



Opinions

Office of the Vermont Secretary of State

Vol. 10, #2

February 2008

Are you ready for Town Meeting Day?



**See page 7
for a list of helpful
reminders!**

Quote of the Month

"...pilgrims should not spend too much time planning their journey, for they might learn of so many hazards that they would decide not to go."

Ken Follett

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A Message from the Secretary

All of my children have been involved in team sports at one time or another. I have sat in the rain and cold to watch soccer matches; I have sat through painfully long and slow games of softball; I have shivered at the ice rink watching hockey; and I have spent many afternoons trying to understand the refs' calls on the lacrosse field. Although it is fun to root for the team, and exciting to watch the players' skills and the team's cohesiveness evolve over the course of the season, it is not always easy to be relegated to the sidelines. Being an observer – instead of being part of the action - can be frustrating.



This year Vermonters are sitting on the sidelines for the presidential primary. We have watched with interest as New Hampshire, Iowa, Nevada, South Carolina, and other states have become important parts of the drama that determines who will be the parties' candidates for president. But it is with some frustration that we wonder whether we will have a meaningful chance to participate.

Although Vermont has never claimed the special status of first-in-the-nation like our neighbor, we are not used to being relegated to the sidelines. In the past, Town Meeting Day (the day we hold our presidential primary) was considered "Super Tuesday." It was generally the day that determined which candidates would have enough delegates to prevail at the national convention. This year, because many states changed their primary date, Super Tuesday will be during the first week in February. By the time Town Meeting comes along we may already know who will be receiving the parties' nominations.

It was largely out of consideration for Vermont's municipalities that the legislature and political parties made a decision not to move our primary this year. Unlike most states we hold our presidential primary at the same time we hold our municipal elections. If we were to move our primary to another date every town would be required to run an additional election. Not only would this increase costs for the towns, but it would require the local officials to run an election at a time they were already busy getting ready for Town Meeting.

Although this year Vermont is sitting on the sidelines for most of the game, it is important to remember that we are doing it because we recognize that we are part of a team, that the decisions made in Montpelier impact our towns, and that a decision such as moving our primary cannot be taken lightly. Of course, the fact that our primary will be held late in the season does not mean that Vermonters are not engaged in the primary process. Not only are Vermonters watching the action with interest, but there are many who have already been active in the campaigns. And there is always the possibility that the races will be so close that Super Tuesday will not result in a clear winner, and all eyes will turn to Vermont to help the nation determine who will be our candidates for the presidency.

Deborah L. Markowitz, Secretary of State

Planning for a New Archives and Research Facility

In his 1846 enumeration of “Deficiencies in our history,” James Davie Butler opined that the “fruits of our historical harvests and gleanings ought also to be gathered up in a chief place of concourse, instead of in a corner [of the statehouse] where they are now secluded.” I recalled Mr. Butler’s remarks as I again begin work with the Department of Buildings and General Services and the General Assembly on locating, designing, funding and building a new archives and research facility. It is a sad metric of the success of my tenure that I have been having these discussions since 1985.



In recent years I have heard from a number of municipalities who have built, are building, or are planning to build new offices, including space for their records. It might be useful to share some of the issues we have considered in planning a new facility.

Selecting a site entails several concerns. First is the security of the building from natural disaster. In Montpelier this primarily means having a site that is above the flood plain. There are, however, considerations. One site we examined would have had a 50 or 60 foot cliff just 15 feet behind the facility, exposing the building to water runoff and rock slides. The built environment around the facility can also be an issue. I learned of one municipal vault which was next to a brewery that regularly vented steam. This may have contributed to some condensation problems in the vault. A key goal in our site planning is to be near the primary creators and users of archival public records.

The site should be near fire and other emergency services. While our citizens do not often give it thought, the loss of records affecting title to land would be costly and unsettle their ability to document ownership or compliance with state and local permits. Vaults should be at least four-hour fire-rated.

Sprinkler systems can help mitigate the risk of fire, though in designing a vault there should be consideration of how to evacuate the water after a fire. When we built the current vault back in the early 1980s the standard was not to have any penetration of the vault by water lines, including sprinkler systems. It is now understood that water damage is easier to repair than fire damage and sprinkler systems are allowed. In designing a new facility you have to decide what kind of sprinkler or fire suppression system to install (wet pipe, dry pipe, misting, chemical, or gas) and understand the advantages or disadvantages of each, as well as their costs. Where municipal water systems are not available make sure the water pressure meets the needs of whatever system you choose.

Since money is always a factor, the footprint of a building can be reduced through the use of high density (mobile) shelving. That requires sufficient floor load-bearing capabilities; the National Archives of Australia suggests a floor loading of 250 pounds per square foot for mobile shelving.

