



# Opinions

Office of the Vermont Secretary of State

Vol. 13, #5

May 2011

## 2011 Poster and Essay Contest

**Winners Announced!**  
**Celebration to be held on**  
**May 23, 2011**  
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## Quote of the Month

"I have never been hurt by what I have not said."

*Calvin Coolidge*

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## A Message from the Secretary

### We are moving!

On June 3<sup>rd</sup> & 4<sup>th</sup>, the Secretary of State's administrative office will be moving from the Redstone Building on Terrace Street to 128 State Street – across from the Statehouse. Buildings & General Services has just completed renovations to restore the inside and outside of the brick Victorian that will be our new home.



In the 2009 -2010 biennium, the Legislature and Governor approved legislation to move the Secretary of State to 128 State Street in order to bring all of the constitutional officers to the Statehouse quad. It is also believed that we will be easier to find, and more accessible with both on and off street parking. Our staff has greeted this opportunity with enthusiasm as the building is beautiful and we will have all new and up to date infrastructure including electrical, plumbing, technology, sprinklers, heating and air conditioning. This will assist us in our goal of improving both efficiency and productivity while providing Vermonters with great customer service.

A bonus for our staff is that we will be within a short walk of downtown Montpelier and the many fine local restaurants, shops and banks.

Beginning on Monday June 6, the Secretary of State's office will be consolidated to three overall locations:

- 128 State Street – Secretary, Elections, Corporations, and Administration
- National Life – Office of Professional Regulation including Licensing, Boards, and the Investigators/Prosecutors
- Middlesex – Vermont State Archives and Records Administration

Please stop by to see us and check out our new home!

As we continue to improve efficiency and productivity, please let us know if you are willing to receive Opinions electronically by contacting us at:

- email: [secretary@sec.state.vt.us](mailto:secretary@sec.state.vt.us)
- fax: 802-828-2496
- post: 26 Terrace St., Montpelier, VT 05609-1101

We ask that you include the information from your current **Opinions** mailing label.

Thanks again for all you do serving Vermont!

*James C. Condos*

James C. Condos, Secretary of State

# Voice from the Vault

## by Gregory Sanford, State Archivist

### Reproduction Rights: Typewriters, Photocopiers, and Computers

In 1963 Secretary of State Howard Armstrong was, according to newspapers, in an “unhappy state of mind.” He wanted a Xerox 914 copier because, as he wrote Rep. Richard Mallary of Fairlee, “it just is not possible for me with the increased workload due to corporation work to have this material copied on the typewriter and then proof read by two employees. That system is archaic in this day of electronic equipment which is available to an up-to-date office.” (Record Series A254, Container 00001; File 26). To acquire and sustain a photocopier Armstrong had increased fees for certified copies to a dollar, but the legislature did not allow him to use that increase for a revolving equipment fund.

Photocopiers did, of course, become common throughout state government and the country. They were, in the words of archivist Richard Cox, “the most profound and powerful office technology” prior to the personal computer.

The vast proliferation of copies presented challenges to records managers and archivists—which of the multiple replications of a document within and across agencies needed to be preserved? The new ease of making copies also had an impact on request for records. The original public records law, Act 231 of 1976, specified “photocopying equipment” in determining charges for copies of public records. In 1996 (Act 159) that language became “copying equipment” in recognition of computers.

As Captain Beefheart once sang, “she wears her past like a present”<sup>\*</sup> and thanks to H. 73 the “transparency” bill, all this past is wearing on the present. Are computers “copying equipment”? In a digital world what is the original and what is the copy? Is it possible nowadays to inspect a record without a “copy” being made? What, if anything, does that do to the right to inspect public records for free but be charged for copies of them?

Indeed 1 V.S.A. §316 which contains the “copying equipment” language is rife with contentious issues. If a public agency may “charge and collect the cost of staff time associated with complying with a request for a copy of a public record,” what does “complying” mean: time locating the records; time photocopying or creating printouts; time creating queries to extract data in response to a request; a staff lawyer’s time redacting exempt public information? Is there an obligation to manage public records so exempt information is tagged from point of creation, eliminating the need for legal review in response to copying requests? Is the need to create new queries to extract information from databases creating a new record—something agencies do not have to do and can charge for if they choose to?

