to the State Board of Appraisers or the Superior Court.
2. **Winning taxpayer gets credit toward future tax liability.** If a taxpayer succeeds on appeal, and it is determined that he has been overassessed, then he or she is entitled to a credit from the municipality, and if the municipality has voted to collect interest on delinquent taxes, then the taxpayer must be given interest at the same rate. 32 V.S.A. §4469, §5136. A municipality can choose to pay the taxpayer in a lump sum, but the statute only mandates a credit.
3. **Three BCA members are quorum for tax appeals.** A quorum of the board of civil authority (BCA) as well as the number needed to make a decision (or take action) is set by specific authority in 24 V.S.A. § 801 where it states that "the act of a majority of the board present at the meeting shall be treated as the act of the board..." (except in election issues when 17 V.S.A. § 2103 controls). This means that any number of board members who attend a duly warned meeting for a tax appeal can take action and make a decision. Note however that this number can never be less than three, as three BCA members are needed for the inspection committee.
4. **BCA members who appeal are disqualified from deciding tax appeals.** Board of civil authority (BCA) members who appeal their taxes or who have any interest in property under appeal are prohibited from serving on the board for tax appeal purposes during the year the property is under appeal. 32 V.S.A. § 4404(d). BCA members who have grieved to the listers and decided not to appeal may consider tax appeals. If a BCA member is an attorney and represents a person who is appealing their taxes, that member is similarly disqualified, as is the town agent, who might also be a board member in some circumstances.
5. **A Lister can be a Justice of the Peace, but lister/Justice of the Peace cannot participate in tax appeal hearings.** Many small towns have difficulty finding different people to serve in various offices. It is legally permissible (i.e., there is no statutory conflict or prohibition) for a person to be elected as a lister and as a Justice of the Peace. The Lister can take an active role in election duties, except when the person is in a contested race for his Lister office. However, the lister cannot sit on the BCA for the purposes of tax appeals because the appeal is from the lister's determination of value. While the law does not address the situation in which a lister appeals, it is best practice for the listers to limit his or her appeal appearance during the year to his or her own appeal (sitting as appellant) to avoid any appearance of inconsistent interests.



- 6. BCA members must step down from any appeal that involves a relative.** The law requires a board of civil authority member to not participate in an appeal that involves a relative by blood or marriage, who is a first cousin, niece, nephew, aunt, uncle, parent, grandparent, or sibling. 12 V.S.A. § 61. In addition, BCA members should avoid the appearance of a conflict by stepping aside when former business partners, friends or enemies appeal their taxes, as well as in any situation in which the member might not be able to render a decision squarely on the evidence and the merits, leaving all personal considerations aside.
- 7. The time for dog licensing and tags is here.** Just a brief reminder that the dog must wear the “license” tag required by the Vermont Statutes. This tag is sufficient proof that the dog has been vaccinated for rabies. An additional “rabies” tag is not required. 20 V.S.A. §3581(a).
- 8. Dog who moves within state does not have to be relicensed.** A dog license obtained from a Vermont clerk is valid in any part of the state. The license may be transferred to the new town, provided it is where the dog or wolf-hybrid is kept. The clerk of the new town must record the license when he or she is presented with a valid license that had been issued by another town clerk. 20 V.S.A. § 3591
- 9. Election of Officers May Not Be Reconsidered.** While 17 V.S.A. §2661 provides a method for reconsideration of public questions, and budgets, the election of officers cannot be reconsidered by filing a petition with the legislative body. The only way to challenge or contest an election of an officer is by filing a petition with the appropriate Superior Court. 17 V.S.A. §2603. The statute sets out that you must allege either errors sufficient to change the outcome of the election, fraud in the process sufficient to change the result, or that for any other reason, the election is not valid.
- 10. The legislative body must call a special meeting within 60 days of the submission of petitions to reconsider that are properly filed.** 17 V.S.A. §2661. We hope that town, school, and union school officials will all coordinate the setting of special meeting dates to minimize voter confusion.
- 11. Clerks should send absentee ballots for reconsideration vote to those who received them for the initial vote.** Although the law does not speak directly to requesting absentee ballots for reconsideration of an article by Australian ballot, we suggest that fairness dictates that the Town Clerk send absentee ballots for the reconsideration to all voters who had requested absentee ballots for Town Meeting. Reconsideration is really an extension of that Town meeting and we believe that absent voters should continue to participate.
- 12. A person must be a United States citizen, in order to register to vote and be added to a checklist in Vermont.** 24 V.S.A. §2121. It is not enough that Canadian or any other foreign citizens own property in town, or pay taxes, or have applied for U.S. citizenship. U.S. citizenship must have been granted, before a person is eligible to vote. Similarly, having lived in town most of my life is not enough to create citizenship. Having a “green card” does not mean that the person is a citizen. Our application for the checklist contains a box that must be checked by the voter to affirm that he or she is a citizen.



