

# Opinions

Office of the Vermont Secretary of State



Vol. 6, #11

November 2004



## A Message from the Secretary

By the time you read this the election will be over. No matter which candidates have won, I think the whole State of Vermont will sigh with relief when the official return of votes are completed. This is especially true for town clerks around

the state who, like my election division staff, have been working nights and weekends to do all that is necessary to ensure that our elections run as smoothly as possible.

This year, those of us who run elections face an additional challenge. Because of the problems we saw in Florida in 2000, all across the country there is an intense focus on how our elections are administered. It is not surprising that we too have been hearing from many concerned citizens with questions about how our elections are run. We have heard concerns about voting equipment (we don't use touch screen machines, but many voters don't realize this); rules about voter registration (we don't disenfranchise voters if their registration forms do not arrive to the clerk on time – so long as they were filled out in a timely manner); and about purging felons from the voter roles (we are one of two states that allow felons to vote.) Many advocacy groups are also looking carefully at our polling places and voting systems to ensure that there is no intentional or inadvertent discrimination.

While this close scrutiny has kept us busy, it is not a bad thing. The fact that our citizens are watching with interest how we run our elections shows that our democracy is healthy.

I hope that by the time you are all reading this we are able to look across our great country and be proud of how well the elections went this year. I know that we will be proud about how well it went here in Vermont.

Deborah L. Markowitz, Secretary of State

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## World Series and Record Series: 1918 in the State Archives

I am writing this month's column as the Red Sox Nation awaits within a victory of winning the World Series, agonizing over the gulf between expectation and experience. News media are scurrying about in search of aged citizens who may have a living memory of the last Red Sox Series victory in 1918. Down in the vault, the Vermont of 1918 quietly persists.

In 1915 Vermont switched the date of its general election from September to November and the convening of government from October to January. Since the legislature only met every other year, the legislature had adjourned back in 1917 and did not meet in 1918. Horace Graham of Craftsbury, the long serving auditor of accounts, occupied the governor's chair. In his inaugural he had celebrated the new law that required state officers to maintain year round offices in Montpelier, a practice he had begun as auditor in 1902.

He also expressed satisfaction with Vermont's new (1915) workmen's compensation laws. Of the 7,781 workmen's comp cases that had come before the Industrial Accident Board between July 1915 and January 1917, all but two had been resolved. This, Graham noted, saved "thousands of dollars to both employer and employee, which otherwise would have been spent in litigation." He further opined that, "as the cost of insurance is based upon the extent to which the workman is exposed to danger, it will be seen that it is for the financial interest of the employer to safeguard his workmen as best he may."

With the United State's entry into World War I on April 6, 1917 Governor Graham marshaled Vermont's bureaucracy and resources to support the war effort. War measures ranged from laws protecting Vermont's public utilities and buildings from sabotage to adoption of the new federal daylight savings time.

Following President Woodrow Wilson's directive to root out any opposition to the war a Vermont branch of the American Protective League was established, in the words of the official state history of the war, "to secure information about the activities of certain civilians." One Vermonter caught up in suspicions of anti-American sentiment was the Rev. Frazier Metzger of Randolph, the 1912 Bull Moose Progressive gubernatorial candidate. The federal government considered Metzger a German spy. When handed the written accusations against Metzger, Governor Graham simply wrote on the paper, "This is a damned lie." Metzger was removed from the blacklist.

The war moved the World Series up to September, after a shortened season, since many ballplayers faced the military draft. Despite batting a collective .186 the Red Sox took the Series in six games. If the Series had not been moved up it might not have been played because the Spanish Influenza Pandemic of 1918 exploded in October. The pandemic had actually emerged earlier, primarily among military personnel who had been packed into training camps and transports. News of the outbreak was slow to emerge because of government censorship of anything threatening national morale.

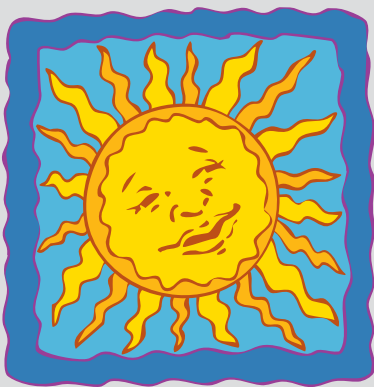
The influenza first appeared in Kansas. Public reports of this highly fatal flu, however, first emerged from Spain. A non-combatant, Spain did not censor news and publicized the arrival of the flu upon its shores. Consequently the pandemic was known as the "Spanish" Influenza.

