

Opinions

Office of the Vermont Secretary of State



Vol. 5, #12

December 2003



A Message from the Secretary

There is so much attention being given to Vermont by the national media these days because of the presidential campaign of Governor Howard Dean. One reporter asked whether anything unpleasant ever happens here.

communities who have sons or daughters, fathers or mothers, in Iraq and Afghanistan.

Let us share the peace and prosperity we feel in Vermont with others here and around the world!

I wish you and your family a great holiday season and a healthy and happy New Year.

Of course, it is easy to feel smug. This time of year the beauty of Vermont surrounds us. Snow covers our brown and gray hills making the green mountains sparkle with white. Our beautiful small communities are decorated for the holidays and look as though they come straight out of a postcard.

But behind the beauty there is some unpleasantness. We have people who cannot keep their homes warm in the winter, or who do not have reliable transportation to get to the grocery store or to the doctor. We have elders who must make difficult choices between food and medicine, and we have families that go hungry.

This year as we celebrate the holidays with our family and friends let's not forget those who are less fortunate. We can share our blessings by supporting the charities that work in our communities. We can volunteer our time at the local soup kitchen, shelter or the food shelf. We can offer our support to those families in our

Deborah L. Markowitz, Secretary of State

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Public Records Go Public

By Gregory Sanford, State Archivist

Public records certainly have been getting a lot of ink lately. National attention has been drawn to Howard Dean's gubernatorial records. Databases compiled by municipal appraisers have been subject to litigation pitting right to know arguments against privacy concerns. A legislatively-mandated study committee on municipal land records is wrestling with traditions of local control confronting the centralizing tendencies of economic and technological realities. Hearings on allowable charges for copies of public records heard from public officials about unremunerated costs of staff time, and from citizens about how staff time charges would make copies prohibitively expensive. A fire in the Winooski municipal clerk's office made us all think about disaster planning and the security of our records.

Government recordkeeping does not usually receive such attention. And that is as it should be; recordkeeping should be invisible. And yet recordkeeping does not take place in a vacuum and changes in the larger society affect the environment within which recordkeepers work.

The unusual and heavy use of gubernatorial records is obviously related to the successes of Howard Dean's campaign for the presidential nomination. Beyond the immediate impact on staff time, the use of the Archives for political, as opposed to institutional, purposes inspires a rethinking of traditional processes. What is it we want or need to document about a gubernatorial administration and what records best support that goal? How do we balance our right to know with the legal authorities a governor properly exercises to protect policy development? How can we separate the intertwined realities that gubernatorial records document both individual administrations and institutional continuities that bridge administrations? And how, when news media begin to focus on the use of the records, do we protect researchers' ability to inspect records without media scrutiny?

The issues surrounding the municipal appraisal records are linked, in part, to enhanced access through new technologies. What do we mean by "public" record when public now entails the ability to share information globally through the Internet? The changing nature of "public" leads us to re-examine what information

government collects, in what form, and whether privacy safeguards can be established without diminishing our right to know? For an earlier discussion of this issue see *Voice from the Vault* in the October 2003 *Opinions*.

Changing technologies and economic patterns also raise questions about cherished traditions of local control versus external centralizing forces. The study committee on municipal land records has heard strong arguments against mandates on how a municipality manages land records. It has also heard from key users of land records about how local control has created a patchwork of



practices that may lead lending institutions and title insurers to withhold services from some municipalities. How can we shape recordkeeping practices so that local governments can respond to change without being overwhelmed by technological and market forces—or by new mandates? For an earlier discussion of standardization see *Voice from the Vault* in the September 2003 *Opinions*.

The information held in public records is, arguably, the most valuable resource controlled by government. Public records prove a citizen's and government's ownership of property, provide government accountability, allow for the measurement of policy decisions, and contain significant economic, environmental and demographic information. Extracting that information in response to requests for copies of public records can be expensive, particularly in terms of staff time. Who should bear the costs? Can we rethink our recordkeeping systems to allow the better identification of records, including distinguishing between open and exempt records, to reduce the costs of responding to copy requests? However we define the issue or whatever solutions we envision, how do we effect a cultural change in an environment where recordkeeping is seen as separate from, and subservient to, service delivery?



The four hour fire rated vault in the Winooski municipal offices, by all accounts, protected the records stored within it. Yet the potential loss of electronic records because computers were not effectively backed-up raises questions for all of us charged with preserving public records. Again, this more than a technology-inspired issue. For example, recent case law and legislation has extended the range of documentation associated with maintaining marketable title to property. In many cases those (primarily zoning) records are not stored in town vaults but in the offices of the administrators. What would happen to property titles if those records were lost in a fire? But how can municipalities afford vaults adequate to the growing volume and extent of public records?

Each of these recent records-related stories raises opportunities to emphasize the importance of recordkeeping and attract support for our work. The Archives hopes to add a new section on disaster planning to its web site, while the collections care program of the Vermont Museum and Gallery Alliance is developing a cooperative emergency response program for records. The legislature may soon be taking up a wide range of record issues, providing opportunities for municipal and state recordkeepers to shape new approaches. Our time is now—let us make the most of it.



