



# Opinions

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## Message from the Secretary



Every March local government takes center stage. Even with all of the drama going on in the state house, it is local government and local issues that are in the spotlight. You can look at any newspaper in the state and you will see articles about local ballot issues, candidates and absence of candidates, budgets, bonds, and meetings. Meetings gone wrong - and meetings that are right out of a Norman Rockwell painting.

March Meeting is only one piece of Vermont's tradition of participatory democracy. In fact, the backbone of that democratic tradition is the many individuals who do the work of local government. After March meeting, when things begin to settle down and town government falls from the front pages of our papers, the real hard work of local government begins. This is the time we reorganize. We set meeting days, elect chairs, adopt rules of order, and to begin to feel out the new personalities on the boards. It is a time when the absence of old friends is felt the strongest - and when new officials must be given an opportunity to learn what their new jobs require.

I want to give a special welcome to those of you who are newly elected this month. As you begin to learn the requirements of your new positions and have questions about the laws that govern the work you do, please feel free to call us for assistance. We will answer your questions and direct you to other resources that might be helpful to you and your towns.

Here at the Secretary of State's Office we have assembled a great team to work with the municipalities in Vermont. We have three attorneys available to answer your questions - Deputy Secretary of State, Bill Dalton, Director of Elections, Kathy DeWolfe and myself. Call us at 1-800-439-8683! Check out the municipal resources on our web site ([www.sec.state.vt.us](http://www.sec.state.vt.us)) including publications on topics including open meeting law, tax appeals, land use regulation and more – and attend our educational workshops. We look forward to getting to know you. We are here to help you serve your communities!

(Reprinted from March 2000.)

Deborah L. Markowitz  
Secretary of State

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# It's a Strange Job, But Somebody's Got to Do It

By Dan Mackie, Valley News Originally published 03/10/2001

One of the highlights of town meetings is the filling of old-time jobs like Fence Viewer and Hog Reeve. It's a light moment that follows the annual Grilling of the Road Agent or the Divine Moment of Muddled Parliamentary Procedure. You know it, the one that goes like this:

"Mr. Moderator, I made the motion to amend the motion that's on the floor, but I'd be willing to amend my amendment to the motion, if that's appropriate, or even withdraw my amendment to the motion, if that's your pleasure, since I've had time to consider my amendment, and the truth is, Mr. Moderator, I'm not sure whether voting aye or nay on my amendment will defeat the original motion, raise taxes 30 percent, call on Congress to fund family planning programs, or approve a new privy for the town ballfield. I'm baffled, Mr. Moderator, I'm just baffled."

Sometimes democracy isn't pretty.

But the ceremonial town jobs -- Weigher of Coal is another -- are a respite from the three hours of ripping apart the school budget wherein the electorate learns that because of federal and state law, and contractual obligations, the only option left to voters is to cut the crayon budget by a third.

By leaving the jobs as quaint reminders of by-gone days, and not updating them, the towns are missing a real opportunity.

We may not need Fence Viewers as urgently as we once did, but communities still need ceremonial functionaries. Part of the fabric of a community is the awareness that things don't just happen: It takes a village, etc.

Here are some ideas. I'm sure a blue-ribbon task force could do even better.

- **Register of Gossip.** Someone in town should keep track of all the juicy stuff. We'll be able to do this online soon.

- **Judger of Flatlanders.** Am I accepted here? Or do they think I'm just another herbal-tea-drinking, Land Rover-driving, trust-fund spending, public radio listening, New Yorker reading pain in the neck? There should be someone you can go to for the official word.

- **Landfill Host.** A genial guy (or gal) at the landfill makes the transaction so much more - pleasant.

- **Repeater of Old Stories.** Did I ever tell you about the time ... Yes? Well, I'll tell it again.

- **Pothole Viewer.** Measurements should be taken and records kept. Same with frost heaves.

- **Town Recluse.** The beauty of this job is you wouldn't have to show up for meetings.

- **Spurner of New Ideas.** Some towns have pretty large numbers of these already.

- **Weather Diviner.** Bunions, woolly caterpillars and achy elbows are just as accurate as the five-day forecasts on TV.

- **Starter of Arguments.** We might need some ground rules for this one. The Starter of arguments should be merely provocative, like the people I meet socially who say, "You know, I don't really like the Valley Snooze." It's an odd conversation starter, but I can deflect it by saying something like, "That's funny. I really don't like the Walla-Walla Union Bulletin." The Starter of Arguments should never begin with, "You want a piece of me?"

- **Bane of Selectmen.** There are a couple of towns around here, and it's not necessary to name them, where there is a pretty vigorous group performing this function.

