

Opinions

Office of the Vermont Secretary of State



Vol. 8, #11

December 2006

A Message from the Secretary



I am proud of the way we run elections in Vermont. We are lucky not to face the problems of voters around the country who were faced with failures of new election equipment, confusing voter identification

rules, and improper purges of voters from their registration rolls. Vermonters feel confident that our elections are accurate, transparent and fair.

Of course, it takes the hard work of a lot of people to run our elections.

I want to recognize the elections division staff – Kathy DeWolfe, Melanie Hodge, Katie Lane-Karnas and David Crossman for their exceptional work. I want to thank Kathy and her staff for their great planning, keen attention to detail and high level of professionalism. This was the first general election with all of the requirements of the Help America Vote Act in place, and despite the challenges this presented, as well as the usual (and new) challenges we face every time there are hotly contested races; because of their hard work, the elections ran smoothly.

I also want to recognize Vermont's town clerks and their election assistants.

It is not easy to run an election. Long lines of voters waiting to check in, voters who can't remember where they are registered, politicians glad-handing voters outside the polling place, poll watchers who cannot hear names and, this year, piles and piles of absentee ballots to process. And yet, it is essential to our trust in the democratic process that our election workers perform their duties professionally, and without bias.

Finally, I want to thank all of the county clerks who, for the first time in over 25 years, will be participating in a statewide recount. These clerks and their staff will have to carve time

out of their busy schedules to organize and oversee the hand recount of hundreds of thousands of votes. Finding enough people to count, and following the very precise state recount laws while all eyes are watching is not easy! They deserve our thanks!

Finally, I want to express my personal gratitude to the people of the State of Vermont for honoring me by electing me to serve as Secretary of State for two more years. If you have any thoughts about how we might improve our services to Vermont's local officials in this next term please give me a call.

Thank you!

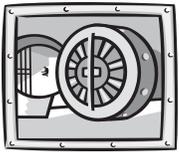
Deborah L. Markowitz, Secretary of State

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Education and Property Taxes: A View From 1890

Somehow when I wasn't looking, I seem to have morphed into being a bureaucrat. Now, instead of whiling away the day contemplating the wonderful information held in the vault, I go to meetings, set out policies and priorities, and other things administrative.



This leads to a certain wistfulness, particularly when we create new tools for researching the Vermont experience. The Archives' new section containing the full texts of gubernatorial inaugural and farewell addresses is a case in point (see my October 2006 column or visit <http://vermont-archives.org/govhistory/gov/govinaug/index.htm>). There is much information in the addresses that begs further examination.

Take William P. Dillingham's 1890 farewell address. Governor Dillingham reflected on a new education law that required certification of teachers. The goal of certification was to develop a common level of educational training and thus some uniformity in education among the towns and school districts. As with many a well-intended goal there was an unanticipated side effect. Dillingham noted that while there was now "increased competency" among teachers, "wages are somewhat higher, particularly in those districts where the cheapest teachers were formerly employed."

Those "cheapest teachers" were primarily found in the poorer rural districts, which now had to pay more. This led to further ponderings by Dillingham. For reasons that will be clear, I quote at length:

"The complaints regarding the operation of the present law, come, as before stated, mostly from the back towns and districts, and relate almost wholly to the matter of expense. In his investigations of these complaints, the superintendent [of education] has made a careful study of their difficulties, and the facts he has brought to light in relation to the inequalities in taxation for school purposes are positively startling. From tables he has prepared it appears that while there are towns in the state in which the average rate of taxation for school purposes amounts to only seventeen cents on the dollar of the grand list, there are others where it amounts to seventy-five cents, and one in which such average rate is one hundred and thirty cents.

The same disparity in the rate of school taxes that exist among the different towns, exists also in as great a degree among the different districts in individual towns. In the villages where the grand list is large, the taxes are light; while in the hill districts where the grand list is small, they are almost uniformly burdensome. In glancing through these tables, I notice that in a town like Bennington, one district escapes with a tax of six cents on the dollar of the grand list, while another is subject to the burden of a tax ten times as great in its rate. The same also appears to be true in Brattleboro, where one district requires a tax of only ten cents on the dollar of its grand list, while another requires one hundred; while in Bakersfield the disparity reaches the greatest extreme, and the contrast in the condition of the people in different districts in this respect is exhibited by the fact that in one district the rate of school taxation is only seven percent, while in another it is two hundred and fifteen percent. These, of course, are extreme instances, and yet you will probably be surprised when you examine the tables prepared by the superintendent, and note the great inequalities that exist in taxation for school purposes in every town where the district system has been retained.