Opinions of *Opinions*

1. **Nominating Petitions Must Include Office and Term Length.** In municipalities using the Australian ballot system for election of officers Vermont law requires that candidates clearly indicate the office and term length on the petition prior to circulating it for signatures. 17 V.S.A. §2681(b). For example, a candidate cannot circulate a petition for selectboard without indicating which term he or she is seeking. It is permissible 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. However, 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.
2. **Town Clerk/Treasurer May Serve As Village Clerk/Treasurer.** It is permissible for 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.
3. **Regional Development Corporation Is Subject to the Open Meeting Law.** A regional development corporation approved by the commissioner of commerce and community development is subject to the open meeting and public records law in 1 V.S.A. §310 et seq. with one exception. A special exemption has been created in 24 V.S.A. §2786 to allow regional development corporations to meet in executive session to consider proposed transactions or agreements in furtherance of development purposes. This allows the corporations to meet privately with potential developers to discuss opportunities for establishing operations up until a contract or agreement is signed.
4. **Vermont Presidential Primary Petition Signatures Do Not Need To Be Verified By Towns.** The Presidential Primary candidates must collect 1,000 signatures from legal voters in Vermont on petitions and submit the petitions to the Office of the Secretary of State along with a filing fee of \$2,000 on or before 5p.m. on January 19, 2004. Petitions for candidates to be placed on the March Presidential Primary do not need to have the signatures verified or certified by Town or City Clerks.
5. **Ballot Preference Must Be Noted On Voter Checklist For Presidential Primary.** The entrance checklist for the Presidential Primary on March 2, 2004 must record a R for Republican or D for Democrat to indicate the ballot of the major party chosen by each participating voter. 17 V.S.A. §2704. This is the only election in which the entrance checklist will be marked to indicate the voter's choice of ballot. This provision is included in the law for the Presidential Preference Primary only.
6. **Board May Negotiate Price for Property In Purchases.** There is no statutory limit to the purchase price a municipality can pay for real property that is needed for municipal purposes. Obviously it is a best practice for a selectboard or school board to negotiate a price on any purchase that the electorate will consider fair and reasonable, but no rule or statute limits the board. Note that if a municipality intends to purchase property with grant money, it may have to follow grant rules that limit purchase price to the certified appraised value or some other limit.

- 7. Voters May Not Petition Directly To The Selectboard For A Vote On A Proposed Zoning Amendment.** Rather, such a petition must be brought to the planning commission who is directed by law to simply correct any technical deficiency, and then “promptly proceed” with public notice and hearings, prepare a report as though the proposal had been drafted by the commission and then submit the proposal to the Selectboard. 24 V.S.A. § 4403(b).
- 8. Planning Commission May Not Change Petitioned Amendment.** Except for correcting technical deficiencies, the planning commission may not make changes to a petitioned bylaw or amendment. However, when it submits the amendment to the legislative body for action it may include its recommendation or opinion about the proposal. 24 V.S.A. § 4403(f).
- 9. Failure Of Selectboard to Hold Public Hearing Will Not Invalidate Bylaw.** Within 120 days of receiving a proposed amendment or repeal of local land use bylaws from the planning commission, the selectboard must hold the first of one or more public hearings. However, the law provides that failure to hold a hearing within the 120 days shall not invalidate the adoption of the bylaw or amendment or the validity of any repeal. 24 V.S.A. § 4404(a).
- 10. Town May Hold Public Hearing On Zoning Amendment At Australian Ballot Informational Meeting.** The law permits a community to combine its public hearing on a proposed zoning amendment or repeal with a meeting or hearing that addresses other matters so long as the proper public notice is provided. 24 V.S.A. § 4404(g). This means that a town may choose to include a public hearing on a proposed bylaw amendment at its public informational hearing that is held prior to an Australian Ballot Vote. Note after the last public hearing is held the bylaw proposal can be finalized by the selectboard and then placed on the ballot for a vote (or voted on by the board, if it is an urban municipality that has not elected to have the voters approved bylaw proposals.) 24 V.S.A. § 4404(d). A town may not place the proposed bylaw on the ballot prior to the final public hearing.
- 11. A Vote Is Effective When It is Taken.** A vote is always effective when the results of the vote is certified by the chief elections official unless the law provides otherwise. This means a newly elected official begins their office at town meeting (in contrast to state officials who, according to law, take office in January after the election) and zoning amendment or municipal ordinance permissive referendum becomes effective when voted. 24 V.S.A. §§ 1973(e), 4404(d)(1).
- 12. Board Of Abatement Has Alternative Quorum Requirements.** The board of civil authority, with the listers and the town treasurer, makes up the board for the abatement of town, town school district taxes, and current use taxes. In the alternative the quorum requirement will be met if the town treasurer, a majority of the listers and a majority of the selectmen are present at the meeting. Unlike most other local boards, an act of a majority of a quorum at a meeting is all that is required for the board to act. 24 V.S.A. § 1533.
- 13. Assistant Treasurer Stands In When Treasurer Is Ill Or Absent.** An assistant treasurer, during the temporary absence or disability of the treasurer, must perform the duties of treasurer. The treasurer is still held responsible for the acts and omissions of an assistant appointed by him or her. Note that if the treasurer does not appoint an assistant the selectboard can make written request for him or her to do so, and if the treasurer fails for ten days to appoint an assistant the selectboard may appoint an assistant treasurer and may revoke the appointment at any time. The treasurer will not be liable for the acts or omissions of an assistant that was appointed by the selectboard. 24 V.S.A. § 1573.