An estimated 100 million people died worldwide from the flu, most in the last few months of 1918. Vermont was not immune and there were 44,000 reported cases of flu (out of a state population of just over 330,000); numerous cases went unreported. From September through December 1918 a reported 1,772 Vermonters died of the flu. On September 27<sup>th</sup>, the Vermont Board of Health, at the urging of Governor Graham, gave local health officers the authority to order “churches and schools and all places of public entertainment to be closed and [to] forbid and prevent the assembling of people in any place...”

Vermonters in the military suffered even more. Colonel Ernest W. Gibson, Sr., commander of the Fifty-seventh Vermont, reported on how the flu ravaged his men aboard the troopship *Leviathan*: “The ship was packed...[C]onditions were such that the influenza could breed and multiply with extraordinary swiftness...The conditions during the night cannot be visualized by anyone who had not actually seen them...[G]roans and cries of the terrified added to the confusion of the applicants clamoring for treatment and altogether a true inferno reigned supreme.”

The war ended in November and the flu quickly abated during January-February 1919. Governor Graham, known as “Honest Horace” for his years as auditor, was widely celebrated for his role in organizing Vermont’s war effort, protecting its citizens from the excesses of unfettered patriotism, and acting quickly in the face of the flu. And yet 1918 did not end well for the Governor. His previous efforts to modernize the auditor’s office unearthed evidence that he had inappropriately used state funds while auditor. In early 1919 he was convicted of malfeasance, but immediately pardoned by Governor Percival Clement, who cited Graham’s many contributions to the war effort.


And so, the last time the Red Sox won the Series the Vermont landscape was marred by war, pestilence, eroded civil liberties and political corruption. It would be the height of churlishness, as the Sox stand poised to win the Series, to suggest we take a moment to thank the NY Yankees who have for so long served as a bulwark against a repeat of 1918. And so, with good will to friends, let me say “Go Sox” and mouth that most unfamiliar of phrases, “wait ‘til next year.”



We would like to extend our sincere thanks to all of the town clerks and local election officials for all of their hard work and dedication to the success of this year's election!



# Opinions of *Opinions*

1. **When a candidate is elected but declines to serve a vacancy is created.** In all elections for office in Vermont, including Justice of the Peace, if the candidate who received the most votes and is elected, decides that he or she does not want to serve in the position, this creates a vacancy that must be filled according to statutory procedures. It is never possible to have a person decline an election so that the person receiving the next highest amount of votes becomes the winner.
  2. **JPs take office on February 1<sup>st</sup>.** Although Justices of the Peace have been elected (on November 2, 2004), the term of office for newly elected JP's does not begin until February 1, 2005. A person elected as a JP can take the oath and return the oath of office to the Town Clerk at any time after receipt of the Certificate of Election, but the newly elected JP cannot perform any of the duties of a JP until February 1, 2005.
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3. **JP oath of office required before JP can act.** A justice of the peace is not fully qualified to serve until he or she has taken the oath of office and the oath of allegiance and has filed a notarized copy of those oaths with the town clerk. The Secretary of State provides copies of these oath forms to every newly elected justice. 4 V.S.A. § 491. (In January we will be mailing JP Handbooks and oath forms to newly elected Justices. The guide and forms can also be obtained from our website [www.sec.state.vt.us](http://www.sec.state.vt.us).)
  4. **Governor appoints to fill JP vacancies.** The Governor may appoint a successor whenever a vacancy occurs in the office of justice of the peace. A vacancy can occur by resignation, death, or insanity. A vacancy can also occur when the JP moves to another state. Moving to another Vermont town in Vermont does not create a vacancy. In most cases, however, a justice will resign when he or she leaves town. Governors usually appoint a member of the party of the former justice of the peace to fill the vacancy - although not always the person recommended by the party. 17 V.S.A. § 2623.
  5. **Town can require hookup to municipal sewer system.** If a town or city extends its sewer system, it can adopt an ordinance to require that all adjacent property owners connect to the public system and abandon private septic systems. 24 V.S.A. § 3509. The sewage commissioners may require the owners of buildings, subdivisions or developments abutting a public street to connect to the municipal sewage system.
  6. **Water and sewer delinquencies can be collected by the delinquent tax collector.** Municipalities with water and sewer systems may choose to collect delinquent payments in the same manner as their delinquent taxes are collected or by using the Uniform Water Disconnect statute. 24 V.S.A. § 3504, 5141 et seq. If collected as a tax, the town or city's delinquent tax collector may bring a tax sale to collect the amount owed. Often the water/sewer charge is collected along with any delinquent taxes owed on the property. In the alternative, the municipality can shut off the water if a person fails to pay their charges. This is a more complicated process, and provides the resident an opportunity to appeal a decision to shut off water.