One of the most difficult calculations is how much space is needed for future acquisitions. Our current space, capable of holding about 1,500 cubic feet of records, is by far and away the smallest vault among state archives. In 2005 we examined five other states with populations of less than a million. Their vault capacities ranged from North Dakota’s 15,000 cubic foot capacity to Delaware’s 95,000 cubic feet. Since that report North Dakota has added another 25,000 cubic feet of capacity.

We also examined trends in other state archives in order to plan for a facility that met our 10-year needs. We learned that between 1986 and 2004 the volume of state archives holdings grew by 171 percent. We also learned that a new facility spurs growth as pent up backlogs of archival records are transferred to the archives; the average annual growth was 15 percent per year for the first ten years, when growth settled at about five percent per year.

We knew Vermont, with relatively weak records management programs and a vault capacity frozen at 1,500 feet for two decades, had a significant backlog of archival records eligible for transfer if a new facility was built. We identified some 15,000 cubic feet of court records alone that could be transferred if we had the space. We continue to hear from agencies that would like to transfer their archival records to a secure facility which could provide reference services (thus alleviating reference burdens in agencies). We recently learned, for example, about 1,000 cubic feet of Act 250 permits in state offices that could be acquired. A new municipal vault may encourage boards and commissions to deposit their records with the clerk as well.

One of the great unknowns in planning space is the impact of digital records. Currently computers have accelerated the growth of paper records (see my June 2006 column <http://vermont-archives.org/publications/voice/pdf/CrowingAboutPaper.pdf>). But we are working on standards and guidelines for managing digital records as digital records. Once implemented by agencies we anticipate the volume of paper records will decline. How do we factor digital records into the design, not only in planning for space but also in providing access; should server rooms be added or arrangements made for offsite storage with online access?

I have focused on storage of the records, but we are a reference service and the new facility should be able to accommodate users (nationally, new facilities can lead to an average increase in use of 30 percent) and provide the effective retrieval of records while keeping line-of-sight control of the reference room. The reference room will need to accommodate access to a proliferation of record formats including paper, digital, audio, microfilm, etc.

And there is a less tangible, but nonetheless important consideration. We are not planning for warehouses, but for facilities that reflect the value of the records to the community. As Tom Wilsted wrote in *Planning New and Remodeled Archival Facilities*, “Archives bestow legitimacy on a state or a nation and enhance its stature in the eyes of its people. Archival buildings not only provide a place to house the archival record but are also a visible sign of its value and symbolize the importance of a country’s, state’s or...[municipality’s] cultural heritage.” James Davie Butler would agree.

NOTE: There are numerous sources for learning about planning archival facilities. Tom Wilsted’s book, mentioned above, is a good source for getting an overview of planning considerations. Even though he is addressing larger archival facilities there is much a municipality could learn about and apply to their particular setting. There are also online sources. To learn more about storage environments or sprinkler systems, for example, go to the Northeast Document Conservation Center’s publications online at: <http://nedcc.org/resources/leaflets.list.php>. And, of course, we would be happy to help you locate information for helping to plan a new archives.

Civics Behind the Scenes

Missy Shea, Civics Education & Voter Outreach

Opportunities to Share Your Opinion

I often write about the various programs and wonderful resource materials available to teachers and students through the Secretary of State’s Office. We tend to concentrate on kids because we strongly believe that teaching children about the value of democracy will help them grow up to become well-informed citizens who participate in local, state, and maybe even national politics. But we recognize that our system of government depends on everyone’s participation, regardless of age.

In our ongoing effort to advocate for civic education and civic engagement, we’ve recently partnered with Vermont Public Television, AARP, Vermont League of Women Voters, the Vermont Chapter of the American Association of University Women, the Vermont Area Agency on Aging, The Snelling Center for Government, and Vermont Maturity magazine in the Vermont Primary Tracker initiative.



Vermont Primary Tracker is an online forum designed to keep folks up-to-date about Vermont’s March 4, 2008, presidential primary election. Although designed for those ages 50+, Vermonters of all ages are welcome to log on and share opinions. The site allows visitors to get up-to-the-minute information about the presidential primary while practicing interactive computer skills.

A different issue is stressed each week, from topics that include retirement security, the environment, health care, and more. Jon Margolis, author of *The Last Innocent Year: America in 1964*, and Washington correspondent for the Chicago Tribune for 23 years, posts columns inspired by his close look at the presidential primary campaign trail. The site is interactive and there are lots of opportunities for Vermont citizens to weigh in, including live, weekly online chats hosted by well-known Vermont politicians and lobbyists. Secretary Markowitz herself kicked off the live chats in early January.

In addition to links for all the candidate sites, Vermont Primary Tracker contains great information about the presidential primary election process. Check it out by logging onto www.vpt.org, and clicking on Vermont Primary Tracker.