- 14. Selectboard Must Agree To Investments Of Town Funds.** Although the law makes the treasurer responsible for all of the accounts of the town, it permits moneys received by the town treasurer on behalf of the town to be invested and reinvested by the treasurer only with the approval of the legislative body. 24 V.S.A. § 1571.
- 15. Selectboard Can Call For A Special Audit At Any Time.** The treasurer must settle with the auditors of the town every year five days before town meeting. In addition, the treasurer must settle the town accounts with the auditors when requested by the selectboard. The selectboard is not required to provide a specific reason or concern, but can simply require that settlement of the books by the auditors be conducted on a more regular basis. 24 V.S.A. § 1578.
- 16. Town Treasurer Serves As School Treasurer Unless School Votes Otherwise.** The town treasurer serves as the treasurer of the town school district unless the school district elects a town school district treasurer. The town treasurer cannot decide to give up the duties of the school treasurer, however, it can appoint an assistant treasurer to perform the school treasurer duties. For convenience, the treasurer could consider appointing the school district's bookkeeper or financial manager as the assistant treasurer. The treasurer will be responsible for the acts and omissions of the assistant treasurer. 24 V.S.A. § 426.
- 17. School District May Not Vote To Eliminate Town Auditors.** The law permits a town to vote to eliminate its board of auditors. If such a vote passes the town is required to hire a public accountant to audit both the town and school accounts. If the town has not elected to eliminate the office of auditor, the town school district cannot vote to use a public accountant instead of the town auditors. However, if the town auditors and the school board agree, the law provides that the town auditors need not conduct an audit of school district accounts as to school district fiscal years that are audited by a public accountant. 24 V.S.A. § 1681.
- 18. Subcommittee Of Board Must Follow Open Meeting Law.** The open meeting law applies to all meetings of public bodies, including the selectboard, school board and other local boards. The law specifically provides that subcommittees of these boards are also subject to the open meeting law. 1 V.S.A. § 310(3). This means, for example, when a budget or personnel committee of a selectboard or school board meets it must provide public notice of the meeting, keep minutes and follow all of the requirements of the open meeting law with respect to executive sessions and public participation.
- 19. Towns May Charge An Impact Fee To Offset Costs Of Development.** Vermont law authorizes municipalities to charge a fee as a condition of a zoning or subdivision permit that will be used to cover any portion of the costs of an existing or planned capital project that will benefit or is attributable to the users of the development or to compensate the municipality for any expenses it incurs as a result of construction. 24 V.S.A. § 5202. In order to be eligible for charging impact fees the municipality must have adopted a capital budget and program, and its planning program must be approved by the regional planning commission. 24 V.S.A. § 5203(a). The fee must be levied according to a formula set out in law so that the developer is required only to pay the percentage of the cost of the capital project that will benefit or is attributable to the development. 24 V.S.A. § 5203(b).
- 20. Town Manager May Be Removed "For Cause".** Once a community has voted to adopt the town manager form of government the selectboard may hire a manager to help run the town. The law requires that the manager be selected with special reference to his or her education, training and experience and without reference to his or her political beliefs. The board, by majority vote, may remove the manager at any time for cause. 24 V.S.A. § 1233.

- 21. Town Manager Has General Supervision Of The Affairs of the Town.** The town manager has general supervision over the affairs of the town. The manager is the administrative head of all departments of the town and is responsible for the efficient administration of town government. However, in all things the manager must act at the direction of the selectboard. 24 V.S.A. §§1233, 1235.
- 22. Voters Can Set Pay Of Manager.** The selectboard generally sets the salary of the town manager. However, if the voters vote a particular salary the selectboard is bound by the amount set. 24 V.S.A. § 1239.
- 23. Town Can Vote To Have Manager Collect Taxes.** The voters can elect to have the town manager collect all taxes due the town and perform all the duties conferred by law upon the collector of taxes. Once voted, the manager will serve as the tax collector until the voters elect otherwise. When the town manager collects delinquent taxes he or she may charge and collect the same fees as a collector of taxes that will be paid into the town treasury. 24 V.S.A. § 1236.

ERRATA: In November Opinions there were typos in Opinion 20. The correct wording is as follows:

20. A member of a Development Review Board or Zoning Board of Adjustment can only be removed “for cause” by the Selectboard after being given written charges and a public hearing. 24 V.S.A. §4461(b)

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 Doreen Aldrich, Clerk/Treasurer from Rockingham



In Rockingham we used our restoration fund to put all of our select board minutes on CD-ROM. Our computers are networked so we made a folder and put it on our shared drive to allow all departments to search by word. We no longer have to pour through minute books to find information. It saves us valuable time and money. As soon as we complete our web page the minutes will be available to the public.