- **Nagger of Children.** Most every parent qualifies, like the job or not.

- **Keeper of Grudges.** Let's always remember the good things, and the bad things, too.
- **Keeper of Lost Baseballs.** In childhood lore, there is often a man or woman, usually older, who refuses to return baseballs hit into his or her yard. It's unthinkable to even speculate as to what they do with all those baseballs. Burn them? Ship them to Communists? Evil rituals?
- **Evaluator of Loud Music.** The older you get, the more you want to say, TURN THAT DOWN! It would be good to have the power of the state behind you.
- **Town Alarmist.** Things can always get worse.
- **Tester of Limits.** All the kids, actually.
- **Preserver of Karma.** A new position for the New Age.
- **Maintainer of Appearances.** An age-old skill, and handy during hard times.
- **Register of Issues.** A lot of people these days have "issues." It's awkward to unexpectedly run afoul of these people, especially when you didn't know they "have issues." A registry would help.
- **Rememberer of Names.** I could use this service. I really could.
- **Minders of Own Business.** They don't really want recognition, but let's give it anyway.
- **Hoarder of Pennies.** Someday that heap of coins is going to come in handy.
- **Defender of Personal Boundaries.** Ever meet someone who, without prompting, tells

you he or she is recovering from an addiction, has a kid in jail, and was sexually abused as a child? I'm a little more cautious about personal things, so I'm inclined to say, "Uh, how 'bout those Red Sox?"

- **Dispenser of Unwanted Advice.** Another-self appointed post, generally.
- **Explainer of Parliamentary Procedure.** (See above.)
- **Assayer of Cell Phones.** I'm not sure what an Assayer of Cell Phones would do, but I like the title.
- **Rememberer of Facts.** For those moments when you just need to know who lived in the old Goodwin place before the Pecks and the Thomases, but after that school teacher from Plymouth rented it for a couple of years, and then the Millers bought it, but never moved in, so it was empty awhile. You know who I mean?
- **Weigher of Obligations.** We all need help deciding whether we need to respond to certain invitations.
- **Oracle of Cliches.** At some point in many town meetings, it's someone's role to stand up and say, "We're opening a can of worms," or, "The tail is wagging the dog." Let's make this an official job.
- **Facilitator of Self-Esteem.** What's the point of all this civic business, really, if we don't feel good about ourselves?

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If you are interested in receiving your *Opinions* by email please send an email to [salberghini@sec.state.vt.us](mailto:salberghini@sec.state.vt.us) to sign up!

# Opinions of Opinions

**1. Request for reconsideration must be submitted within thirty days of meeting.** A petition signed by five percent of the legal voters of the town or school district can be submitted to request reconsideration of an article within 30 days following the town or school meeting. 17 V.S.A. § 2661(b). If a proper petition is submitted in a timely manner, the legislative body (selectboard or school board) must schedule and warn a special meeting to be held not later than 60 days after receipt of the petition to vote on the requested article. It is wise to avoid committing to any contract until the 30 days for reconsideration has passed.

**2. Absentee ballots for reconsideration should not require separate request.** Although the law does not speak directly to whether a person who has requested an absentee ballot for town meeting votes by Australian ballot, must make a separate request for an absentee ballot for reconsideration, we suggest that fairness dictates that you send absentee ballots for the reconsideration to all voters who had requested absentee ballots for Town Meeting. Reconsideration is really an extension of town meeting. It is likely that a court would find that the obligation to send a ballot to a voter would continue until the voting on the issue is complete.

**3. There is no reconsideration of election of officers.** While 17 V.S.A. §2661 provides a method for reconsidering 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 you must establish another reason that the election is not valid.

**4. Votes requiring two-thirds instead of a majority at Town Meeting.** It's a fairly short list: Tax stabilization agreements relating to commercial or industrial property (24 V.S.A. §2741(b)); Rural town approval of a zoning bylaw or amendment if 5% of the voters have filed a written protest or petition asking for 2/3 vote at least 15 days prior to the vote (24 V.S.A. §4404 (e)); and when Robert's rules requires 2/3 for procedural motions such as motions to suspend the rules, to rearrange articles, to cease or limit debate; to adopt special rules of order; to allow a nonresident to speak after a voter has objected, to close nominations; and to postpone to a time certain (17 V.S.A. §2658).

**5. Articles that are voted to be either "passed over" or "postponed indefinitely" cannot be raised at a special or annual meeting without a full warning of a new article.** Likewise if an article is "tabled" (it could be removed from the table during that meeting) but it cannot be considered at a subsequent meeting without being warned as an article. Voters rely on the warning to know what will be discussed.