In his investigation the superintendent has become convinced that a great wrong has been done to the poorer class of towns and the smaller districts in the failure to provide an adequate system for equalizing taxation for the maintenance of the common schools, and after mature consideration, he has reached the conclusion that the wrong can never be remedied until we adopt the policy already adopted by at least nine-tenths of our sister states in levying a state tax for this specific purpose.

He therefore recommends a state tax to equalize taxation for school purposes among the towns, and the adoption of the town system to equalize taxation among the districts. In addition to such innovations, he also favors a law by which all pupils in our public schools shall be supplied with the required text books at the public expense.

He bases his argument in favor of such recommendation upon the broad proposition that the education of the masses is absolutely essential to the safety of the state and the United States; that it is, indeed, a public necessity; and that the state in recognition of this principle, has established a system which is compulsory in almost every feature, and in which little that is optional can be found; and he claims that the spirit of the Constitution, as well as its letter, requires that, inasmuch as society is protected in its enjoyment of life, liberty and property in a thousand fold greater degree by education than through its jails and prisons, every member is bound to contribute his proportion toward the expense of that protection, and that until taxation for the support of those schools in which are taught the required English branches is substantially equalized among the towns and among the districts, the state has subjected a portion of its citizens, and those least able to bear it, to unjust hardship. Time will not permit me to review his argument. Its material is drawn from every source, his facts are clearly stated, and, to my mind, his logic is unanswerable.”

Dillingham’s concern sounds familiar. The 1890 legislature, dominated by the smaller rural towns under the then system of one representative from each town, responded with a statewide property tax for the equalization of education. That statewide property tax remained until the adoption of a state income tax in 1931. Throughout the forty years of the education tax, the legislature had to make adjustments to the rates and grappled with creating a system for the consistent appraisal of property among the towns. Throughout the forty years the commissioner of taxes reported on the amount each town raised and the amount each received in return.



Here my wistfulness fully takes wing. One role of the Archives is to provide context for decision-making. Wouldn’t it be wonderful if someone would analyze this early statewide education tax to better understand how it worked and why, in the end, it was abandoned?

I have put this on my list of things to do when I retire, but my daughters assure me they have economic demands that do not accommodate any thought of retirement (indeed, my daughters are not reluctant to ask why I mulishly insisted upon being a public archivist rather than, lets say, the chief executive of an oil company).

So I throw this research idea out there for anyone not blessed with children with certain economic expectations. At a minimum I hope it entices you to root around in the inaugural and farewell addresses to find other ideas to explore.

Opinions of Opinions



1. Constitutional amendments can be proposed this year! Vermont has one of the most difficult constitutional amendment processes in the country, which may be why our constitution is one of the least amended of all the states. The amending process for the Vermont Constitution can be found in Chapter II, Sec. 72. Proposals of amendment can only be initiated every four years and they must be initiated in the Senate. A proposal must be approved by two-thirds of the Senate (20 votes) before being sent to the House, where a majority vote is required for passage. Successful proposals are taken up by the succeeding legislature, the intervening election allowing voters an opportunity to instruct their legislators on whether to support any amendments. The proposal must then survive majority votes of the Senate and House, before being placed before the voters for ratification.