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

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



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

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

December 2003

Wednesday, December 10th: Local Economic Development Strategies

Capitol Plaza Hotel, Montpelier

This workshop will focus on what municipalities can do to attract and retain both small businesses and large employers.

Thursday, December 11th: Planning & Zoning Series #2: Agriculture and Local Zoning

Vermont Interactive TV

This evening workshop will clarify a town's ability to regulate agricultural uses through zoning and clear up the confusion surrounding the statutory terms "accepted silvicultural practices" and "agricultural or farming practices."

January 2004

Thursday, January 15th: Wind Power and Municipalities

Suzanna's Restaurant, Berlin

Wind tower proposals pose many issues for municipalities, among them, how to participate in Public Service Board proceedings, regulating off-grid vs. on-grid generators, and amending town plans to address wind generation. This workshop will answer these and other questions.

Thursday, January 29th: Municipal Lands Management

Hulbert Outdoor Center, Fairlee

This workshop will focus on the legal, insurance, and management issues involved with town forests, parks, and natural areas.

February 2004

Thursday, February 5th: Moderators' Town Meeting Tune-up

Suzanna's Restaurant, Berlin

A parliamentarian's paradise, this annual workshop is designed for seasoned and new town moderators and will focus on the statutory requirements of town meeting, Robert's Rules, and best practices for making it through unscathed.

Wednesday, February 11th: Local Government Day

Capitol Plaza Hotel, Montpelier

A special day at the Vermont State House for local officials to hear about the status of pending legislation from VLCT and VMCTA representatives, attend legislative hearings, and speak with their representatives in the Vermont Legislature.

Thursday, February 19th: Making Grants Work for Your Municipality

Capitol Plaza Hotel, Montpelier

This workshop will bring together multiple private and public grant funders for municipal projects ranging from downtown revitalization to public works.

March 2004

Thursday, March 11th: Planning & Zoning Series #3: Child Care Facilities

Vermont Interactive TV

The 2003 legislative session added a new planning goal to 24 VSA Chapter 117: ensure the availability of safe and affordable childcare and integrate childcare into the planning process. This evening workshop will provide guidance in implementing this new goal.

Thursday, March 18th: Town Highways

Suzanna's Restaurant, Berlin

With 80 percent of the state's roads under local stewardship, town highway maintenance is of great concern to citizens and businesses. This workshop will focus on the legal, pragmatic, and budgetary concerns involved in managing a town highway system.

April 2004

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

Suzanna's Restaurant, Berlin

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

Thursday, April 22th: Legal Aspects of Property Taxes

Capitol Plaza Hotel, Montpelier

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

May 2004

Thursday, May 6th: Municipal Attorneys' Forum

Capitol Plaza Hotel, Montpelier

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

Thursday, May 20th: Clerks and Treasurers Workshops

Capitol Plaza Hotel, Montpelier

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

June 2004

Thursday, June 10th: Planning & Zoning Series #4: Natural Resource Planning

Vermont Interactive TV

This final evening session in the series will illustrate how local tools such as the town plan, zoning bylaws, and municipal ordinances can be vital tools for protecting open space, shore lands, flood plains, and preserving scenic and historic features.

December 2003

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

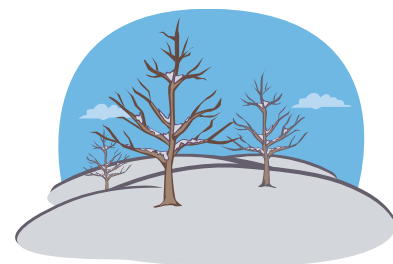
December 14: Last day for Listers to add omitted inventory to tax roles. 32:4086

December 23: (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)



January 2004

January 1: New Year's Day. 1:371

January 2: (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)(6)

January 6: Legislature reconvenes (second year of biennium).

January 15: Last day for Tax Collector to deliver unpaid real and personal property tax lists to Treasurer. 32:5162

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

January 19: Martin Luther King, Jr.'s Birthday. 1:371

*We wish you and your families a safe
and happy holiday season!*

January 2004 continued

January 22: 40 days before Town Meeting

- Last day to file petitions signed by at least five percent of voters with Town Clerk for articles to be included in Town Meeting warnings. 17:2642(a)
- The legislative body has its first opportunity to warn the annual Town Meeting and the Presidential Primary for Major Party Candidates, and post the warning and notices in two public places and in or near the Town Clerk's office. 17:2641(a), 17:2642, 17:2701
- Last day Town Clerk may request additional ballots from the Secretary of State, if necessary due to unusual growth of the checklist. 17:2478(d)
- Last day for Board of Civil Authority to designate polling places and, if necessary, divide the checklist according to geographic boundaries. 17:2501
- (10 days before first public hearing) Official copy of proposed charter amendments must be filed in Town Clerk's office if vote is to be taken on Town Meeting Day. 17:2645(a)(2)

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

January 26: (Sixth Monday before election) 5:00 p.m. deadline for filing with the Town Clerk nominating petitions for town offices to be filled by Australian Ballot. 17:2681(a) Within 24 hours from receipt Town Clerk must return nominating petitions found not to conform, stating in writing the reasons why they cannot be accepted. 17:2681(e)

