

Opinions

Office of the Vermont Secretary of State



Vol. 6, #6

June 2004



A Message from the Secretary

In Vermont nearly 17% of our citizens have some sort of disability. These disabilities vary greatly. Some disabilities are very visible – like those requiring a person to use a wheelchair, a guide dog or a walker. Other disabilities, like many cognitive disabilities, are invisible, but can make

communication especially challenging.

As public officials and employees we have a special obligation to serve all of our citizens, regardless of disability. To that end, the Secretary of State's office has recently issued a new brochure entitled Disability Etiquette, a Guide to Respectful Communication. This brochure was developed with help from individuals with disabilities, and is based on a similar brochure developed by the Secretary of State of Idaho.

Here are samplings of tips included in the brochure:

1. Treat people with disabilities with the same respect and consideration you have for everyone else. Find a topic of small talk the way you would with anyone. Don't assume the disability is all that person can talk about or is interested in.
2. Use a normal voice when saying hello. Don't raise your voice unless requested.
3. When you meet someone, extend your hand to shake it if that is what you normally do. A person who cannot shake hands will let you know, but he/she will appreciate being treated in a normal way.
4. Do not automatically give assistance. Ask first if the person wants help. Many disabled people will be grateful for an offer of help. If your offer of assistance is accepted, listen to or ask for instructions.

5. Talk directly to the person, not to an aide, friend or interpreter. It is important to make eye contact. If you don't understand someone, ask the person to repeat it. Sometimes it takes repeated attempts at listening or speaking. If the person uses a wheelchair, sit down yourself (if possible) and converse at the same level.
6. Guide dogs and other service animals should not be pet or touched without specific permission.

To order copies of Disability Etiquette for your town or business please fill out the order form on page 10 of this issue and either fax or mail it to our office.

Deborah L. Markowitz, Secretary of State

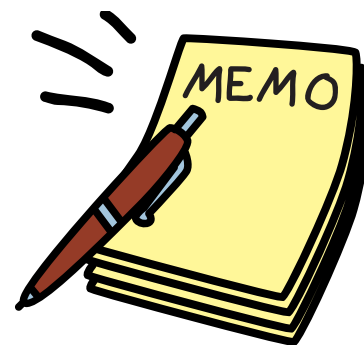
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Making the Best of a Sticky Situation

Among the things that fascinate me is the unintended consequences of technological innovation. A case in point is in the now ubiquitous Post-it note. In 1968 a 3M research scientist, looking for ways to improve on the company's acrylate adhesives, discovered an adhesive that worked well with paper, but not tape. Various applications were suggested, such as use on bulletin boards. It was not, however, until another 3M researcher began to use the new adhesive on scraps of paper to mark pages in his church choir hymnal that a marketable application was discovered. In 1980 3M introduced the Post-it note, which became an immediate success.

Like most technological innovations for the office, Post-it notes had a variety of consequences for recordkeeping. Since a small amount of the adhesive remained on the paper, once the Post-it note was pulled off, conservation concerns were raised. More importantly, while a Post-it note might contain substantive information about a document (for example, a supervisor's approval to release a draft), it is easy to remove.



These thoughts emerged as I reviewed the actions of the 2004 legislative session. Recordkeeping, linked to new technologies, once again figured prominently. Two legislative directives involve the state archives and municipal records. The first is “electronic document storage; pilot project” in Section 9 of the capital construction act. The other is the “land records commission” created in Section 78 of the appropriation act.

Both relate to technology. The first calls on buildings and general services, in consultation with municipal clerks, the state archives and others, to “develop and implement a pilot project designed to create a coordinated municipal filing system” including the “conversion of paper documents to electronic format, which conversion shall be designed to ensure compatibility with any state electronic document storage system that may be developed in the future.” Five municipalities, including Colchester, will serve as test sites. A report on the implementation of the project, along with recommendations, must be submitted to the general assembly by January 15, 2005.

The second directive creates a municipal land record commission charged with proposing “standards for formatting, filing, recording and preserving municipal land records;” a uniform municipal land record indexing system; “continuing education requirements for municipal officials;” and a system for financing “all facets of municipal land records management on a sustainable basis.” In addition the commission is to analyze “the prerequisites for a municipality to digitize its land records” and examine “the related administrative and public policy issues,” including privacy. The commission, to be convened by the state archivist no later than November 2004, must report to the general assembly by January 15, 2006.