- 2. Town vacancies are filled by the selectboard.** When an elected official resigns the selectboard has 10 days to post a notice of the vacancy. The board can act immediately to fill the vacancy - and can decide to solicit applications or can decide to simply appoint a qualified individual without an open recruitment. This person will serve until the next election. Note that the voters can petition for a special meeting to hold an election to fill the vacancy. This is the purpose of the notice of vacancy being posted - to let the voters know so that they can decide whether to petition for a new election.
- 3. School board must fill school vacancies.** A change in the law permits school boards to fill vacancies on the school board. 16 V.S.A § 424 (Prior law required the selectboard to fill the vacancy with advice from the remaining school board members.) While the open meeting law permits the board to interview candidates in executive session the appointment decision must be by vote in the open meeting. 1 V.S.A. § 313
- 4. Unfilled positions are treated as vacancies.** If no one wins a particular office it is treated as a vacancy. The board should post notice of the vacancy and then should act as quickly as possible to appoint someone to serve until the next election.
- 5. Citizens may not petition for a town vote to change the classification of a road.** If the people who live on a road wish to have it reclassified (usually from class 4 to class 3) they must petition the selectboard to consider the change. The law provides that if at least 5 percent of a town's voters and/or landowners petition to have a highway laid out, altered, reclassified, or discontinued the board must begin the statutory process to consider the change. Note that even if the process is started by petition in the first instance, it is within the board's discretion whether to grant or deny the requested change. The board's decision can be appealed to the District Court. 19 V.S.A. §708. If the board agrees to the request to reclassify, it may order that the petitioners pay the costs of upgrading a class 4 town highway to the class 3 town highway standards. 19 V.S.A. § 711.
- 6. Selectboard considers the public good when deciding whether to reclassify a road.** In deciding whether to reclassify a road the selectboard makes a decision according to what it deems is the public good and necessity. The law specifically provides that a class 4 highway need not be reclassified to class 3 merely because there exists within a town one or more class 3 highways with characteristics similar to the class 4 highway. In considering whether to reclassify a class 4 highway to class 3, consideration may be given as to whether the increased traffic and development potential likely to result from the reclassification is desirable or is in accordance with the town plan. 19 V.S.A. § 711.
- 7. Citizens cannot force selectboard to change road policy.** In one town, citizens on a particular road were unhappy about the level of service they received from the road crew. After complaining to the selectboard and receiving a less than enthusiastic response they wanted to petition the selectboard to warn a meeting to discuss the road maintenance policy for the town. The law does not require the selectboard to call such a meeting as decisions about road maintenance are left to the discretion of the board (who may delegate the decisions to the road commissioners). Of course, the citizens can always raise these types of concerns during the "other business" portion of town meeting.
- 8. Taxes must be accepted if received by midnight unless a town establishes a tax due date that specifies the time.** The law provides that "a municipality that does not vote to fix a date, time, or method of delivery for the payment of a tax shall accept payment of a tax delivered or postmarked before midnight on the day established in the notice required by section 4772 [title 32]." 32 VSA § 4773(b). This means that unless the town establishes that taxes are due by a certain time - like the close of the office - on the tax due date the town must accept payment delivered before midnight on the tax due date. Putting payments under the door - or through a mail slot is not uncommon.

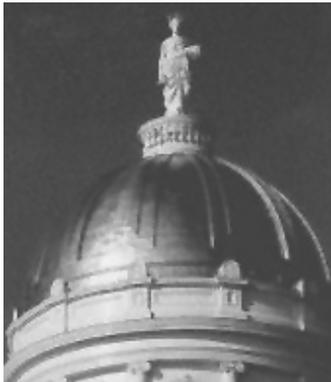
- 9. Municipalities may choose to accept taxes by postmark date.** The law permits the town to establish by vote that tax payments will be accepted so long as they are postmarked by the tax due date. However, unless a town has so voted, the taxes will be delinquent unless they are received by the town by the tax due date. 32 VSA § 4773.
- 10. The selectboard may accept and/or purchase property without voter approval.** There is no law requiring the selectboard to ask the voters for approval prior to accepting a donation or making a purchase of land or buildings. Note that a purchase of land can only be made without voter input where there is already money in the budget to pay for the purchase (for example money in the highway fund could be used to buy land for a salt shed.) See 10 V.S.A. § 6302 (acceptance of donated property). If the board has to borrow money to pay for the purchase it must get voter approval in accordance with 24 V.S.A. § 1786a.
- 11. The selectboard has general oversight over the town.** The law delegates to the selectboard all duties that must be performed in a town that are not otherwise delegated to another official. Specifically, it provides “the selectmen shall have the general supervision of the affairs of the town and shall cause to be performed all duties required of towns and town school districts not committed by law to the care of any particular officer.” 24 V.S.A. § 872.
- 12. Tax appeal hearings could be rescheduled for the convenience of the taxpayer.** In one town the taxpayer asked for a tax appeal hearing to be rescheduled because he was not planning to be in town. Although the law does not require the board to reschedule tax appeal hearings for the convenience of the taxpayer, the board should do so as a courtesy if it is reasonably possible. If the tax appeal cannot be rescheduled then the taxpayer should be reminded that he does not have to appear personally – and can have someone else represent him.
- 13. The listers may not meet with the BCA prior to tax appeal hearings!** The law prohibits ex parte communications (conversations between a decision maker and one of the witnesses or interested parties) when there is a quasi-judicial proceeding. Because the listers are interested parties at the tax appeal – defending their assessments - they may not meet prior to the tax appeal hearings with board of civil authority to discuss the appeals. However, the listers may hold a public meeting to which all appellants and the BCA are invited, to explain how they came up with their values (generally - ie. not in specific cases.) Members of the BCA can attend this meeting so long as they do not discuss any particular cases that may come before the board and so long as appellants and other members of the public are also invited.
- 14. Candidate 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.
- 15. Town meeting votes for officers are by paper ballot.** In towns that have not adopted the Australian ballot system of voting for local offices, Vermont law requires the use of paper ballots during the town meeting for election of officers to the selectboard, listers, auditor, road commissioner, or water commissioners. 17 V.S.A. §2646. If at least seven voters support a request that paper ballots be used for voting on any other article during a special or annual meeting, then paper ballots must be distributed and used. 17 V.S.A. §2658.
- 16. Local officials must receive a majority of all votes cast,** not just a plurality in order to be elected during an open town meeting. 17 V.S.A. §2660. If no candidate receives the majority in the first paper ballot, then another vote must be taken. If no person has obtained a majority by the end of the third vote, then the moderator shall announce that the person who received the least votes in the last vote shall no longer be a candidate, and continue voting in like fashion until a candidate receives a majority.
- 17. If a recount for JP or local official election ends up with a tie vote,** then a runoff election must be held pursuant to 17 V.S.A. §2682(e). When this happens the town must warn a runoff election as required by the statute. This can generally be done in plenty of time for the beginning of the JP term on February 1, 2007.