January 27: Last day for Auditors to post 10 days' notice of their meeting to examine town accounts. 24:1681

January 28: (Wednesday after filing deadline) 5:00 p.m. deadline for candidates to file written consent for the candidate's name to be on the ballot. 17:2681(a)

January 28: 5:00 p.m. deadline for a person to withdraw after he or she has consented to be nominated. 17:2681(d) or 5:00 p.m. deadline for candidates to file supplementary petitions if initial petition was not accepted. 17:2681(e)

January 30: Last day for Town Clerk in municipality with fiscal year ending December 31 to publicly disclose fees kept as compensation for that fiscal year. 24:1179

January 31: Last day to mail W-2 Withholding Forms to employees and last day to file Form 941 (Quarterly Withholding Return) with the IRS.

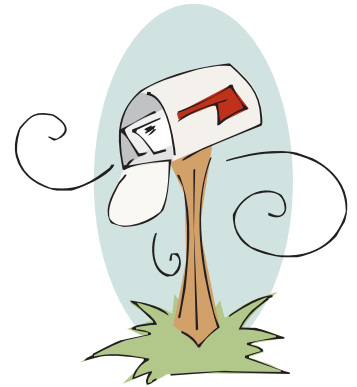
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But behind the beauty there is some unpleasantness. We have people who cannot keep their homes warm in the winter, or who do not have reliable transportation to get to the grocery store or to the doctor. We have elders who must make difficult choices between food and medicine, and we have families that go hungry.

This year as we celebrate the holidays with our family and friends let's not forget those who are less fortunate. We can share our blessings by supporting the charities that work in our communities. We can volunteer our time at the local soup kitchen, shelter or the food shelf. We can offer our support to those families in our

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practices that may lead lending institutions and title insurers to withhold services from some municipalities. How can we shape recordkeeping practices so that local governments can respond to change without being overwhelmed by technological and market forces—or by new mandates? For an earlier discussion of standardization see *Voice from the Vault* in the September 2003 *Opinions*.

The information held in public records is, arguably, the most valuable resource controlled by government. Public records prove a citizen's and government's ownership of property, provide government accountability, allow for the measurement of policy decisions, and contain significant economic, environmental and demographic information. Extracting that information in response to requests for copies of public records can be expensive, particularly in terms of staff time. Who should bear the costs? Can we rethink our recordkeeping systems to allow the better identification of records, including distinguishing between open and exempt records, to reduce the costs of responding to copy requests? However we define the issue or whatever solutions we envision, how do we effect a cultural change in an environment where recordkeeping is seen as separate from, and subservient to, service delivery?



The four hour fire rated vault in the Winooski municipal offices, by all accounts, protected the records stored within it. Yet the potential loss of electronic records because computers were not effectively backed-up raises questions for all of us charged with preserving public records. Again, this more than a technology-inspired issue. For example, recent case law and legislation has extended the range of documentation associated with maintaining marketable title to property. In many cases those (primarily zoning) records are not stored in town vaults but in the offices of the administrators. What would happen to property titles if those records were lost in a fire? But how can municipalities afford vaults adequate to the growing volume and extent of public records?

Each of these recent records-related stories raises opportunities to emphasize the importance of recordkeeping and attract support for our work. The Archives hopes to add a new section on disaster planning to its web site, while the collections care program of the Vermont Museum and Gallery Alliance is developing a cooperative emergency response program for records. The legislature may soon be taking up a wide range of record issues, providing opportunities for municipal and state recordkeepers to shape new approaches. Our time is now—let us make the most of it.



Opinions of *Opinions*

1. **Nominating Petitions Must Include Office and Term Length.** In municipalities using the Australian ballot system for election of officers Vermont law requires that candidates clearly indicate the office and term length on the petition prior to circulating it for signatures. 17 V.S.A. §2681(b). For example, a candidate cannot circulate a petition for selectboard without indicating which term he or she is seeking. It is permissible 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. However, 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.
2. **Town Clerk/Treasurer May Serve As Village Clerk/Treasurer.** It is permissible for 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.
3. **Regional Development Corporation Is Subject to the Open Meeting Law.** A regional development corporation approved by the commissioner of commerce and community development is subject to the open meeting and public records law in 1 V.S.A. §310 et seq. with one exception. A special exemption has been created in 24 V.S.A. §2786 to allow regional development corporations to meet in executive session to consider proposed transactions or agreements in furtherance of development purposes. This allows the corporations to meet privately with potential developers to discuss opportunities for establishing operations up until a contract or agreement is signed.
4. **Vermont Presidential Primary Petition Signatures Do Not Need To Be Verified By Towns.** The Presidential Primary candidates must collect 1,000 signatures from legal voters in Vermont on petitions and submit the petitions to the Office of the Secretary of State along with a filing fee of \$2,000 on or before 5p.m. on January 19, 2004. Petitions for candidates to be placed on the March Presidential Primary do not need to have the signatures verified or certified by Town or City Clerks.
5. **Ballot Preference Must Be Noted On Voter Checklist For Presidential Primary.** The entrance checklist for the Presidential Primary on March 2, 2004 must record a R for Republican or D for Democrat to indicate the ballot of the major party chosen by each participating voter. 17 V.S.A. §2704. This is the only election in which the entrance checklist will be marked to indicate the voter's choice of ballot. This provision is included in the law for the Presidential Preference Primary only.
6. **Board May Negotiate Price for Property In Purchases.** There is no statutory limit to the purchase price a municipality can pay for real property that is needed for municipal purposes. Obviously it is a best practice for a selectboard or school board to negotiate a price on any purchase that the electorate will consider fair and reasonable, but no rule or statute limits the board. Note that if a municipality intends to purchase property with grant money, it may have to follow grant rules that limit purchase price to the certified appraised value or some other limit.