Like Post-it notes, these technology-driven mandates create a sticky situation with non-technological consequences for recordkeeping. Clearly, given overlapping responsibilities under different timelines, coordination of effort is essential

My hope is that we step back from the technologies involved and articulate what recordkeeping goals should be achieved through these projects (and what unintended consequences we need to avoid). Some areas for discussion include:

1. While there is deep-seated unease about standards (see my September 2003 column), both acts envision standards-based compatibilities across individual offices (including compatibility with an as-yet-established state “document storage system.” For better or worse, the question is no longer how you feel about standards, but which standards do we need to implement effective recordkeeping.
2. What goals do you want to achieve? The pilot scanning project is based, in part, on a goal of reducing the need for new municipal vault space (it requires the commissioner of buildings and general services, in consultation with the state archivist, to “arrange for the state to provide temporary paper document storage” for the participating municipalities). At first read this appears to be a questionable goal. Simply switching the costs of vault space from municipalities to the state neither addresses the cost issue nor the forces driving the growing volume of records. Scanning, for example, does not eliminate local storage costs and instead requires sustained budgets for training, upgrades of rapidly changing technologies, etc (some studies suggest that 40% or more of the original technology acquisition costs must be annually budgeted to meet the special needs of preserving electronic records).
So what goals do you see as essential, and how can we best achieve them? Equally important, what services do our users want, in what form?
3. What, if any, impacts will digital records have on traditional legal definitions of “public record,” access, and actual cost for copies? This discussion is already underway, but what precisely are the qualitative differences between a paper-based public record and electronic public records that can be widely distributed? How do we address those differences without diminishing a citizen’s right to know?

These are but a few of the questions we must discuss in the coming months. I will keep you informed and I encourage you to participate so that our needs as recordkeepers and the needs of the public we serve drive the process. Technology can allow us to do a host of things; the real question is what do we need it to do?

Quote of the Month

“Bad officials are elected by good citizens who do not vote.”

- George Jean Nathan



Opinions of *Opinions*

1. **Office Hours May Be Altered During Clerk's Vacation.** Even town clerks can go on vacation – provided they make an arrangement to have someone else – an assistant – open up the office and the vault in order to make the public records available. No law requires the assistant clerk to maintain the same hours as the clerk (in one instance, the assistant, who ordinarily works very part time for the town, will open the office on request.) So long as the clerk posts an advance notice to let the public know what the temporary times or arrangement will be, and the records are available during his or her absence, the legal requirement that “the files and records in the office of the clerk shall be available for inspection upon proper request at all reasonable hours” will be met. 24 V.S.A. § 1165.
2. **Study Committees Formed by the Board are Subject to the Open Meeting Law.** The open meeting law treats committees formed by a public board as public bodies. Accordingly, if the selectboard appoints a citizen committee to study and report back its findings on an issue such as developing the local riverfront into a park, or changing the municipal charter, the meetings of that committee must be publicly noticed – just like the meetings of the board that created it. The committee must also take and make available within five days minutes of each meeting. 1 V.S.A. § 310.
3. **When two boards meet jointly both must publicly notice the meeting.** Whenever a quorum of a board gather to discuss the business of their board it must publicly notice the meeting as required by the open meeting law. This means that if two boards meet jointly each board must call a special meeting of their board and notify the board members, and any press that requested notification, and post notice of the meeting in the clerk's office and two or more places in town within 24 hours of the meeting. 1 V.S.A. § 312.
4. **Board members may not vote by proxy.** There is no law that would permit proxy voting on local boards. A person who cannot make it to a meeting can participate by telephone conference, in which case they would count toward a quorum. 1 V.S.A. § 312.
5. **Entrance or Exit Checklist Must Be Kept For Five Years.** Vermont law requires the town to keep for five years following an election the entrance or exit checklist from the election. This checklist must be made available at cost to the public. 17 V.S.A. §2590(e). Although the ballots and tally sheets may be destroyed 90 days after a local election and 22 months after an election including federal offices, the entrance or exit checklist together with the statement of discrepancies must be retained for five years.
6. **Polling places must be in a public space unless otherwise decided by the voters.** Vermont law provides that every polling place must be in an accessible public place as designated by the Board of Civil Authority. However, the voters may designate different polling places if an article is placed on the warning for an annual or special meeting. 17 V.S.A. §§2501, 2502. Note that many laws, including the Help America Vote