18. Although Justices of the Peace have been elected (on November 7th, 2006), the term of office for the newly elected JPs does not begin until February 1, 2007. 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 person cannot perform any duties of a JP until February 1, 2007.

19. The age requirement for State Representative and State Senator are not clear in the Vermont Constitution. In discussions with staff at Legislative Council we agree that there is no clear statement of age requirements in either the constitution or the statutes today. However, the law is clear in Vermont that if there are any questions about a person's qualifications to serve, it is up to the House of Representatives to judge the qualifications of its members (see 17 V.S.A. §2605), and it is up to the Senate to judge the qualifications of its members. (17 V.S.A. §2606)

The consensus of several attorneys familiar with the General Assembly is that if a person is 18 before the beginning of the session, we think that the House or Senate would find that person qualified to serve. If a person was not yet 18 in January when the session begins, it is more likely that the House or Senate might find that person not qualified to serve. However, this is just our best estimation of what the House or Senate might do.



Our office does not have any authority to determine a candidate's qualification to be on a ballot. If petitions and a consent form are properly submitted, the name will be placed on the ballot. It is possible that the House or Senate may adopt rules or that legislation may be proposed to address the age qualification issue.

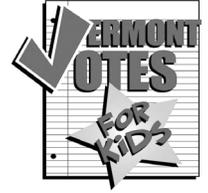
20. Employers must permit leave to serve in the legislature. Unless the employer can establish that he would suffer unreasonable hardship the law provides that "Any person who, in order to serve as a member of the General Assembly, must leave a full-time position in the employ of any employer, shall be entitled to a temporary or partial leave of absence for the purpose of allowing such employee to perform any official duty in connection with his elected office. Such leave of absence shall not cause loss of job status, seniority, or the right to participate in insurance and other employee benefits during the leave of absence." 21 V.S.A. § 496. Although the legislator has the right to keep his or her employee benefits during the leave of absence, he or she may be required to pay the cost of those benefits.

21. 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 to be a fair price, but there is no rule or statute that limits the board. However, if a municipality intends to purchase property with a grant from the Vermont Housing and Conservation Board, it may have to follow the grant rules that limit purchase prices to the certified appraised value.

22. It is now time to purge voters. We have now concluded the fourth general election after the changes to Title 17 which require Boards of Civil Authority to wait to remove names from the checklist of persons who have been notified in writing pursuant to 17 V.S.A. §2150. Therefore, all persons who were sent challenge letters prior to the 2004 general elections, and who did not respond to the notice as described in section 2150 (d)(3), and who did not appear to vote in 2004 or 2006, may be removed from the checklist. The Board of Civil Authority must meet to remove those names. 17 V.S.A. §2150(d)5.

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.

Thanks to all Town Clerks who helped schools in Vermont run their mock elections this year. We heard from many teachers who are grateful for the support they received from their town office so that their students could experience a mock election. Over and over we hear how much students appreciate the chance to vote. Principal Mark Carbone of Camel's Hump Middle School in Richmond had this to say about the mock election at his school: "The students had fun and couldn't wait to see what the results were in our mock election. It's part of our job as educators to involve students in the democratic process. Holding a mock election clearly demonstrates to them that their voice matters."