1. **No runoff required in tie vote if a candidate withdraws from the race.** The legislature amended the law last year to permit towns to avoid a runoff vote when there is a tie vote for any local office and one of the candidates decides to withdraw from the race. The new law provides that “if one of the candidates that are tied withdraws his or her candidacy within five days after the election, the town clerk shall certify the other tied candidate as the winner, and there shall be no runoff election.” 17 V.S.A. §2682(e), amended effective July 1, 2007.
2. **Not every local official must get paid.** While some officers, like clerk, treasurer and tax collector have fees set out by statute, Vermont law states that unless compensation is fixed by law or by vote of the town or town school district, local officials cannot demand payment for their services to the town. However, the law provides that if an official makes a request for payment the auditors must report the claim as well as the nature and extent of the services at town meeting. 24 V.S.A. § 931.
3. **Town or selectboard may set salary.** A town may vote to compensate any or all town officers for their official services. 24 V.S.A. § 932. However, when a town does not set a salary or stipend for an officer (or for town employees) the selectboard may fix the salary. Note that they may not set their own salary – but the selectboard’s salary can be fixed by the auditors at the time of the annual town audit. Or, if the town has voted to eliminate the office of auditor and the voters fail to fix the compensation to be paid to members of the selectboard, selectboard members shall be compensated at the rate at which they were compensated during the immediately preceding year. 24 V.S.A. § 933.
4. **Salary of election workers is set by the voters or by the selectboard.** There is no law that requires a town to compensate the people who work at the polls on Election Day. The law permits the town to set a salary for these officials, and if they have not, then the selectboard may set a salary. In many towns the board votes to pay election workers minimum wage. Note that this wage has just increased to \$7.68/hr.
5. **New vote is not required for board to spend reserve fund money for the purpose the reserve fund was created.** When the electorate has voted at a town meeting to establish a reserve fund, such as a highway capital reserve fund, the selectboard is authorized by statute to expend those funds for purchase of capital assets for the maintenance and improvement of highways and the selectboard does not need another article to approve each expenditure (so long as the expenditure is for the purposes for which the fund was established.) 24 V.S.A. §2804. If the selectboard wants to use the funds for some other purpose, then the board needs to warn an article for voter approval to use the funds for a different purpose.
6. **Property bought at tax sale must be sold in arm’s-length transaction.** The town bought property at tax sale five years back and a neighbor has asked to purchase the property. The selectboard has an obligation to both the taxpayers of the town and to the delinquent taxpayer who last owned the property to sell the parcel for the highest price possible. The best practice is to try to sell the property for fair market value and allow all members of the public to place a bid or make an offer on the property. Any money that is received by the town in excesses of the taxes, fees, penalties, carrying costs, lost tax revenue and any other costs to the town associated with the property is remitted to the delinquent taxpayer. *Bogie v. Barnett*, 129 Vt. 46 (1970).
7. **Town officers take office at town meeting.** Newly elected town officers take office on town meeting day. Some officials must take an oath before they officially take office. This can be done by the clerk at town meeting, or at any time thereafter. 17 V.S.A. § 2646. An official who is required to take an oath of office (by either swearing or affirming) and who refuses to do so may not take office, thereby creating a vacancy.
8. **Union school officers take office on July 1st, except for moderator.** “Union district officers elected at an annual meeting shall enter upon their duties on July 1 following their election and shall serve a term of one year or until their successors are elected and qualified, except that if the voters at an annual meeting so vote, moderators elected at an annual meeting shall assume office upon election and shall serve for a term of one year or until their successors are elected and qualified.” The law also provides that school directors elected at an annual meeting shall assume office upon election and shall serve a term of three years or until their successors are elected and qualified. 16 V.S.A. § 706k.
9. **Australian ballot is not a paper ballot.** People often confuse the terms “written ballot,” “paper ballot” and “Australian ballot.” A “written ballot” and a “paper ballot” are blank pieces of paper that are used to vote at a traditional floor school district or town meeting to elect certain officers as required by statute, when required by a particular statute, or when requested by at least seven voters. An “Australian ballot” vote refers to the practice of voting at designated polling places during designated polling hours (set by the BCA,



but commonly from 7 a.m.-7 p.m.) with pre-printed ballots that are available 20 days prior to the school district or town meeting for absentee voting.