Act of 2002 requires all polling places to be accessible to the disabled. If your polling place(s) is not accessible, the BCA needs to designate a different accessible polling place, such as a school. We strongly encourage Boards of Civil Authority and/or town voters to do everything possible to choose polling places that are nonsectarian whenever possible. Although rulings in court cases in other states have upheld the use of a church all-6 when absolutely no other public place is available, it is a best practice to designate a nonsectarian public place. In our times, if sued by a voter over a polling place, it will be difficult to defend the use of a church if other accessible public buildings exist in the district.

7. **A new law permits a polling place to be outside the voting district.** 17 V.S.A. § 2502(a) has been changed to allow towns that have more than one polling place to allow more than one district to vote at a particular polling place. (The old law only permitted voting outside ones district when all the districts voted in one location.) This change in law will help communities that have districts in residential areas that may not have an accessible public building for use as a polling place.

8. **The selectboard and school board may loan money to each other to help with cash flow.**



16 V.S.A. §429. When the school district or selectboard loans money to the other this loan must be secured by a note signed by the boards. The note shall stipulate the terms of the loan and the notes must be payable upon demand or mature within three months from the date of issue. There is no requirement that such loans be made – but where it works for the two municipal entities it can be a convenient way to manage cash flow issues.

9. **The Selectboard or School Board can warn a special meeting to reconsider the same Article as many times as it wishes during a year - except for bond votes.** Petitions by 5% of town voters requesting reconsideration can only be done once on the same Article or issue during a twelve-month period. In contrast, the legislative body can take an issue back to the voters more than once if they believe that passage of the article is in the best interests of the town or school district. 17 V.S.A. §2661. The only exception to this rule is with bond votes. A board can only bring a bond vote to the voters two times during a 12-month period.

10. **BCA notice requirements are more stringent than the rule for other boards.** A special rule exists for noticing meetings of the board of civil authority. 24 V.S.A. § 801 provides in part that “meetings of the board shall be called by the town clerk, or by one of the selectmen, on application, by giving written notice to each member, and by posting a notice in two or more public places in the town at least five days previous to the meeting.” In contrast, for a regular meeting of other municipal boards all that is required is that the time, place and location of the regular meeting be designated by the board, and be publicly available upon request. 1 V.S.A. § 312(c)(1). We believe that if the BCA must take action and there is not time to use the regular meeting warning provisions in 24 V.S.A. §801 that the board may use the procedure for noticing special meetings of public bodies. A special meeting must be noticed by notifying the board members as well as the public and any press that has asked to be notified of the time place and purpose of the meeting at least 24 hours before the meeting. 1 V.S.A. § 312(c)(2). There does not have to be a formal agenda , but the general purpose of the meeting must be provided in the meeting notice. The notice must be posted in or near the municipal clerk’s office and in at least two other public places in the municipality.



- 11. BCA must appoint assistant election officials if needed to staff the polling place on Election Day.** If members of the board of civil authority will not be able to fully staff the polling places on Election Day, then prior to the day of the election, the BCA must appoint a sufficient number of voters from each district to serve as assistant election officials in each polling place. 17 V.S.A. §2454. The board shall make every effort to appoint an equal number of legal voters of the town (and district) from each major party. These election officials must be sworn in before the polls open and activity begins.
- 12. Town clerk generally serves as presiding officer at the primary and general elections.** The Town Clerk is be the presiding officer unless the town has previously voted at an annual meeting to provide otherwise. 17 V.S.A. §2452(a). However, if a town clerk is unavailable to serve, then the Board of Civil Authority must promptly appoint a voter of the town to serve as Presiding Officer. Also, if the town has more than one polling place, the board of civil authority must appoint a presiding officer for each additional polling place. 17 V.S.A. §2452(b)
- 13. The Town Clerk adds names to the checklist expeditiously upon receipt of an application to the checklist.** 17 V.S.A. §2144b was amended effective July, 2003, to require the town clerk to add names to the checklist as (s)he receives the voter registration applications. The clerk forwards the application to the BCA only when the he or she is unable to determine that an applicant meets the requirements to register to vote in town. If the applicant appears to meet the qualifications, the town clerk adds the name to the checklist as soon as possible after receipt of the application. These changes are reported to the BCA at the time the checklist is reviewed prior to the election.
- 14. Presiding Officers must receive training!** The regular presiding officer or an assistant election official designated by the board of civil authority must attend at least one workshop presented by the Office of the Secretary of State every two years. 17 V.S.A. §2457(b). Workshops for the Summer of 2004 will be held as follows:

Elections Procedures Workshops

<u>DATE</u>	<u>TOWN/CITY</u>	<u>TIME</u>	<u>LOCATION</u>
Tuesday, June 8	Lyndonville	6-7:30 p.m.	Municipal Offices
Wednesday, June 9	Weathersfield	6-7:30 p.m.	Town Office
Wednesday, June 23	Randolph	6-7:30 p.m.	Elementary School
Thursday, June 24	Williston	6-7:30 p.m.	Town Office
Tuesday, August 17	Wallingford	6-7:30 p.m.	Town Office
Thursday, August 19	Vergennes	6-7:30 p.m.	Opera House

Please Note: The dates for the Randolph and Williston workshops were inadvertently transposed on the “directions sheet” sent to Town Clerks. The correct dates for all workshops were given on the postcards, town clerk memo, and as listed above.

- 15. A Planning Commission with many vacancies should be made smaller.** Planning commissions may be as small as 3 voting members or as large as nine members. 24 V.S.A. § 4322. Whenever a selectboard has a hard time filling vacancies on a local board it should consider reducing the size of the board. This is especially true with the planning commission. This is because when a seven or nine person commission has multiple vacancies it will have problems getting the quorum it needs to take action. The board can reduce the size of the commission by resolution unless the planning commission is an elected board.

16. The selectboard should appoint a board of alternates to fill in when there are absences on the Zoning Board or Development Review Board. Selectboard members can appoint a board of alternates to fill in on the zoning or development review board when members have conflicts of interest or are absent. Selectboard members may serve as alternates, as can members of the planning commission. The law does not permit the appointment of alternatives to serve on the planning commission. 24 V.S.A. § 4461(b).

17. The law does not yet permit conducting meetings solely through the web. Vermont's open meeting law requires that all meetings of public bodies be open to public observation and participation. This contemplates that the meetings be in a physical location where members of the public can go. The law permits board members to participate by conference call – but there is no provision of law that would permit web conferences. We believe that the law would permit a town to conduct combination meetings - where the public and members of a board gather in a public place in the town to hold a hearing and people can call in to the meeting - or perhaps e-mail questions (while viewing a live web feed). 1 V.S.A. § 312.



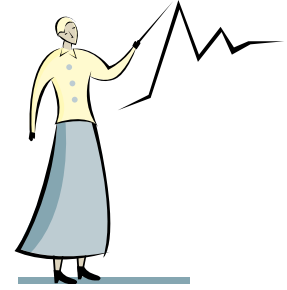
18. Vacancies are filled only until the next election. When the selectboard appoints someone to fill a vacancy the appointment is only until the next election at which time a person is elected for the rest of the term. 24 V.S.A. § 961 requires the legislative body to post notice of a vacancy in two or more public places in town within ten days of the creation of the vacancy. The purpose of this notice is to permit the public to petition for a special meeting to fill the vacancy. In the meantime the selectboard may appoint to fill the vacancy. If no special election is petitioned or called by the selectboard the person will serve until the next annual meeting of the town.

19. Special elections of officers by Australian Ballot must be warned with enough time to petition to get on the ballot. When a special election is warned to fill a vacancy in a town where offices are voted by Australian Ballot, the Selectboard should post a public notice giving the public enough time to bring in nominating petitions to run for the office that is to be filled. Nominating petitions can be filed no later than 5:00 on the sixth Monday preceding the day of the election. Note that the selectboard has fifteen days to set the meeting date, and the meeting must be warned for not less than 30 nor more than 40 days. 17 V.S.A. § 2641, 2643.

20. Conservation Commissions may be created by the vote of the municipality or by vote of the legislative body. 24 V.S.A. § 4501 provides that a conservation commission may be created at any time when a municipality votes to create one, or, if the charter of a municipality permits it, when the legislative body of the municipality votes to create one. A conservation commission may have not less than three nor more than nine members. The statute specifies that members are appointed for four-year terms. Unlike the planning commission or zoning board, all conservation commission members must be residents of the municipality. 24 V.S.A. § 4502.