The mock election results reported back from Vermont schools are as follows:

| | | | |
|----------------------|-----|-------------------------------|-----|
| <u>U.S. Senate</u> | | <u>U.S. House</u> | |
| Bernie Sanders | 58% | Martha Rainville | 46% |
| Rich Tarrant | 30% | Peter Welch | 40% |
| Other | 12% | Other | 14% |
| <u>Governor</u> | | <u>Lt. Governor</u> | |
| Jim Douglas | 59% | Brian Dubie | 56% |
| Scudder Parker | 30% | Matt Dunne | 32% |
| Other | 11% | Other | 12% |
| <u>Treasurer</u> | | <u>Secretary of State</u> | |
| V. Murray Ngoima | 21% | Deb Markowitz | 52% |
| Jeb Spaulding | 79% | Cheryl Moomey | 34% |
| | | Boots Wardinski | 14% |
| <u>Auditor</u> | | <u>Attorney General</u> | |
| Martha Abbott | 30% | Dennis Carver | 36% |
| Randy Brock | 36% | Rosemarie Jackowski | 18% |
| Thomas Salmon | 34% | William Sorrell | 46% |



Please let us know if there is any further support our office can provide as we work together to promote civic engagement in our schools!

Municipal Calendar

DECEMBER 2006

- 1 Last day to pay property taxes in towns that voted to collect interest on overdue taxes. 32:5136(a)
- 7 Last day for U.S. Congressional candidates to file FEC 30-day post-general reports (Oct. 20-Nov. 28), 2 U.S.C. § 434(a)(2).
- 14 Last day for Listers to notify persons of omissions from inventory. 32:4086
- 18 Deadline for filing forty-day post election campaign finance reports with the Secretary of State by candidates for statewide office, state senator, state representative, political committees, and political parties who have expended or received \$500.00 or more. Also deadline for filing forty-day post election campaign finance reports by county office candidates who have made expenditures or received contributions of \$500.00 or more. County candidates (probate judge, assistant judge, state's attorney, sheriff, high bailiff and justice of the peace) shall file with the county clerk with whom his or her nomination papers were filed. Copies of these reports must be forwarded by the county clerks to the Secretary of State within five days of receipt. 17 V.S.A. §§ 2811, 2821(c), 2831. If a filing deadline falls on a Saturday, Sunday or legal holiday, then the deadline shall be extended to the next business day. 17 V.S.A. § 2103(13). Candidates for the state senator or state representative must also file such reports with the clerk of the candidate's respective senate or house district (the same clerk where the candidate files nominating petitions). 17 V.S.A. § 2811(e).
- 25 Christmas Day. 1:371(a)
- 26 *(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)(3)
- 30 Last day for Listers to correct real or personal estate omission or obvious error in grand list, with approval of legislative body. 32:426
- 31 Town fiscal year ends, unless voted otherwise. 24:1683(c)



JANUARY 2007

- 1 New Year's Day. 1:371(a)
- 3 *(First Wednesday after the first Monday of January)* Legislature convenes. Vermont Constitution. Ch II, §7
- 5 *(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)
- 15 Last day for Tax Collector to deliver unpaid real and personal property tax lists to Town Treasurer. 32:5162
- 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 a rabies control program. 20:3581(f)
- 15 Martin Luther King, Jr.'s Birthday. 1:371(a)
- 25 *(Not less than 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 warning. 17:2642(a)
- 25 *(40 days before Town Meeting)* First day for the legislative body to warn the meeting, by posting the warning and notice in two public places and in or near the Town Clerk's office. 17:2641(a), 2642
- 25 *(40 days before Town Meeting)* Last day for Board of Civil Authority to designate polling places and, if necessary, divide the checklist according to geographic boundaries. 17:2501(a)
- 25 *(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)
- 25 State Withholding Tax Return is due *(actual date by which return must be postmarked is shown on the printed form)* if reporting less than \$2,500 per quarter. More than \$2,500 requires monthly report; more than \$9,000 requires semi-weekly report. 32:5842

- 29 *(Sixth Monday before election)* 5:00 p.m. deadline for filing with the Town Clerk nominating petitions for town offices to be voted on by Australian Ballot. 17:2681(a)
- 30 Last day for Auditors to post 10 days' notice of their meeting to examine town accounts. 24:1681
- 30 *(Within 24 hours of receipt)* Town Clerk must return nominating petitions found not to conform, stating in writing the reasons why they cannot be accepted. 17:2681(e)
- 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
- 31 *(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)
- 31 *(Wednesday after filing deadline)* 5:00 p.m. deadline for a person to withdraw after he or she has consented to be nominated. 17:2681(d)
- 31 *(Wednesday after filing deadline)* 5:00 p.m. deadline for candidates to file supplementary petitions if initial petition was not accepted. 17:2681(e)
- 31 Last day to file Form 941 *(Quarterly Withholding Return)* with the IRS.