- 10. Town gets 120 days to remit taxes to school district, even if not yet collected by the town.** 16 V.S.A. § 426 (b) provides that “within one hundred and twenty days after the date on which taxes become delinquent, but in no event later than the end of the school year, the treasurer shall deposit the balance of the sum of the gross school tax levy in the school account.” This means that even if taxpayers are delinquent, the school portion of those taxes must be remitted by the town to the school district. The town is responsible for collecting the delinquencies, and when it does so can keep the entire proceeds.
- 11. Town treasurer must pay taxes to school as they come due.** One treasurer deposited the tax payments into the town account and left them there to accumulate interest for the town. The school district objected. According to 16 V.S.A. § 426, unless the school board and selectboard agree (in writing) otherwise, the treasurer must deposit the school taxes within 20 days after the date they become due and payable.
- 12. Non-voters must request permission to speak at town meeting.** Because town meeting is a meeting of the voters of a town, only voters have a right to speak at the meeting. If a non-voter wishes to speak he or she can request the meeting to grant its permission to address the assembly. This is done as a motion to suspend the rules to permit a non-voter to address the assembly which must be passed by a two-thirds vote. In some towns the motion includes limitations on the time the person is given to speak (i.e. the nonvoter may speak once to an issue for a time not to exceed five minutes, etc.)
- 13. Moderator’s rulings may be challenged by voters.** During a traditional floor voting town meeting, any voter may challenge a moderator’s ruling on points of order by requesting that the issue be put to a vote. Many wise moderators will encourage voters to challenge a ruling when they are in doubt by prefacing the ruling such as “The chair is doubtful, but will rule that” This encourages a voter to rise to challenge. *Robert’s Rules* provides that any voter can rise to ask that the ruling be voted upon by the assembly. It is difficult for any moderator to know every rule and anticipate every type of motion that may be presented. *Robert’s Rules* thus allows the majority of those voters present to decide what is fair and just under the circumstances.
- 14. Moderators should not provide legal opinions.** The best practice is for moderators at the annual meeting to refrain from speaking to the legality of an article or to give an opinion regarding the legal effect of taking action on or passing over an article. While moderators generally desire to be helpful, it is the moderator’s role to manage the process and procedures of the meeting with the primary purpose of seeing that the will of the electorate is given effect, with fairness and impartiality to all legal voters who are participating. Even a well-intentioned comment regarding the legality or impact of an article could be misunderstood as showing partiality for or against an article. If there is truly no one else in the room that can answer a question, and the moderator feels compelled to enter the discussion, the moderator should call for a moderator *pro tem* to take over, and step down to participate in the debate.
- 15. Person elected to incompatible offices must decline or resign one, which will create a vacancy.** When a person is elected to more than one position in the town or school district and the positions are incompatible, the person must resign from one of the positions. This creates a vacancy which must be filled according to statutory procedures. Under Vermont law, the runner-up or next highest vote-getter does not move up or become the winner. To fill a vacancy in town officer the selectboard posts the vacancy within 10 days of its creation, and then appoints a person to fill the term of office until the next election. 24 V.S.A. §961 and 963. For vacancies in town school districts, within 30 days, the school board appoints a person to fill the position until the next election. 16 V.S.A. § 424. For vacancies in union school districts the clerk of the union district notifies the school board of the town which elected the original incumbent and within 30 days the school board must appoint to fill the position until the next election. 16 V.S.A. §7061.
- 16. It is not best practice for spouses to serve on the same board.** There is no Vermont law that would prevent spouses from serving on the same board. That being said, it is our opinion that it is not best practice. This is because boards work best when their membership reflects some of the diversity of the town. Indeed, we have observed that when two family members serve on the same board it affects the public confidence in the board because of a perception that one family dominates the decision-making to the detriment of the minority perspective in the town. Even if the spouses act independently from one another, the public will generally still believe that they act together. In towns that have a three-member board having two spouses serving raises significant questions about whether the open meeting law is violated whenever they discuss the business of the town at home, outside of the public meetings.
- 17. School board may use school district resources to educate public about upcoming vote.** The law permits a school board to use the school district resources to develop and present to the public informational materials related to issues on the school meeting warning. If public funds and resources are used these materials may not say “vote yes” or “vote no” on a particular article, but it may explain the board’s position. The law provides that the school board “May, at the expense of the district, present informational

materials to the electorate on any matter to be voted. However, such materials shall be limited to those that are reasonably designed to inform, educate and explain to the electorate the board's position on the matter." 16 V.S.A. § 563(23).

- 18. Executive sessions should not be recorded.** An executive session is designed by law to be an opportunity for a board to privately discuss matters that have been deemed too sensitive for public discussion. 1 V.S.A. § 313. This includes, for example, discussion of personnel matters, contract negotiations and litigation. When a board permits a member to record these sessions there is a real risk that what was private will become public. (Note that if the board is not concerned about whether their discussion could become public, then the matter should have been discussed in the open session in the first place.) In order to ensure the integrity of the executive session discussion the board should adopt a policy of not permitting the taping of executive sessions.