21. Selectboard can alter size of conservation commission under some circumstances. When a conservation commission is created by resolution of the selectboard the board can later, by resolution, change the size of the commission. If the size is reduced, any vacant seats will first be eliminated, and any additional reductions will occur as the terms of the board members expire. The authority of the selectboard to change the size of a conservation commission is less clear in cases where the commission was created by vote of the municipality. It is clear that if the vote to create the commission included a reference to the size of the commission that this cannot be altered without a vote of the municipality. However, if the commission was created without reference to a particular size then it is likely that a court would find that the selectboard has the authority to increase or decrease the membership, as it deems appropriate.

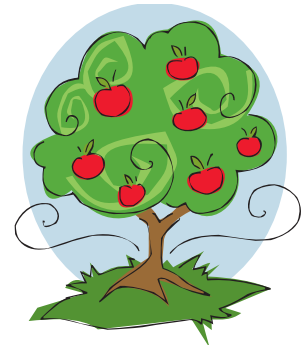
22. Treasurer must consult with selectboard when investing town funds. The town treasurer must keep an account of “moneys, bonds, notes and evidences of debt paid or delivered to him, and of moneys paid out by him for the town and the town school district.” 24 V.S.A. § 1571. In addition, the law provides that “moneys received by the town treasurer on behalf of the town may be invested and reinvested by the treasurer with the approval of the legislative body.” 24 V.S.A. § 1571. As a practical matter this means that the town treasurer may not change any interest bearing bank accounts without the approval of the legislative body.



23. Residents have the right to confidentiality of E-911 records. Vermont law provides that “if a municipality has adopted conventional street addressing for enhanced 911 addressing purposes, the municipality shall ensure that an individual who so requests will not have his or her street address and name linked in a municipal public record, but the individual shall be required to provide a mailing address.” A request for confidentiality must be made in writing and be filed with the municipal clerk. The request itself is confidential. 30 V.S.A. § 7059(d).

24. E-911 confidentiality option applies only to current records. When an individual chooses to exercise his or her confidentiality option as provided by 30 V.S.A. § 7059(d) it will not apply retroactively to records that were properly recorded prior to a person exercising his or her confidentiality option. Section 7059(d) The law applies to current and future records. While it contains no provision requiring the town to rewrite history by expunging information from old records (like former grand lists) the official is obligated to make a good faith effort to change the current year’s lists and to ensure that the individual’s confidentiality is protected going forward. (This opinion has been sanctioned by the E9-1-1- board.)

25. Town is not required to take down tree in right of way. In one town a landowner insisted that the town remove a tree that was in a highway right of way that the landowner believed was a danger to his or her property. No law requires a town to take down a tree in a highway right of way. Note that the law permits landowners to take down limbs of trees that overhang their property. Title 24 Chapter 67 gives towns the authority to manage trees in rights of ways. The law creates a process for dealing with these issues, but does not obligate the town to remove, or pay for the removal of any of these trees.



26. Town must go to court to collect unpaid fines. When fines for tickets issued for violations of municipal ordinances go unpaid, the town must go to court to get a judgment order against the scofflaw. The court can attach property of the violator, which can be taken and sold to pay the fines. The court can also put a lien on the property of the violator.

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.

Reminder for Primary Election on September 14, 2004

Major Party (Democratic, Progressive and Republican) candidates for the Vermont Senate and House of Representative **MUST FILE PETITIONS WITH THE SENATORIAL OR REPRESENTATIVE DISTRICT CLERK** for the September Primary **BEFORE THE CLOSE OF BUSINESS ON MONDAY, JULY 19, 2004**. Petitions for the Senate must contain 100 signatures and candidates for Representatives must submit at least 50 signatures.

The Senatorial or Representative Clerk must FAX, if possible, and then mail the original consent form for each candidate to the Office of the Secretary of State immediately. (Fax to (802) 828-5171) The Clerk shall examine the petitions to see that they contain a sufficient number of legible signatures. However, unless the Clerk has reason to believe that the petitions are defective, the Clerk does not have to verify signatures on the Primary Petitions. 17 V.S.A. §2357. The Clerk shall retain the Primary Petitions until 30 days after the General Election, and can then destroy the petitions. 17 V.S.A. §2360

Congratulations to our 2004 Poster and Essay Contest Winners!