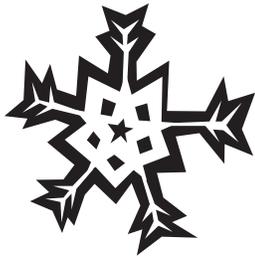
The Municipal Calendar is provided by the Vermont League of Cities and Towns/Chittenden Bank and the Secretary of State's Office.

Tip of the Month



This month's tip is a reminder that this is an opportunity to share your ideas with your peers. Please email your tips to Clyde Jenne, VMCTA President, at hartlandvtclerk@vermontel.net or to Ginny Colbert, Secretary of State's Office, at gcolbert@sec.state.vt.us.

Update on Holiday Displays and Municipal Property



Now that we have passed through Vermont’s biggest holiday season—hunting season—the rest of the holidays will soon be upon us. We are anticipating calls from the public or from public officials in Vermont asking us about the guidelines for holiday displays on municipal property. Although there has been a considerable amount of litigation about holiday displays on public property, longstanding public officials among us will remember that there are no hard and fast “rules” that give a straightforward answer to most of the questions regarding holiday displays.

Vermont has had two federal cases involving challenges to religious displays on public property. In 1988, the Trustees of the village of Hyde Park settled a challenge by agreeing to no longer place a cross on the Hyde Park Court House lawn. In 1989, the second circuit court of appeals held that based upon the specific facts of the case, the display of the menorah in City Hall Park in Burlington would violate the Establishment Clause of the First Amendment.

A more recent 1997 second circuit case, *Elewski vs. the City of Syracuse*, held that the challenged placement of a creche in a public park along with a menorah in a nearby public park and other secular decorations throughout town was not unconstitutional and did not violate the separation of church and state required by the first amendment. This court went through a detailed description of the cultural, social, and economic motivations of the downtown merchants and city officials in its analysis.



What do we learn from these cases? First, and foremost, the definitive U.S. Supreme Court case, *County of Allegheny vs. ACLU* (relied upon by lower courts to decide challenges to displays on public property), makes it clear that any decision will be extremely fact specific and the outcome will depend on the presentation of the various facts to the judge. In fact, in *Allegheny*, the Supreme Court justices wrote five separate opinions joined in whole or part by various members of the court because the nine justices drew different conclusions based on the facts as presented.

After the *Allegheny* decision, the judge must determine “would a reasonable observer of the challenged display in its particular context perceive a message of governmental endorsement or sponsorship of religion? This endorsement test focuses upon the perception of a reasonable, informed observer who must be deemed aware of the history and context of the community and forum in which the religious display appears. Therefore, after *Allegheny*, not every city-owned and/or displayed creche or menorah violates the Establishment Clause. The issue is now, would a reasonably informed observer perceive the display as a message of endorsement of a religion or perceive a celebration of the diversity of the holiday season.



In a nutshell, we believe that if municipal officials wish to permit holiday displays on public property, the physical display(s) itself and all of the historical and cultural facts surrounding the placement of the display(s) must support the conclusions that the display(s) are a celebration of the diversity of the holiday and not an endorsement of a religion.

(Reprinted from December Opinions 2005)

Quote of the Month

We should certainly count our blessings, but we should also make our blessings count.

-Neil A. Maxwell



Upcoming Training Events

| | | | |
|-----------------------|---|-------------------------------|------------------------------|
| Saturday, December 9 | Selectboard Forum 9:00 a.m. to 4:00 p.m. | Vermont College Montpelier | Contact VLCT 800-649-7915 |
| Tuesday, December 12 | Legislative Preview 9:00 to 11:00 a.m. | Milton Town Office | Contact VLCT 800-649-7915 |
| Thursday, December 14 | Legislative Preview 9:00 to 11:00 a.m. | Wilmington Town Office | Contact VLCT 800-649-7915 |

Mailing List Updates!

Help us keep our mailing list up to date!

Let us know if:

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



Send us a note via fax: 802-828-2496,
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