**6. Town Meeting Can Be Put Off To A New Date If Voters Wish.** If voters want to continue the meeting at a later date, it is generally best to make a motion to adjourn to a date and time certain so that the meeting does not need to be warned again. This motion can be used in the event of bad weather, other emergencies, or when the voters need more information that will be available at a later date.

**7. Town Clerk is responsible for preparing Town Meeting minutes.** 24 V.S.A. §1152. Even if the Town Clerk is not seeking re-election, it is the responsibility of the clerk whose term is ending to make a record of the town meeting. The minutes must be approved and attested to by two of the following: moderator, selectboard or justices of the peace. The clerk must request approval within 7 days after each town meeting and his or her request must be given prompt consideration.

**8. Officers voted on the floor must receive majority vote to win.** At a Town Meeting in a Town that does NOT use Australian ballot for election of town officers, where the statute requires that the election be by paper ballot (as for Selectboard, Listers, and Auditors), the candidate must receive a major part of the vote (a majority of all votes cast) not just the most votes. 17 V.S.A. § 2660(c). If no nominee has obtained a majority by the end of the third vote, the moderator shall announce that the person receiving the least votes in the last vote shall no longer be a candidate, and the voting shall continue until a candidate receives a majority.

**9. Office remains vacant if no nominees.** At a Town Meeting in a town election, town officers, from the floor if no one is nominated, the office remains vacant and the selectboard must appoint. The Selectboard or Moderator cannot “force” the town meeting to keep nominating until someone accept the nomination by stating that the next article will not be considered until the election is complete. If there are no nominations for an office, the Selectboard appoints someone to serve until the next election. If at a later date other interest arises in the office, 5% of the legal voters can always petition for a special election.

**10. Some Local Officials Do Not Have To be Residents.** In most cases, in order to be elected or appointed to serve in local office you must be a voter in that municipality. However, the law does not require assistant treasurers or assistant clerks to be residents of the communities where they serve.. In addition, the town clerk or treasurer can serve as clerk or treasurer of a village or fire district even if they are not a resident of that municipality. A town tax collector can serve as an incorporated school district collector even if not a resident of the district. There is also no residency requirement for appointment to town planning and zoning boards. However, for the planning commission, at least a majority of the members must be residents of the town.

**11. Law requires majority of a board to act. (except as provided in 16 V. S. A. § 554 for school boards.)** Vermont law provides that when joint authority is given to a board of three or more there must be a concurrence of a majority in order for the board to take action. This means that, with a five member board three board members must vote in favor of taking action. This rule applies even if there is a vacancy on the board, or if one or board member abstains from voting. 1 V.S.A. § 172.

**12. As long as a quorum (majority of board) is present, School Boards may take action by vote of a majority of the memebers present at the meeting.** 16 V. S. A. § 554

**13. Subcommittees of public bodies must follow the rules of the open meeting law.** All requirements of the open meeting law apply to subcommittees of public bodies. See 1 V.S.A. § 310 (3). This is because "public body" means any board, council or commission of the state or one or more of its political subdivisions, any board, council or commission of any agency, authority or instrumentality of the state or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils or commissions . . . ."

**14. Agencies Who Receive Local Funding Are Not Required To Make Financial Books Public.** Vermont’s public record law applies only to “public agencies” which are defined as “any agency, board, department, commission, committee, branch, instrumentality or authority of the state or any agency, board, committee, department, branch, instrumentality, commission or authority of any political subdivision of the state.” Because social service agencies and other nonprofit organizations that receive local funding do not come under this definition, they are not obligated to open their books to public inspection. The selectboard can have a policy of not automatically putting on the warning a funding request without first seeing the books, and the voters can choose not to support funding unless the books are open – but no law requires a nonprofit organization to disclose its financial information as a condition to public financing.

**15. Town is not required to conduct professional audit.** No Vermont law requires a town to regularly audit its books by a certified public accountant. Rather, the law requires the board of auditors to audit the town books every year and report their findings in the town report. 24 VSA § 1681, 24 VSA § 1690. Vermont law permits the selectboard or village trustees, or the voters, by petition, to ask the voters to “instruct the selectmen or trustees to employ a certified public accountant or public accountant to aid the work of the auditors.”

**16. Ex Officio Notaries must file with Superior Court.** Justices of the peace, town clerks and their assistants, municipal police officers, sheriffs and others who serve as ex officio notaries public cannot perform notarial services until they submit an application to the superior court and take the oath of office. 24 V.S.A. § 441. A new application must be submitted every four years (at the time when all notarial appointments expire.) These officials do not need to pay the registration fee, and their commissions expire once they leave office. Also, ex officio notaries provide notary public services without charge or fee. 32 V.S.A. § 1403(b).