Be sure to visit our Kids' page to view the winning entries!

http://www.sec.state.vt.us/kids/contest/2004/2004_winners.htm

Grades K-2: Official Vermont Symbols Poster Contest

Winner: Anna Violet Hardt, Raven Glen Home School, Salisbury

Honorable Mention: Kit VanHorn, Fisher Elementary School, Arlington

Grades 3-5: Vermont History Poster Contest

Winner: Heather Rose Hardt, Raven Glen Home School, Salisbury

Honorable Mention:

Lily Ross, Maple Street School, Manchester

Charles Weaver, Home School, Northfield

Grades 6-8 Essay Contest

Winner: Addie Peterson, Williston Central School, Williston

Honorable Mention: Marielle Rousseau, Mater Christi School, Burlington

Class Honorable Mention: Sr. Joanne LaFreniere, Mater Christi School, Burlington

Grades 9-12 Essay Contest

Winner: Isaiah Usher, Home School, Shoreham



2004 Poster and Essay Contest winners Anna and Heather Hardt with Secretary Markowitz

Order the New Disability Etiquette Brochure!



Please send me _____ Disability Etiquette brochures to share with my community.

Name: _____

Town/Organization: _____

Address: _____

City, State, Zip: _____

Phone: _____

Please fill out the above form and return it to our office via fax 802-828-2496 or mail to Sarah Alberghini, Secretary of State's Office, 26 Terrace St., Montpelier, VT 05676

Tip of the Month from the VMCTA



This month's tip is from Doreen Aldrich of Rockingham



Because the Secretary of State wants us to report annually how many voter applications were received from her office, other clerks, other agencies, individual by mail, disabled, DMV, over the counter or other, Brenda Davignon suggested I get a stamp with that information and the date. When the apps come in, I just stamp and check the appropriate line and when I update my checklist, I transfer this information to a spreadsheet —VOILA!! At the end of the year, I have all the necessary information at my fingertips. Thanks Brenda!

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

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

June 2004

June 1:

Deadline for Listers to lodge personal property inventories with Town Clerk. 32:4007

(91st day after Town Meeting election) In towns using Australian Ballot, Town Clerk may open and destroy used Town Meeting ballots and tally sheets, except as otherwise provided by law. 17:2590(d)

June 30: End of fiscal year for all school districts, charter provisions notwithstanding, and for municipalities that have adopted July 1 through June 30 fiscal year calendar. 32:1, 24:1683(b)(c)

June 30: Within 30 days after completion of a town fiscal year the Town Clerk shall publicly disclose the total amount of fees received as part of his or her compensation. 24:1179

July 2004

July 1: Last day for Town Clerk to submit name of Town Treasurer to State Treasurer. 24:1166

July 4: Independence Day. 1:371

July 15: Last day for School, Fire District and Village Clerks to deliver to Town Clerk statement of taxes assessed during year ending June 30th. 32:3461 **19** (*Third Monday in July preceding the primary election*) Primary petitions and consent forms shall be filed not later than 5:00 p.m. 17:2356 **22** Within three days after the last day for receiving primary petitions, all Town and County Clerks who have received petitions shall notify the Secretary of State of the names of all candidates, the offices for which they have filed, and whether each has submitted a sufficient number of valid signatures. 17:2359

July 22: Town Clerk should have returned nonconforming petitions to candidates for correction by this date or within 72 hours of receipt of petition. 17:2358(b) **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 \$2500 per quarter; more than \$2500 requires monthly report. 32:5842

July 29: Last day for supplementary petitions, initially rejected by the official with whom they were filed, to be filed with his or her office to qualify for the primary. The petitions will again be subject to review in the same manner as the original submissions. 17:2358(a)(b)

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

July 31: Last day for officials who have received supplementary petitions from candidates to notify the Secretary of State of the status of such petition (*not later than two days after the last day for filing supplementary petitions*). 17:2359

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,
email: salberghini@sec.state.vt.us,
or post: 26 Terrace St. Drawer 09, Montpelier, VT 05609-1101
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well as any changes that you would like to have made!

Thank you for helping us keep Opinions running efficiently!

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Office of the Vermont Secretary of State
June 2004

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