- 7. Voters May Not Petition Directly To The Selectboard For A Vote On A Proposed Zoning Amendment.** Rather, such a petition must be brought to the planning commission who is directed by law to simply correct any technical deficiency, and then “promptly proceed” with public notice and hearings, prepare a report as though the proposal had been drafted by the commission and then submit the proposal to the Selectboard. 24 V.S.A. § 4403(b).
- 8. Planning Commission May Not Change Petitioned Amendment.** Except for correcting technical deficiencies, the planning commission may not make changes to a petitioned bylaw or amendment. However, when it submits the amendment to the legislative body for action it may include its recommendation or opinion about the proposal. 24 V.S.A. § 4403(f).
- 9. Failure Of Selectboard to Hold Public Hearing Will Not Invalidate Bylaw.** Within 120 days of receiving a proposed amendment or repeal of local land use bylaws from the planning commission, the selectboard must hold the first of one or more public hearings. However, the law provides that failure to hold a hearing within the 120 days shall not invalidate the adoption of the bylaw or amendment or the validity of any repeal. 24 V.S.A. § 4404(a).
- 10. Town May Hold Public Hearing On Zoning Amendment At Australian Ballot Informational Meeting.** The law permits a community to combine its public hearing on a proposed zoning amendment or repeal with a meeting or hearing that addresses other matters so long as the proper public notice is provided. 24 V.S.A. § 4404(g). This means that a town may choose to include a public hearing on a proposed bylaw amendment at its public informational hearing that is held prior to an Australian Ballot Vote. Note after the last public hearing is held the bylaw proposal can be finalized by the selectboard and then placed on the ballot for a vote (or voted on by the board, if it is an urban municipality that has not elected to have the voters approved bylaw proposals.) 24 V.S.A. § 4404(d). A town may not place the proposed bylaw on the ballot prior to the final public hearing.
- 11. A Vote Is Effective When It is Taken.** A vote is always effective when the results of the vote is certified by the chief elections official unless the law provides otherwise. This means a newly elected official begins their office at town meeting (in contrast to state officials who, according to law, take office in January after the election) and zoning amendment or municipal ordinance permissive referendum becomes effective when voted. 24 V.S.A. §§ 1973(e), 4404(d)(1).
- 12. Board Of Abatement Has Alternative Quorum Requirements.** The board of civil authority, with the listers and the town treasurer, makes up the board for the abatement of town, town school district taxes, and current use taxes. In the alternative the quorum requirement will be met if the town treasurer, a majority of the listers and a majority of the selectmen are present at the meeting. Unlike most other local boards, an act of a majority of a quorum at a meeting is all that is required for the board to act. 24 V.S.A. § 1533.
- 13. Assistant Treasurer Stands In When Treasurer Is Ill Or Absent.** An assistant treasurer, during the temporary absence or disability of the treasurer, must perform the duties of treasurer. The treasurer is still held responsible for the acts and omissions of an assistant appointed by him or her. Note that if the treasurer does not appoint an assistant the selectboard can make written request for him or her to do so, and if the treasurer fails for ten days to appoint an assistant the selectboard may appoint an assistant treasurer and may revoke the appointment at any time. The treasurer will not be liable for the acts or omissions of an assistant that was appointed by the selectboard. 24 V.S.A. § 1573.