- 7. Interest on Delinquent Water or Sewer Payments May Only Be Charged After Vote.** Water or Sewer Commissioners in a town can charge interest on delinquent payments for water and/or sewer ONLY if the voters of the municipality have approved an article in the warning to collect interest on overdue taxes in the town. 24 V.S.A. § 5151 and 32 V.S.A. § 5136. The article stays in effect until voted otherwise at a subsequent meeting. Similarly, the trustees or prudential committee of a fire district or water district must place an article on the warning for voters to collect interest on overdue payments for water and sewer before interest can be collected.
- 8. Town Clerk can serve as Village Clerk.** The law permits the same person to be elected to serve as Town Clerk-Treasurer and also as Village Clerk-Treasurer. There is no statutory conflict and in many situations each municipality benefits from the knowledge and experience of the candidate who has already served in one of the positions.
- 9. Town treasurer cannot resign as school treasurer.** 16 V.S.A § 426 provides that “the town treasurer shall be treasurer of the town school district unless, by vote of the town school district a town school district treasurer is elected.” This means that the treasurer cannot decide to resign as school treasurer – but remain town treasurer. Unless the school district elects a treasurer, the town treasurer must perform the school treasurer duties.
- 10. Investment of funds is a joint responsibility.** While the treasurer has control over the accounts of the town, how and where to invest the money (including decisions as to what bank to keep the town accounts in) are a joint responsibility of the treasurer and the selectboard. 24 V.S.A. § 1571(b) provides that “moneys received by the town treasurer on behalf of the town may be invested and reinvested by the treasurer with the approval of the legislative body.”
- 11. Social service agencies can circulate a joint petition.** Social service agencies can join together in circulating a petition signed by 5% of the legal voters to ask to have an article or several articles placed on the warning for town meeting. 17 V.S.A. § 2642. However, if using a joint petition, we strongly suggest that each agency present its request in a separate Article in the petition so that the votes for each agency will be taken separately at town meeting.



- 12. Social service agency funded by the town must provide services to the community.** The general rule is that a town may only spend taxpayer dollars for social service agencies that serve the community. According to 24 V.S.A. § 2691 a town or village may “appropriate such sums of money as it deems necessary for the support of social service programs and facilities within that town for its residents.” Note that, despite the statutory language, the Vermont Supreme Court has held that social service agencies physically located outside the municipality may be considered to be social programs within the village or town if the agency serves the residents of the municipality. Addison County Community Action Group v. City of Vergennes, 152 Vt. 161 (1989) (This case also extended § 2691 to cities.)



**13. Selectboard can require social service agency to contract with the town to ensure services.** State law allows the selectboard to require a social service agency that is being funded by the town to enter into a contract to ensure that the appropriation is used to provide services to the town. 24 V.S.A. § 2692. A court will require that such a contract be reasonable. *Addison County Community Action Group v. City of Vergennes*, 152 Vt. 161 (1989).

**14. A majority of the selectboard must concur in order for a motion to pass.** A Selectboard must have a majority of the full board vote in favor of a motion in order to pass the motion even if some members of the board are absent or have recused themselves. (1 V.S.A. §172). For example, if you have a five member selectboard, at least 3 members must vote in favor of a motion for it to pass. If only 3 members are present and voting, then all three members must vote in favor of the motion in order to take action.



**15. Quorum for school board differs from the rules that apply to town boards.** School boards operate under a special statute, 16 V.S.A. §554, that changes the general rule for board voting. A school board needs a quorum (majority of the board) to be present, but then only requires the majority of those present to vote in favor of a motion for the motion to pass. For example, on a union high school board composed of 15 total members, if only 9 members are present at a meeting, only five members need to vote in favor of a motion for it to pass.

**16. Advisory board does not have to follow quorum rules.** Vermont’s quorum rule can be found in 1 V.S.A. § 172. This law 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.” Because an advisory board is not given any authority – rather, by definition it is only providing a recommendation to the board who has the authority to act – this quorum requirement will not apply. This means that unless the board who creates the advisory committee instructs otherwise, no quorum rule will apply.

**17. Board Cannot Eject Member From Executive Session.** In one town a dissenting member of the board routinely informed public and press about what was discussed during their executive session. The board cannot prevent this from occurring. Although the board can publicly express its displeasure, the law does not permit the board to exclude or eject one of its members from a meeting. 1 V.S.A. § 313(b)

**18. Board May Eject Unruly Member of Public.** On occasion a member of the public will disrupt a meeting. In such a case the chair of the board should first try to calm the individual down and restore order. If this is not possible the chair can call on the town constable to remove the individual from the meeting. 1 V.S.A. § 312(h).