- 13. Deliberative session is exempt from the Open Meeting Law.** Deliberative sessions are totally exempt from the Open Meeting Law so that a board does not have to warn the session, and the decision of the board does not need to be adopted in open session so long as the decision is in writing and is a public record. 1 V.S.A. 312(f). A deliberative session can be used by a board at the end of a quasi-judicial proceeding to discuss the merits of the application, weigh the evidence, and arrive at points that the board wants to address in its written decision. 1 V.S.A. §312(e). Applications for site plan approval (planning commission or development review board), requests for variances (zoning board of adjustment or development review board), and requests for a curb cut or driveway permit (selectboard) are examples of quasi-judicial hearings. On the other hand, a planning commission hearing on adoption of a zoning by-law or work sessions to draft revisions to the zoning bylaw or an ordinance are a legislative type of proceedings and deliberative sessions cannot be used.
- 14. Adjourned meeting can only discuss articles warned for the original meeting.** If an annual meeting is adjourned to a date certain to continue the meeting, the adjourned session can only include completion of voting and discussion of articles which were in the original warning. New articles cannot be added during the recess. The adjourned session is a continuation of the original meeting. If the deadline for posting of the warning has passed, and your board has thought of another article to be voted, the town will need to either warn a special meeting or save it for next year.
- 15. Same sex couples cannot be given marriage licenses.** Under Vermont law same sex couples may enter into civil unions. A couple can only be given a marriage license, and the solemnization/legalization of the marriage will only be valid if it involves a man and a woman. 18 V.S.A. §1203, 5163.
- 16. A person cannot be made a Justice-For-A-Day to perform a wedding or civil union ceremony.** In Vermont only judges, justices of the peace and members of the clergy may solemnize marriages or civil unions. Unlike some of our neighbors there is no provision in Vermont law to permit a person to become a justice of the peace for a day in order to solemnize a particular marriage or civil union. Justices of the Peace are either elected in a town, or appointed by the governor to fill a vacancy. 18 V.S.A. §5164.
- 17. Legislative body or manager hires police chief.** Vermont law gives the power to establish a police department and hire the chief of police to the legislative body or town manager (in towns that have a town manager). Because the law specifically gives this authority to the selectboard or manager we do not believe that a court would permit voters to petition to have a vote on the matter. 24 V.S.A. § 1931. The board or manager can create a hiring committee to review applications, conduct interviews and make a recommendation, but it is not required to do this.
- 18. The police chief directs and controls the police force.** The law specifically grants the police chief the authority to direct and control the police force for the town. This means that the selectboard and manager, who generally oversee the personnel of the town do not have direct control over these employees. 24 V.S.A. § 1931.
- 19. With permission, the board chair can sign on behalf of the board.** Title 1 section 172 provides that, “when joint authority is given to three or more, the concurrence of a majority of such number shall be sufficient and shall be required in its exercise.” This means that a single board member has no independent authority to act. That being said, the law permits the chair or vice chair, with the board’s permission, to sign on behalf of the board any decision or order issued by it. 24 V.S.A. §1141.