- 19. Minutes of meetings must reflect the business of the meeting.** In one town a person asked a board to amend its meeting minutes because the minutes included a statement by a board member that the person believed was factually inaccurate (although it was actually discussed during the meeting). Because the minutes must reflect the topics of discussion, the proper way to proceed was to allow this person to submit a letter explaining why she believed the statement in the minutes was false, and to include this in the file with the minutes. It would not be proper to alter the minutes so that they would no longer "give a true indication of the business of the meeting." 1 V.S.A. § 312.
- 20. Selectboard members on BCA may not act independently of the BCA quorum.** Although selectboard members serve on the board of civil authority they serve as equal members to the rest of the board. This means that the selectboard may not make decisions on behalf of the BCA at selectboard meetings. BCA meetings must be independently warned, and all members of the board must be given an opportunity to attend. 24 V.S.A. § 801. According to law "Meetings of the [BCA] shall be called by the town clerk, or by one of the selectmen, on application, by giving written notice to each member, and by posting a notice in two or more public places in the town at least five days previous to the meeting."
- 21. Selectboard may require social service agencies to report on how they spent town money before including an appropriation in the selectboard's budget.** Some selectboards have a policy of including appropriations for social service agencies that the town has funded in the past in the budget it presents to the voters. The board may choose to condition placing these appropriations in the selectboard's budget on the agency presenting to it a report on how the prior year's appropriation was spent. Note that the law permits social service agencies to bring in a petition to get an article on the warning to appropriate money to the agency. Social service agencies that petition such articles cannot be required to present a report of prior spending. However, during a floor meeting the voters may ask questions about the appropriation, and if not satisfied with the information provided, they can choose to vote against the article.

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



Reminder! Domestic Pets Must be Vaccinated for Rabies

Vermont law requires that domestic pets, including wolf-hybrids and ferrets, be vaccinated for rabies. For more information about rabies control in Vermont, contact Dr. Robert Johnson, State Public Health Veterinarian, 802-863-7240.

If you have a tip you would like to share, please contact John Cushing, VMCTA President, at jcushing@town.milton.vt.us

Are You Prepared for Town Meeting?

Getting Ready at the Polls

Town clerks should furnish presiding officers with one or two certified copies of the checklist, depending on whether the town has opted not to use an exit checklist. 17 V.S.A. § 2507.

Town clerks must also deliver sufficient quantities of the ballots to the presiding officer. 17 V.S.A. § 2479.

The presiding officer should assign specific duties to each election official, ensuring that the election officials work in pairs, with each pair containing members from different political parties if possible. 17 V.S.A. § 2562.

Opening/Closing Polls

In an Australian ballot election, the presiding officer declares the polls open on the day of the election between 5 a.m. and 10 a.m. (the specific time is set by the board of civil authority or by the voters), and declares the polls closed at 7 p.m. 17 V.S.A. § 2581.

Town meeting begins at a time designated by the legislative body, unless the town has voted a specific time at a previous meeting. 17 V.S.A. § 2655.

Public Discussion and Politicking in the Polling Place

In towns that start their annual meeting on one of the three days preceding the first Tuesday in March, and use the Australian ballot system on Tuesday, public discussions of ballot issues and all other issues appearing in the warning, other than election of officers, is permitted at the Saturday, Sunday or Monday meeting. In addition, towns that hold their Australian ballot voting on Tuesday may discuss ballot items at the floor meeting if the Australian ballot voting is held in a different building, or if it is accessible only through a separate entrance. 17 V.S.A. § 2640(c).

Neither the warning, the notice, nor the ballot itself shall include any opinion or comment by any town body or officer or other person on any matter to be voted on. 17 V.S.A. § 2666.

In an Australian ballot election, the presiding officer should ensure that within the building containing the polling place no campaign literature, stickers, buttons, information on write-on candidates or political materials are placed, handed out, or allowed to remain and that no candidate, election official or other person distributes election materials, solicits voters or otherwise campaigns. 17 V.S.A. § 2508.

Outside the building, the presiding officer must ensure that voters can enter and leave the polling place without interference from candidates or other citizens. 17 V.S.A. § 2508. The provisions of this section apply equally to election of candidates as to votes on public questions, including the budget, if done by Australian ballot vote.

For items discussed at a floor meeting the moderator may permit the distribution of literature (including campaign materials), information and political materials.

Maintaining Order at Town Meeting

In traditional town meetings the moderator must follow reasonable and necessary procedures to ensure that people who are not voters of the town do not vote. 17 V.S.A. § 2656.

The moderator must preserve order in the conduct of business and debate. If a person, after notice, continues to be disorderly and refuses to withdraw from the meeting, the moderator may order him to be removed by the constable or some other person. 17 V.S.A. § 2656. A person who disturbs town meeting may be fined \$200 by the district court.

Remember that while *Robert's Rules of Order* or some other rule of order must be followed at town meeting, these rules have been modified by state law. For example, the assembly must not reconsider articles already voted once consideration of another article has begun; when a vote declared by the moderator is immediately questioned by one voter, the moderator shall divide the meeting, and if requested by seven voters, the moderator must take the vote by paper ballot; the assembly may take no binding action during the "other business" portion of the meeting; the moderator shall allow sufficient time for voters to cast paper ballots whenever that method of voting is to be used. 17 V.S.A. §§ 2660(d); 2661(a).