**19. School Board Follows Roberts Rules; Selectboard Can Create Own Procedures.** Vermont law requires school board meetings to be conducted using Robert’s Rules of Order. 16 V.S.A. § 554. For small school boards we recommend that the board use Robert’s Rules for Small Boards. In contrast, the law is silent about what procedures the selectboard and other local boards should follow. Accordingly, these boards can adopt their own rules of order. This can be, but does not have to be, Robert’s Rules. We recommend that boards commit to writing the procedures they follow so that all board members and members of the public will know what to expect.



**20. Board May Draw Orders Without Quorum In Some Cases.** Vermont law permits the selectboard (and other boards that have authority to draw orders directly from the treasurer) to authorize one or more members of the board to draw orders directed to the treasurer to pay the expense of the town. Orders must state definitely the purpose for which they are drawn and serve as full authority to the treasurer to make the payments. The full board must be provided a record of the orders drawn in this manner. 24 V.S.A. § 1623.

**21. Board May Submit Minutes of Meeting To Draw Orders On Town Accounts.** If a selectboard chooses it may simply submit to the town treasurer a certified copy of those portions of the selectboard minutes, properly signed by the clerk and chair or by a majority of the board, showing to whom, and for what purpose payments by the town are to be made by the treasurer. The certified copy of the minutes serves as full authority to the treasurer to make the approved payments. 24 V.S.A. § 1623.

**22. Local Candidate Petitions for Office Must be Specific.** Vermont law requires that a candidate's petition to get on the ballot for local office in municipalities that use the Australian ballot system for election of officers **must clearly indicate the office and the term length** for the office the candidate is seeking (particularly when there is more than one position open with different terms of office.) 17 V.S.A. § 2681(b).



**23. Petition Heading Must be Complete Before Signed by Voters.** A candidate cannot circulate a petition for signatures without a term length and then add or change the term length after signatures have been obtained. For example, a candidate cannot circulate a petition for selectboard without indicating which term he or she is seeking. However, it is ok for a person to circulate two or three different petitions for selectboard, one petition for the one year seat, one for the remaining year of a three year term, and one for the three year term; and then wait until the filing deadline to decide which petition to submit to the Town Clerk.

**24. Purging of Checklists.** We have now concluded another general election after the changes to Title 17 which require Boards of Civil Authority to wait for two general elections before removing names from the checklist of persons who have been notified in writing pursuant to 17 V.S.A. § 2150. Therefore, a Board of Civil Authority can now meet to vote to remove those names of all persons who did not respond to the First Class Letters and Notices (as described in section 2150 (d)(3) asking the voter to verify eligibility to vote) mailed prior to the 2000 general elections.

**Eratta:** Last month, number 8 in the Opinion of Opinions said that the planning commission can appoint an acting administrative officer in accordance with Section 4442 of Title 24. With the passage of Act 115, the appointment provisions are now in section 4448 and only the legislative body can appoint an acting administrative officer [section b] although the planning commission does have a role to play.

*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 Jayne Pratt, West Rutland Town Clerk**

Jayne copies the PTRs as they come in (with the social security numbers blocked out) and puts the copy into a working PTR book for title searchers to access. As soon as it is recorded it then goes into the "official PTR book"

Thanks Jayne!

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](mailto:vernontc@sover.net) or mail them to

**Sandy Harris- VMCTA President**

Town of Vernon  
567 Governor Hunt Rd  
Vernon, VT 05354

## **What do you do to recycle old ballots?**



### **Karen Richardson, Colchester Town Clerk, suggests a great way to recycle ballots!**

We send ours out to a local printing company to have them cut into eight sections of 100 sheets, glued and bound to make note pads for the office.

We have 21 plastic wrapped bundles of ballots go out and get back 420 note pads for a cost of \$140.00. We then donate them to local daycares and schools.

**Any other suggestions?**





# On the Road to the Election

By Janel Johnson, Voter Outreach Coordinator



## VERMONT VOTES FOR KIDS

Congratulations! Now that the election is over, we want to send a big thank you to all of the town officials and schools that participated in *Vermont Votes For Kids*. Our records show that approximately 125 Vermont schools participated in mock elections. Over 300 schools used our *Vermont Votes For Kids* civics curriculum in some way to help their students learn more about how democracy works. Research has shown that when kids are involved in the election process their parents become more engaged as well – and vote in higher numbers! Thanks for all you did to educate our Vermont students and make them feel part of the political process.