- 14. Selectboard Must Agree To Investments Of Town Funds.** Although the law makes the treasurer responsible for all of the accounts of the town, it permits moneys received by the town treasurer on behalf of the town to be invested and reinvested by the treasurer only with the approval of the legislative body. 24 V.S.A. § 1571.
- 15. Selectboard Can Call For A Special Audit At Any Time.** The treasurer must settle with the auditors of the town every year five days before town meeting. In addition, the treasurer must settle the town accounts with the auditors when requested by the selectboard. The selectboard is not required to provide a specific reason or concern, but can simply require that settlement of the books by the auditors be conducted on a more regular basis. 24 V.S.A. § 1578.
- 16. Town Treasurer Serves As School Treasurer Unless School Votes Otherwise.** The town treasurer serves as the treasurer of the town school district unless the school district elects a town school district treasurer. The town treasurer cannot decide to give up the duties of the school treasurer, however, it can appoint an assistant treasurer to perform the school treasurer duties. For convenience, the treasurer could consider appointing the school district's bookkeeper or financial manager as the assistant treasurer. The treasurer will be responsible for the acts and omissions of the assistant treasurer. 24 V.S.A. § 426.
- 17. School District May Not Vote To Eliminate Town Auditors.** The law permits a town to vote to eliminate its board of auditors. If such a vote passes the town is required to hire a public accountant to audit both the town and school accounts. If the town has not elected to eliminate the office of auditor, the town school district cannot vote to use a public accountant instead of the town auditors. However, if the town auditors and the school board agree, the law provides that the town auditors need not conduct an audit of school district accounts as to school district fiscal years that are audited by a public accountant. 24 V.S.A. § 1681.
- 18. Subcommittee Of Board Must Follow Open Meeting Law.** The open meeting law applies to all meetings of public bodies, including the selectboard, school board and other local boards. The law specifically provides that subcommittees of these boards are also subject to the open meeting law. 1 V.S.A. § 310(3). This means, for example, when a budget or personnel committee of a selectboard or school board meets it must provide public notice of the meeting, keep minutes and follow all of the requirements of the open meeting law with respect to executive sessions and public participation.
- 19. Towns May Charge An Impact Fee To Offset Costs Of Development.** Vermont law authorizes municipalities to charge a fee as a condition of a zoning or subdivision permit that will be used to cover any portion of the costs of an existing or planned capital project that will benefit or is attributable to the users of the development or to compensate the municipality for any expenses it incurs as a result of construction. 24 V.S.A. § 5202. In order to be eligible for charging impact fees the municipality must have adopted a capital budget and program, and its planning program must be approved by the regional planning commission. 24 V.S.A. § 5203(a). The fee must be levied according to a formula set out in law so that the developer is required only to pay the percentage of the cost of the capital project that will benefit or is attributable to the development. 24 V.S.A. § 5203(b).
- 20. Town Manager May Be Removed "For Cause".** Once a community has voted to adopt the town manager form of government the selectboard may hire a manager to help run the town. The law requires that the manager be selected with special reference to his or her education, training and experience and without reference to his or her political beliefs. The board, by majority vote, may remove the manager at any time for cause. 24 V.S.A. § 1233.

- 21. Town Manager Has General Supervision Of The Affairs of the Town.** The town manager has general supervision over the affairs of the town. The manager is the administrative head of all departments of the town and is responsible for the efficient administration of town government. However, in all things the manager must act at the direction of the selectboard. 24 V.S.A. §§1233, 1235.
- 22. Voters Can Set Pay Of Manager.** The selectboard generally sets the salary of the town manager. However, if the voters vote a particular salary the selectboard is bound by the amount set. 24 V.S.A. § 1239.
- 23. Town Can Vote To Have Manager Collect Taxes.** The voters can elect to have the town manager collect all taxes due the town and perform all the duties conferred by law upon the collector of taxes. Once voted, the manager will serve as the tax collector until the voters elect otherwise. When the town manager collects delinquent taxes he or she may charge and collect the same fees as a collector of taxes that will be paid into the town treasury. 24 V.S.A. § 1236.

ERRATA: In November Opinions there were typos in Opinion 20. The correct wording is as follows:

20. A member of a Development Review Board or Zoning Board of Adjustment can only be removed “for cause” by the Selectboard after being given written charges and a public hearing. 24 V.S.A. §4461(b)

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 Doreen Aldrich, Clerk/Treasurer from Rockingham



In Rockingham we used our restoration fund to put all of our select board minutes on CD-ROM. Our computers are networked so we made a folder and put it on our shared drive to allow all departments to search by word. We no longer have to pour through minute books to find information. It saves us valuable time and money. As soon as we complete our web page the minutes will be available to the public.

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

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



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

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

December 2003

Wednesday, December 10th: Local Economic Development Strategies

Capitol Plaza Hotel, Montpelier

This workshop will focus on what municipalities can do to attract and retain both small businesses and large employers.

Thursday, December 11th: Planning & Zoning Series #2: Agriculture and Local Zoning

Vermont Interactive TV

This evening workshop will clarify a town's ability to regulate agricultural uses through zoning and clear up the confusion surrounding the statutory terms "accepted silvicultural practices" and "agricultural or farming practices."

January 2004

Thursday, January 15th: Wind Power and Municipalities

Suzanna's Restaurant, Berlin

Wind tower proposals pose many issues for municipalities, among them, how to participate in Public Service Board proceedings, regulating off-grid vs. on-grid generators, and amending town plans to address wind generation. This workshop will answer these and other questions.

Thursday, January 29th: Municipal Lands Management

Hulbert Outdoor Center, Fairlee

This workshop will focus on the legal, insurance, and management issues involved with town forests, parks, and natural areas.

February 2004

Thursday, February 5th: Moderators' Town Meeting Tune-up

Suzanna's Restaurant, Berlin

A parliamentarian's paradise, this annual workshop is designed for seasoned and new town moderators and will focus on the statutory requirements of town meeting, Robert's Rules, and best practices for making it through unscathed.