Continued on next page

Accessibility of Town Meeting

The legislative body must take reasonable measures to ensure that elderly or disabled voters may conveniently attend town meeting. Sign language interpreters must be provided, if necessary. 17 V.S.A. § 2667 and the Americans with Disabilities Act. **Town meeting must be held in an accessible location.**

The board of civil authority must take reasonable measures to ensure that disabled and elderly voters may conveniently and secretly cast their votes. For the presidential primary every town will have a Vote-By-Phone system available at the polling place to permit voters with disabilities to cast a vote in the presidential primary privately and independently. The Vote-by-Phone system will not include the town ballot items so voters who choose to use the telephone voting system must also be provided with the town ballot for marking with assistance, if requested.

A voter who declares to the presiding officer that he or she needs assistance to vote may bring a person of his or her choice into the voting booth (so long as it is not the voter's employer or union representative) or the voter can ask the presiding officer to direct elections officials to assist the voter. Those rendering assistance may not divulge information about the choice of the voter or manner in which the vote was cast. 17 V.S.A. § 2569. If a voter wishes he or she may ask that an election official carry a ballot to an elderly or disabled person in order to permit that person to mark his or her ballot while in a motor vehicle adjacent to the polling place. 17 V.S.A. § 2502.

Election of Officers

In order to be elected as a write-in candidate in an Australian ballot election when no other candidate has received a greater number of votes, a candidate must receive 30 votes or the votes of one percent of the registered voters of the town, whichever is less. 17 V.S.A. § 2682(c).

The offices of selectboard, lister and auditor must be elected by paper ballot (unless it is done by Australian ballot). The offices of road commissioner and water commissioner, if elected, must also be elected by paper ballot. 17 V.S.A. § 2646.

When there is a single candidate, unless any voter opposes this, the town may agree to ask the clerk to cast one ballot for the candidate. 17 V.S.A. § 2660(b).

A majority of those present and voting is required to elect an officer by paper ballot (unless the vote is by Australian ballot.) This means that if there are three candidates, none of whom receive a majority of the votes by the third ballot, you must eliminate the candidate with the least votes and repeat the procedure until someone receives a majority of the votes. 17 V.S.A. § 2660(c).

The law for election of local officials was amended effective July 1, 2007, for any race in which there is a **tie vote**. It now provides that "if one of the candidates that are tied withdraws his or her candidacy within five days after the election, the town clerk shall certify the other tied candidate as the winner, and there shall be no runoff election." 17 V.S.A. §2682(e).

Upcoming Events

Local Government Day in the Legislature

Sponsored by VLCT and the Vermont Municipal Clerks and Treasurers Assoc.

Date: February 20, 2008
Location: Capitol Plaza Hotel, Montpelier
Contact: Jessica Hill (jhill@vlct.org)
Phone: 802/229-9111
Fax: 802/229-2211
Price: \$40.00

A special day at the Vermont State House for local officials to hear about the status of pending legislation from VLCT and VMCTA representatives. This event kicks off at the Capitol Plaza. Attendees then head to the State House to attend legislative hearings and speak with their representatives about the Vermont Legislature. Attendees return to the Plaza for lunch and then close out the day at the State House.

Town Meeting Tune-up

Sponsored by VLCT Municipal Assistance Center

Date: February 26, 2008
Location: Montpelier Elks Club
Time: 8:30 am
Contact: Jessica Hill (jhill@vlct.org)
Phone: 802/229-9111
Fax: 802/229-2211
Price: \$70.00 VLCT PACIF Members
\$100.00 VLCT Members
\$110.00 Nonmembers