**17. Delinquent Tax Collector Adopts Collection Policy.** Vermont law gives the delinquent tax collector the authority to adopt a collection policy and decide when or whether to conduct a tax sale. The selectboard have no authority to order the collector to take collection action, however, if the collector fails to do his or her job a court can assess penalties. 13 V.S.A. § 3006.

**18. Clerk’s Office Must Be Open the Second Saturday Before Every Election.** Vermont law requires the clerk’s office to be open to accept voter applications on the second Saturday at least from ten until noon before any vote. This includes town meeting, and reconsideration votes, special meetings as well as bond votes. 17 V.S.A. § 2144.

**19. Budget Reconsideration Must Be Voted In Same Manner As Initial Budget Vote.** In one town at the same meeting that voters rejected a school budget it voted to adopt all budgets by Australian Ballot. Despite the vote to go to Australian Ballot, the budget re-vote must be a floor vote. Courts consider that the election is not complete until the budget issue is finally resolved. Any new budget votes – after the budget passes – must be voted by Australian ballot.

**20. Village Can Be Created By Selectboard Upon Petition.** Vermont law provides that “upon a petition of a majority of the voters in a town meeting residing in a village containing thirty or more houses, the selectmen shall establish the bounds of such village and cause a description thereof, by its name and bounds, to be recorded in the office of the town clerk and posted in two or more public places in such village. The residents in such village shall there-



## After the Meeting: A Checklist

- 1. FINISH THE MINUTES:** The Town Clerk is obliged to prepare the minutes of town meeting and have them approved by two people from among the following officers-selectboard member, moderator, or justices of the peace. This must be done within seven days of the meeting. 24 V.S.A. § 1152.
- 2. GET ORGANIZED:** "Forthwith," the statute announces, the selectboard must meet, elect a chair, a clerk (of the board), and let the town clerk know your decision. At this meeting, you will also need to appoint three fence viewers, a poundkeeper, inspectors of lumber, shingles and wood, weighers of coal, and a tree warden. 24 V.S.A. § 871. The same process should be followed by any board, including auditors, listers, the board of civil authority, the board for abatement of taxes, planning commission, and zoning board of adjustment, and any others. Take up the issue at your first meeting, elect a chair, set your regular meeting schedule and let the town clerk know about it.
- 3. SETTLE:** Immediately after town meeting, if not before, auditors need to "settle" with former town officers. If a new delinquent tax collector has been elected, for instance, the former DTC must pay over all funds collected to date and make a complete accounting of the taxes still owed. 24 V.S.A. § 1578. All papers in the collector's hands are also to be turned over to the successor collector.
- 4. GET SWORN:** Town clerks, select board members, constables, listers, grand jurors and fence viewers and the school board must be sworn in before taking office. 24 V.S.A. § 831. See the town clerk for forms, or look at the oath in Chapter II, Section 56 of the Vermont Constitution, in the first volume of Vermont reports.
- 5. GET BONDED:** School directors, constables, road commissioners, collectors of taxes, treasurers, and town clerk must be bonded before taking office. 24 V.S.A. § 832. The selectboard sets the amount. This is usually done through your insurance company. The town or school district pays for the bonds, not the officers. 24 V.S.A. § 835.
- 6. TELL WHO WAS ELECTED:** Newly elected town clerks must file the certificate of their election with the county clerk, signed by the moderator of the meeting, within five days of the election. File a copy of your oath of office as well. 24 V.S.A. § 1151. The clerk should also write the state treasurer to tell him the name of the new town treasurer. 24 V.S.A. § 1166. Actually, this must be done before July 1, but why not do it now and get it out of the way? Within five days of town meeting, the clerk should also send each lister's name, mailing address, and length of term to the commissioner of taxes. 24 V.S.A. § 1168. Send the name and address of the constable to the county clerk. 24 V.S.A. § 1169.
- 7. APPOINT ASSISTANTS:** Town clerks and treasurers must have assistants. They should be appointed following the beginning of each new term, and the appointment recorded. 24 V.S.A. §§ 1170, 1573. Send the county clerk a copy of the appointment of the assistant town clerk and of the assistant's subscribed oath. 24 V.S.A. § 1172.
- 8. LEARN THE OPEN MEETING AND PUBLIC RECORDS LAWS:** Read them. They are found back to back in the first volume of the Vermont Statutes Annotated, at 1 V.S.A. §§ 310-320. Everything is open unless you can find a reason to close it in these laws. Don't meet with a quorum of your board without public notice. That's against the law. See the [Pocket Guide To The Open Meetings Law](#) as well as our publication [A Matter of Public Record: A Guide to Vermont's Public Records Law](#) on our website for details.
- 9. LEARN HOW TO ASK FOR HELP:** Everybody helps everybody in Vermont. Call those who held the office before you. Call those who hold the same office but in another town. Call us. Call the League of Cities and Towns. Call state offices. There's no reason not to ask for help. Everything is complicated at first. For contact information for town clerks throughout our state visit the municipal section of our website.
- 10. LEARN HOW TO DEAL WITH THE PUBLIC:** You are a public officer. That means you are available to help, answer questions, find official paperwork, and anything else people ask of you. There are limits, of course. You don't need to be abused. But as long as the public remains civil, you should try to help.