20. Local officials may work without pay. Except when compensation is set by law (as in the clerk, treasurer and delinquent tax collector), a local official may not make a claim for compensation for personal services to the town. 24 V.S.A. §931. This means that, despite the Fair Labor Standards Act and state laws that require the payment of a minimum wage for work done, local officials are presumed to be volunteers unless the law specifically provides, the selectboard sets compensation, or the town votes otherwise.

In our monthly Opinions we provide what we believe the law requires based upon our legal judgment, years of observing Vermont's local government practices, and Vermont Court decisions. This information is intended as a reference guide only and should not replace the advice of legal counsel.

Tip of the Month from the VMCTA



**This month's tip is from Sandy Harris,
Vernon Town Clerk and VMCTA President**

In January of each year we run two sets of dog licenses: One set is used to send to each dog owner with a letter indicating the fees and the rabies expiration dates (as well as the date of the rabies shot & licensing clinic). The other set we keep in the office and take to the clinic. The owners have the option of signing the licenses we sent them, sending it back with a check, and receiving their license and tag by return mail, or they can still register at the office or clinic. Many choose to do it through the mail and the costs incurred are offset by time saved in the office. We also have noticed a drastic reduction in the number of unlicensed and/or late dogs.

If you have a good tip that you would like to share with our readers please email it to Sandy Harris at vernontc@sover.net or mail them to:

Sandy Harris- VMCTA President
Town of Vernon
567 Governor Hunt Rd
Vernon, VT 05354

May 22-26th is Vermont High School Voter Registration Week

Participate in Vermont High School Voter Registration Week
by visiting your local high school to register voters!



Vermont lags behind the nation with only 33% of our young people voting! In Vermont, voters must take an oath before a notary to be eligible to vote. This means that our young people cannot register and vote all by mail. For this reason it is especially important to register our young people to vote before they leave high school.

During **High School Voter Registration Week** we are asking town clerks, and other local officials to go into local high schools to register new voters. We will also be asking schools to conduct their own registration drives. To make this easy we can supply you or your school with voter registration forms, “Your Vote is Your Voice” buttons and bumper stickers, a short student handout with important dates and answers to frequently asked questions and a 7 minute video explaining how to vote.

Contact Janel Johnson at jjohnson@sec.state.vt.us or by calling 828-1296 for more information about how you can get involved with this year’s **High School Voter Registration Week** or to order materials for your registration drive.



A Special Farewell to Town Clerks:

Each of these remarkable clerks have shown a special commitment to serving the people of their towns, making their communities and the State of Vermont a better place for all of us. We will miss them and hope they continue to stay involved in town government.

Paul R. Disney-	Andover
Connie Quimby-	Concord
Peggy Rackleff-	Coventry
Linda Anderson-	Hancock
Gerald Hall-	Hardwick
Vickie Hall-	Irasburg
Lynda Cluba-	Montgomery
Sidney Jones-	Proctor

June B. Hadley-	Salisbury
Susan A. Burnor-	Sheldon
Carol F. Easter-	Victory
Nancy Bragg-	West Fairlee
Earle Holland, Jr.-	Whitingham
Marion Jenks-	Winhall
Joan Payne -	Cornwall



How to Subscribe to the Muninet Internet ListServ Discussion Group

The Muninet Internet ListServ is an on-line discussion group for all municipal officials. It is maintained by Peter Brownell from the Vermont Department of Education. Peter manages this ListServ as a hobby and as a service to the municipal community. We would like to thank Peter for his efforts and also UVM for the use of their ListServ software that keeps Muninet running. The Muninet acts as an electronic bulletin board for anyone who wants to post a municipal question or answer to a question. A copy of the question or answer is automatically sent to ALL Muninet subscribers. The ListServe is free and the only requirement to be able to participate is an e-mail account. To access Muninet, please follow the directions provided below.

To Subscribe to the Discussion Group: Send a one line email message to listserv@list.uvm.edu (leave the Subject BLANK). The message content is "subscribe muninet FirstName LastName "

EXAMPLE

To: listserv@list.uvm.edu
Subject: LEAVE BLANK
Message Content: subscribe muninet
John Doe

To Send a Message to the Discussion Group: NOTE the email address you use to send messages to the people on the list is NOT the same as the Email address you use to get on (and off) the list!! Send email to muninet@list.uvm.edu (You can, and SHOULD, include a subject)

EXAMPLE

To: muninet@list.uvm.edu
Subject: New Procedure
Message Content: I just read an article....