## HONOR A VET WITH YOUR VOTE

We also want to acknowledge the contributions of the town clerk's offices in helping to make the *Honor A Vet With Your Vote* program a success this election season. Many towns made vet buttons available to the public and lots of bright red buttons were seen on coat lapels when voters showed up to the polls on election day. Thanks for your work in honoring our nation's veterans as Vermonters exercise their right to vote.

## YOUR VOTE IS YOUR VOICE

We've been seeing lots of bumper stickers and buttons around Vermont proclaiming **Your Vote Is Your Voice**. We hope that message resonated with the public enough to increase voter turnout! If you have any supplies of buttons and bumper stickers left just save them for the next round of elections. Thanks!

Janel Johnson  
[Jjohnson@sec.state.vt.us](mailto:Jjohnson@sec.state.vt.us)  
(802)828-1296

# November 2004

## November 1:

- Voters, or their 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. 17:2531(a), 2532(a)
- Board of Civil Authority must designate pairs of Justices assuring political balance in each pair to deliver ballots to ill and disabled voters in towns using Australian Ballot. 17:2538(a)
- Board of Civil Authority must appoint a Presiding Officer if the Town Clerk or other regular Presiding Officer is unable to preside at the election or if more than one polling place is used. 17:2452
- Prior to the day of the election, Board of Civil Authority must appoint Assistant Election Officers. 17:2454
- Town Clerk or other Presiding Officer must notify Election Officers of their hours and duties. 17:2455

## November 2:

- **GENERAL ELECTION DAY 17:2103(15)**
- *(Before polls open)* Town Clerk must give Election Officials a list of those voters who have already cast early or absentee ballots. 17:2548(a)
- *(Before polls open)* The Presiding Officer must post copies of the warning and notice, sample ballots, and voter information cards. Signs should be placed on or near the ballot boxes explaining procedures for depositing ballot. 17:2523(a), (b)
- Polls must be open no earlier than 5:00 a.m. and no later than 10:00 a.m. *(opening hour set by Board of Civil Authority)*. Polls remain open until 7:00 p.m. 17:2561(a)
- *(Upon opening of polls)* A copy of the list of early or absentee voters must be made available upon request at the Town Clerk's office and on election day at polling place(s). 17:2534
- *(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. 17:2508
- For those who became eligible to vote after the second Monday prior to Election Day and had notified the Town Clerk of intent to apply for addition to the checklist, the Town Clerk or Board of Civil Authority may act on applications until polls are closed. 17:2144b(c)
- 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. 17:2583(a)
- Presiding Officer directs Election Officials in counting ballots. 17:2581, 2582
- Presiding Officer must seal all ballots, entrance checklist(s) and tally sheets. 17:2590(a), 2689, 2583(a)

**November 3:** *(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 and both sign the return. 17:2588

**November 4:** *(Within 48 hours of closing of polls)* Town Clerk should have delivered one certified copy of each general election return to the Secretary of State, county clerk, representative district clerk and senatorial district clerk. 17:2588

**November 11:** Veterans Day. 1:371

**November 12:** *(Within 10 days after election)* Last day for a losing candidate to request a recount. 17:2602(b)

**November 17:** Last day a legal voter may contest the results of the general election *(within 15 days after the election)*. 17:2603(c)

**November 25:** Thanksgiving Day. 1:371

# December 2004

**December 1:** Last day to pay property taxes in towns that voted to collect interest on overdue taxes. 32:5136(a)

**December 14:** Last day for Listers to notify persons of omissions from inventory. 32:4086

**December 21:** (70 days before Town Meeting) First day to warn the first public hearing if a charter adoption, amendment or repeal is to be voted on at Town Meeting. 17:2641(a), 2645(a)

**December 25:** Christmas Day. 1:371

**December 30:** Last day for Listers to correct real or personal estate omission or obvious error in grand list, with approval of Selectboard. 32:4261

**December 31:**

- Town fiscal year ends, unless voted otherwise. 24:1683(c)
- (60 days before Town Meeting) Last day to warn the first public hearing if a charter adoption, amendment or repeal is to be voted at Town Meeting. 17:2641(a), 2645(a), (3)



## Quotes of the Month



“We ourselves feel that what we are doing is just a drop in the ocean. But if that drop was not in the ocean, I think the ocean would be less because of that missing drop.”

*-Mother Teresa*

“You can milk a cow the wrong way once and still be a farmer, but vote the wrong way on a water tower and you can be in trouble.”

*-John Fitzgerald Kennedy*

# 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



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email: [salberghini@sec.state.vt.us](mailto:salberghini@sec.state.vt.us),  
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*Thank you for helping us keep Opinions running efficiently!*

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