Municipal Calendar

February 2008

- 1 Deadline for tax collector to turn over monies collected and settle account with treasurer. 24:1532
- 1 Last day for listers to file corrected grand list for preceding year in order to render it valid. 32:4112
- 3 *(Not less than 30 days before town meeting)* Last day for municipality to post warning and notice of town meeting and the presidential primary. 17:2521(a), 2641(a), 2642
- 3 Last day to hold first public hearing on charter amendments if article is to be voted at town meeting. (First public hearing shall be at least 30 days before the meeting) 17:2103(13), 2645(a)(3)
- 3 *(No sooner than 30 days before polls open)* First day for town clerk in towns with at least 5,000 registered voters to direct two election officials to open the outside envelope, sort, and check absentee ballots. 17:2546(a)
- 3 Checklist must be posted in town clerk's office and two or more public places in towns with population over 5,000. In towns with less than 5,000 population, the checklist must only be posted in one place in addition to the clerk's office. 17:2141, 2521(a)
- 4 Town clerks will receive presidential primary ballots by this date (not later than 30 days before the election). Clerks should store the ballots, except those used for sample ballots and absentees, in a secure location until the date of the election. 17:2479, 2103(13)
- 8 *(25 days before town meeting)* Auditors must meet by this date to examine and adjust town finances. 24:1681
- 8 *(25 days before town meeting)* Town officers must settle accounts with auditors to be eligible for re-election. 24:992
- 10 Last day for any municipality that has enacted special weight limits, which are other than state legal limits for highways and bridges, to file complete copy of the limitations with the Department of Motor Vehicles. 23:1400b(a)
- 10 Last day for the legislative body to file with town clerk annual statement of description and measurement of all Class 1, 2, 3 and 4 town highways and trails then in existence, including special designations. 19:305(b)
- 12 Lincoln's Birthday. 1:371
- 13 Last day to post sample ballots (for the presidential primary) in the same places as the warning, notice, and checklist (not later than 20 days prior to town meeting). 17:2522(a)
- 13 First day for legislative body to post warning for public informational hearing (to be held on or after 2/23/08) on any public question to be voted by Australian ballot at town meeting. 17:2680(g)
- 13 *(In towns using Australian ballot 20 days before election)* Under direction of the town clerk, ballots for local officers and local public questions must be back from printer. 17:2681a(a)
- 18 Washington's Birthday. 1:371
- 19 *(At least two weeks before town meeting)* Town clerk must have liquor ballots printed if liquor issue is on town meeting agenda and if town does not use Australian ballot. 7:163
- 23 Last day for legislative body to post warning for public informational hearing (to be held on or before 3/3/08) on any public question to be voted by Australian ballot at town meeting. 17:2680(g)
- 23 *(At least 10 days before town meeting)* Legislative body must mail or otherwise distribute town meeting warning in annual town report by this date to avoid publishing warning in newspaper. 17:2641(b)
- 23 *(At least 10 days before town meeting)* Auditors' report, or the findings of the public accountant employed in accordance with 17:2651b, must be distributed. 24:1682, 17:2651b
- 23 *(At least 10 days before municipal election)* Last day for town clerk to post sample ballots for the local election in the same places clerk has previously posted copies of the warning, notice and checklist. 17:2522(a)
- 23 *(At least 10 days before the election)* Voting machines must be tested using official ballots that are clearly marked "test ballots." 17:2493(b)



- 25 (10 days before the election) Candidates for town meeting local election who are spending more than \$500 must file a campaign finance report with officer with whom nominating papers were filed. 17:2822, 2103(13)
- 25 During the eight days preceding election day, and on election day, the clerk shall divide the list of ill and physically disabled early or absentee voters into as many equal parts as there are pairs of designated justices, and deliver those lists to the justices, together with early or absentee ballots and envelopes. 17:2538(b),(c)
- 27 Last day (by 5:00 p.m.) for town clerk to receive a request for an application for addition to the checklist simultaneously with a request for an early voter or absentee ballot. 17:2532(b),(c)
- 27 (Wednesday before the election) Town clerk's office must be open from 3:00 p.m. (or earlier) until at least 5:00 p.m. for the purpose of receiving applications for addition to the checklist. 17:2144(a)
- 27 Last day (up to 5:00 p.m) for people who are not eligible to register to vote by this date, but who will be by election day, to file a written notice of intent to apply with the town clerk. 17:2144(b),(c)
- 28 (Five days before town meeting) Treasurer must settle accounts with auditors. 24:1578
- 28 (At least five days before town meeting) Last day for town clerk to forward to the board of civil authority a list of voters added to the checklist. 17:2144b(d)
- 28 (Five days before town meeting) Town meeting warning must be published in newspaper by this date if town report has not been distributed otherwise. 17:2641(b)

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- 1 Last day for the board of civil authority to designate pairs of justices of the peace, assuring a political balance in each pair, to deliver early or absentee ballots to ill and physically disabled voters (not later than three days prior to the election). 17 V.S.A. § 2538(a)
- 1-2-3 (On any of the three days immediately preceding the first Tuesday in March) Towns that have voted to do so must hold the open meeting portion of their annual town meeting (at a time set by the legislative body). 17 V.S.A. § 2640(b), (c)
- 2 (No sooner than 48 hours before polls open) First day that town clerk in towns with fewer than 5,000 registered voters may direct two election officials to open the outside envelope, sort, and check absentee ballots. 17 V.S.A. § 2546(a)
- 3 Voters, family members, authorized persons or health care providers may request early or absentee ballots until 5:00 p.m. or the closing of the town clerk's office on this day. 17 V.S.A. § 2531(a). Clerks must make a list of all early or absentee voters available upon request at their office. 17 V.S.A. § 2534
- 3 Board of civil authority must appoint a presiding officer if the town clerk or other regular presiding officer is unable to preside at the Australian ballot portion of town meeting or if more than one polling place is used. 17 V.S.A § 2452
- 3 The presiding officer of each polling place must also post a copy of the warning and notice, sample ballots and the current checklist in a conspicuous place in each polling place before the polls open on election day. 17 V.S.A. § 2523(a) and (b)
- 3 The presiding officer shall make sure that signs informing voters of procedures for depositing ballots are placed on or near the ballot boxes before the polls open on election day. 17 V.S.A. § 2523(b)
- 3 Prior to the day of the election, board of civil authority must appoint assistant election officers for town meeting. 17 V.S.A. § 2454
- 3 Last day for legislative body to hold public informational hearing on any public question to be voted by Australian ballot at town meeting. 17 V.S.A. § 2680(g)
- 3 Town clerk or other presiding officer must notify election officers of their hours and duties. 17 V.S.A. § 2455
- 4 In presidential election years, a presidential primary for each major political party shall be held in all municipalities on the first Tuesday in March. 17 V.S.A. § 2701
- 4 A meeting of the legal voters of each town shall be held annually on the first Tuesday in March unless the town charter changes the date or the voters have voted to begin on one of the three days preceding the Tuesday. 17 V.S.A. §§ 2640(a) and (b), 2631
- 4 (Before polls open) In towns using Australian ballot, the town clerk must give election officials a list of those voters who have already cast early or absentee ballots. 17 V.S.A. § 2548(a)
- 4 (Before polls open) In towns using Australian ballot, presiding officer must post a copy of the warning, notice, and sample ballots. Signs should be placed on or near the ballot boxes explaining procedures for depositing ballot. 17 V.S.A. § 2523