To Remove Your Name From The Discussion Group List: NOTE: This is REALLY important! You may get tired of getting lots of email or want to stop getting the messages while you are on vacation. You can always subscribe again. Keep a copy of these instructions so you remember how to get off the list. Send a one line email message to listserv@list.uvm.edu (leave the Subject line BLANK) The message content is "signoff muninet "

EXAMPLE

To: listserv@list.uvm.edu
Subject: LEAVE BLANK
MessageContent: signoff muninet

You will receive a message from the system asking you to confirm that you really want to be deleted from the list.

Please address problems to **Peter Brownell**
Vermont Department of Education
120 State Street
Montpelier, VT 05620
802-828-0289 or email him at peter.brownell@state.vt.us

List of Services to Local Government

A Note of Welcome

Education and Training

- Leadership Workshops For Local Board Chairs.
- Training for Boards of Civil Authority On Tax Appeals, Abatement, Marriage and Civil Unions, Oaths of Office, Etc....
- Election Workshops – Training For Election Workers.
- On-Site And Regional Workshops On A Variety Of Topics From A (Authority of Local Officials) To Z (Zoning and Planning).

Telephone Inquiries

- Every year we answer thousands of calls from local officials and citizens about municipal laws and practices. You can call us at 1-800-439-8683.



Opinions Newsletter

- A monthly newsletter sent to local officials and members of the public that includes articles on municipal issues and “opinions” on legal and practical questions concerning local government.

Publications

- We publish numerous free handbooks and pamphlets on topics of municipal law and practice from the Law of Libraries, to the Rules on School Governance, to the Tax Appeal Handbook and more. The publications are available in hard copy as well as electronically on our website at <http://www.sec.state.vt.us/municipal>

April 2004

April 1 (Believe it !):

- Last day for dog or wolf-hybrid licensing. 20:3581
- Base date for setting appraisal value and determining ownership of real and personal property. 32:3482
- Last day for Town Clerk to furnish Listers with transfer book for preceding 12-month period. 32:3485(a)
- (Within 30 days of Town Meeting) Last day legislative body can accept petition signed by five percent of the registered voters requesting reconsideration or rescission of a Town Meeting article. 17:2661(b)



April 15: Last day for Selectboard to notify Commissioner of PATH of appointment of Town Service Officer. 33:2102

April 20: Last day for return of personal property inventories to Listers. 32:4004

April 25: State Withholding Tax Return is due (actual date by which return must be postmarked is shown on the return) if reporting less than \$2,500 per quarter. More than \$2,500 requires monthly report; more than \$9,000 requires semiweekly report. 32:5842

April 30:

- Last day for Listers to receive applications for tax exemption due to disabled veteran status. 32:3802(11)
- Last day to file Form 941 (Quarterly Withholding Return) with the IRS.

May 2004



May 15: Last day for Town Clerk to remit to State Treasurer an accounting of dog and wolf-hybrid licenses sold and remit the license fee surcharge for an animal and rabies control program. 20:3581(f)

May 30: Memorial Day. 1:371

May 31: Within 60 days of petition) If a petition for reconsideration or rescission of a question considered or voted at Town Meeting has been filed, this is the last day on which a municipal vote may be held at a duly-warned meeting. 17:2661(b)

Mailing List Updates!

Help us keep our mailing list up to date!

Let us know if:

- your address needs to be updated
- your name is misspelled, or
- you'd rather receive *Opinions* a week early via email



Send us a note via fax: 802-828-2496,
email: salberghini@sec.state.vt.us,
or post: 26 Terrace St. Drawer 09, Montpelier, VT 05609-1101
and be sure to include what your current *Opinions* mailing label says as
well as any changes that you would like to have made!

Thank you for helping us keep Opinions running efficiently!

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