Wednesday, February 11th: Local Government Day

Capitol Plaza Hotel, Montpelier

A special day at the Vermont State House for local officials to hear about the status of pending legislation from VLCT and VMCTA representatives, attend legislative hearings, and speak with their representatives in the Vermont Legislature.

Thursday, February 19th: Making Grants Work for Your Municipality

Capitol Plaza Hotel, Montpelier

This workshop will bring together multiple private and public grant funders for municipal projects ranging from downtown revitalization to public works.

March 2004

Thursday, March 11th: Planning & Zoning Series #3: Child Care Facilities

Vermont Interactive TV

The 2003 legislative session added a new planning goal to 24 VSA Chapter 117: ensure the availability of safe and affordable childcare and integrate childcare into the planning process. This evening workshop will provide guidance in implementing this new goal.

Thursday, March 18th: Town Highways

Suzanna's Restaurant, Berlin

With 80 percent of the state's roads under local stewardship, town highway maintenance is of great concern to citizens and businesses. This workshop will focus on the legal, pragmatic, and budgetary concerns involved in managing a town highway system.

April 2004

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

Suzanna's Restaurant, Berlin

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

Thursday, April 22th: Legal Aspects of Property Taxes

Capitol Plaza Hotel, Montpelier

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

May 2004

Thursday, May 6th: Municipal Attorneys' Forum

Capitol Plaza Hotel, Montpelier

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

Thursday, May 20th: Clerks and Treasurers Workshops

Capitol Plaza Hotel, Montpelier

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

June 2004

Thursday, June 10th: Planning & Zoning Series #4: Natural Resource Planning

Vermont Interactive TV

This final evening session in the series will illustrate how local tools such as the town plan, zoning bylaws, and municipal ordinances can be vital tools for protecting open space, shore lands, flood plains, and preserving scenic and historic features.

December 2003

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

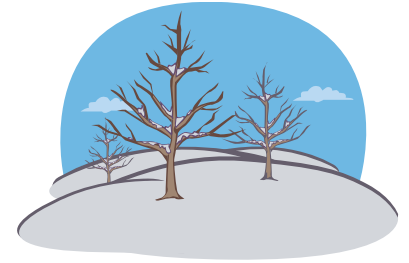
December 14: Last day for Listers to add omitted inventory to tax roles. 32:4086

December 23: (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)



January 2004

January 1: New Year's Day. 1:371

January 2: (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)(6)

January 6: Legislature reconvenes (second year of biennium).

January 15: Last day for Tax Collector to deliver unpaid real and personal property tax lists to Treasurer. 32:5162

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

January 19: Martin Luther King, Jr.'s Birthday. 1:371

*We wish you and your families a safe
and happy holiday season!*

January 2004 continued

January 22: 40 days before Town Meeting

- Last day to file petitions signed by at least five percent of voters with Town Clerk for articles to be included in Town Meeting warnings. 17:2642(a)
- The legislative body has its first opportunity to warn the annual Town Meeting and the Presidential Primary for Major Party Candidates, and post the warning and notices in two public places and in or near the Town Clerk's office. 17:2641(a), 17:2642, 17:2701
- Last day Town Clerk may request additional ballots from the Secretary of State, if necessary due to unusual growth of the checklist. 17:2478(d)
- Last day for Board of Civil Authority to designate polling places and, if necessary, divide the checklist according to geographic boundaries. 17:2501
- (10 days before first public hearing) Official copy of proposed charter amendments must be filed in Town Clerk's office if vote is to be taken on Town Meeting Day. 17:2645(a)(2)

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

January 26: (Sixth Monday before election) 5:00 p.m. deadline for filing with the Town Clerk nominating petitions for town offices to be filled by Australian Ballot. 17:2681(a) Within 24 hours from receipt Town Clerk must return nominating petitions found not to conform, stating in writing the reasons why they cannot be accepted. 17:2681(e)

January 27: Last day for Auditors to post 10 days' notice of their meeting to examine town accounts. 24:1681

January 28: (Wednesday after filing deadline) 5:00 p.m. deadline for candidates to file written consent for the candidate's name to be on the ballot. 17:2681(a)

January 28: 5:00 p.m. deadline for a person to withdraw after he or she has consented to be nominated. 17:2681(d) or 5:00 p.m. deadline for candidates to file supplementary petitions if initial petition was not accepted. 17:2681(e)

January 30: Last day for Town Clerk in municipality with fiscal year ending December 31 to publicly disclose fees kept as compensation for that fiscal year. 24:1179

January 31: Last day to mail W-2 Withholding Forms to employees and last day to file Form 941 (Quarterly Withholding Return) with the IRS.

Happy New Year!

Mailing List Updates!

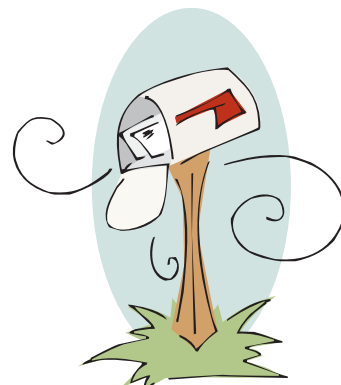
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