- 4 Clerks must make a list of all early or absentee voters available upon request in each polling place as soon as it opens. 17 V.S.A. § 2534
- 4 Towns using Australian ballot must open polls no earlier than 5:00 a.m. and no later than 10:00 a.m. (*opening hour set by the board of civil authority*). 17 V.S.A. § 2561(a)
- 4 (*During polling hours*) Presiding officer must ensure that there is no campaigning of any kind and no campaign literature displayed, placed, or distributed inside the polling place. On walks and driveways leading to a polling place, no candidate or other person may physically interfere with the progress of a voter to and from the polling place. 17 V.S.A. § 2508
- 4 For those who became eligible to vote after the Wednesday prior to town meeting, and who had notified the town clerk of intent to apply for addition to the checklist, the town clerk shall act on applications until the polls are closed. 17 V.S.A. § 2144(b), (c)
- 4 In towns using Australian ballot, as soon as possible after the polls close, town clerk or other presiding officer must examine entrance and exit checklists and prepare a statement of discrepancies. 17 V.S.A. § 2583(a)
- 4 In towns using Australian ballot, presiding officer directs election officials in counting ballots. 17 V.S.A. §§ 2581, 2582
- 4 In towns using Australian ballot, presiding officer must seal all ballots, entrance checklist(s) and tally sheets and deliver to town clerk. 17 V.S.A. §§ 2583(A), 2590(a), 2689
- 4 (*Immediately after vote is counted*) Under the direction of the legislative body, the town clerk shall announce and post the results of any charter amendments. 17 V.S.A. 2645(b)
- 5 (*No later than 24 hours after polls close*) Presiding officer and one other election official shall transfer the totals from the summary sheets to the return, both sign the return, and deliver the original to the town clerk. 17 V.S.A. § 2588
- 6 In a manner prescribed by the secretary of state and within 48 hours of the close of the polls, the town clerk shall deliver one certified copy of the official return of vote for the presidential primary to the secretary of state. 17 V.S.A. §§ 2588, 2706
- 9 (*Within five days after town meeting*) Town clerk must certify financial actions of town meeting to treasurer and to the chair of the legislative body. 24 V.S.A. § 1167
- 11 (*Within seven days after election*) Last day for legislative body or town clerk to warn a run-off election if there was a tie vote for any Australian ballot race at town meeting, unless one of the candidates withdraws. 17 V.S.A. § 2682(e)
- 11 The canvassing committee for state and national offices shall meet at 10:00 a.m. one week after the day of election to certify results of the presidential primary. The chair of each major political party shall be given a copy of the official certificate of votes for the election. 17 V.S.A. § 2607
- 14 Last day for a losing candidate for local office in a municipality using the Australian ballot system of voting to request a recount (within 10 days after the election). 17 V.S.A. § 2683(a)
- 14 Deadline for a voter to file a request for a recount with the town clerk of any issue voted by Australian ballot (within 10 days after the election). 17 V.S.A. § 2688
- 14 Last day for a local candidate who has made expenditures or accepted contributions of \$500 or more to file a campaign finance report with the town clerk. 17 V.S.A. § 2822
- 14 Last day for town clerk to certify to the secretary of state each proposal of (charter) amendment showing the facts as to its origin and the procedure followed. Clerk shall also certify the result of any vote required before an act of the General Assembly takes effect. 17 V.S.A. § 2663, 17 V.S.A. § 2645(b)
- 19 Last day that a legal voter may contest the results of the presidential primary or local election results from the town meeting (within 15 days after the election). 17 V.S.A. § 2603(c)
- 26 First day a run-off election may be held (15 days after the warning of the run-off election). 17 V.S.A. § 2682(e)



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