# **Board of Civil Authority / Justice of the Peace Workshops**

## ***From Marriage to Tax Appeals***

Featuring Secretary of State Deborah Markowitz  
and Municipal Attorney, Paul Gillies

We are pleased to offer four Justice of the Peace/ Board of Civil Authority Workshops in April. These workshops will provide an overview of your duties, discussion of tax abatement, a role-play of a tax appeal, and time for questions. We especially encourage newly elected Justices of the Peace and Selectboard Members to attend! Listers are also welcome.

### **BCA/JP Workshop Registration Form**

**Tuesday, April 1, 3:00 – 5:00 p.m.**  
Killington Public Library (Next to Town Hall),  
Killington, VT

**Tuesday, April 8, 3:30 – 5:30 p.m.**  
Williston Town Offices, Williston, VT

**Tuesday, April 1, 7:00 – 9:00 p.m.**  
Springfield Town Offices, Springfield, VT

**Tuesday, April 8, 7:00 – 9:00 p.m.**  
Montpelier City Hall, Montpelier, VT

Registration Fee: \$15 Individual  
\$ 40 Town (for 3 or more BCA members)

Amount enclosed: \$\_\_\_\_\_ (Please make check out to Vermont Secretary of State.)

Town Clerk or Respondent: \_\_\_\_\_

Address: \_\_\_\_\_

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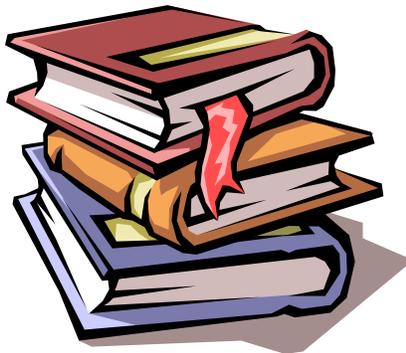
Workshop Date and Location: \_\_\_\_\_

Number of JPs Attending: \_\_\_\_\_

***Please copy and return this form to Sarah Alberghini, Secretary of State's Office, 26 Terrace Street, Montpelier 05609-1101 For additional information, please contact Sarah Alberghini at (802) 828-2148 or e-mail salberghini@sec.state.vt.us.***

# ARCHIVAL MANAGEMENT BILL PASSES!

*By State Archivist Gregory Sanford*



The general assembly recently passed an archival management bill that consolidates the administrative oversight of state government's archival records under the State Archives within the Office of the Secretary of State. The bill gives, for the first time, statutory recognition to the Archives and to archival management and establishes a framework for cooperation between the Archives and Public Records.

Several municipal clerks have asked whether the bill affects municipal records. In good government fashion the answer is; no, and yes.

The records addressed by the bill are those of the state, not municipal government. The scope of the bill is limited to archival management. Public Records will continue to oversee record management. Municipal offices will still work with Public Records to schedule and, where appropriate, reformat their records. So the bill will not have a direct impact on current practice involving municipal records. Further, the bill provided no new resources and implementation will, by necessity, be slow.

That is not to say there will be no impact. By allowing Public Records to focus on record management there may be, in the long run, opportunities for enhancing the scheduling of municipal records.

More importantly, the bill creates a framework of cooperation between the Archives and Public Records. As many clerks can attest, a diffuse or unclear authority over records complicates their management (think of land records, zoning and planning records, lister records, etc).

The new cooperative framework will allow the two programs to work together in better identification of State archival records and a better understanding of what needs documentation. A common understanding of goals and record systems will allow more efficient use of limited resources and improve access through consistent terminology identifying records. Such cooperation, important for managing paper records, is essential in addressing new information technologies.

It is that cooperation that promises long term benefits for municipal records. The more the two programs can identify and implement best practices at the State level, the more, and better, models municipal governments will have to draw from. Indeed, we look forward to the participation of clerks in identifying issues and solutions.



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