There are just some of the questions legislators are grappling with as advocates from across the spectrum weigh in on H. 73. In trying to define the mechanics of our right to know and of government accountability the legislators are part of a tradition as old as Vermont. Our access to public records law is based on Article 6, Chapter I of the Vermont Constitution. That article was initially adopted at the 1776 constitutional convention in Windsor—a convention that by design did not leave any public records of the delegates’ deliberations.

<sup>\*</sup> “Pachuco Cadaver” Captain Beefheart, Trout Mask Replica.

# Opinions of *Opinions*

## by Secretary of State Jim Condos

- 1. A town clerk must record properly submitted deed and survey (conforms to statutory requirements in 27 V.S.A. §341) even if an abutter objects that it contains incorrect information.** The recording function is a ministerial duty that allows the documents to provide notice to others. If a correction needs to be made, a new corrected deed or survey must be submitted for recording.
- 2. A person in a correctional institution must register to vote in the last town in Vermont that the person resided in prior to incarceration.** (See 17 V.S.A. §2121 and 2122(a), “a person can neither gain nor lose residency...while in a correctional institution.) There is also a more specific provision in 28 V.S.A. §807 that states that a person cannot register to vote in the town where the correctional facility is located. While some attorneys consider this provision to be unconstitutional, it has not been challenged in court.
- 3. Title 17 requires that the voter checklist include the mailing address of each voter.** This should be the current mailing address which means that your checklist should be updated to include the correct E911 addresses unless the person has a Post Office Box for a mailing address or unless the person filed a confidentiality request form to keep the E911 address out of public records. You will also want to update your mailing addresses this year so that when you send out purge letters, you will be using the most recent address.
- 4. The Selectboard must pass a resolution of public necessity to begin the process for a bond vote. 24 V.S.A. §1755. All bond votes require special and additional notice and warning to be provided as directed in 24 V.S.A. §1756.** The ballots must be prepared as directed in 24 V.S.A. §1758. Selectboards and town clerks must provide copies documenting the various steps to bond counsel. It is wise to confirm that you have covered all the steps with bond counsel before the warning is posted.
- 5. The manner in which a town votes to either adopt or revoke the town manager system is determined by the manner in which the town has voted to elect its town Officers. 24 V.S.A. §1242 and 1243.** If a town has voted to elect its officers by Australian ballot, then any vote on the town manager system of government is done by Australian ballot (whether to adopt or to revoke.) If a town still votes its officers from the floor by voice vote or paper ballot, then the vote to adopt or revoke the town manager system is by the floor system of voting. The legislature decided to “piggyback” the manner of voting to the manner in which officers are elected rather than dictate Australian ballot for all towns.
- 6. Towns must go through all of the same statutory procedures to reclassify a highway from IV to III as must be done to go to a lower classification or to abandon a road. 19 V.S.A. §§707-717.** If a road is reclassified to Class III, after the selectboard has gone through the necessary notice, hearing and decision, the town can use funds from its town highway budget to improve the road, if funds are available. A vote of the electorate is only required if additional funds are needed.
- 7. The entrance checklist from each election must be kept for five years following the election and a copy shall be made available upon request at cost to the public. 17 V.S.A. §2590.** 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 checklist must be retained for five years.
- 8. A public board cannot “recess” its meeting for a brief time in order for board members to leave the room to continue to discuss board business in private.** All board business must be discussed in public unless it meets one of the two exceptions to the open meeting law discussed below (executive session or deliberative session). It is perfectly appropriate for a board to take a brief recess to allow members to use the facilities, take a stretch, or return an important telephone call. However, the recess cannot be a ruse so that board members can discuss board business outside of the hearing of the attending public.
- 9. One of the two exceptions that board can use to discuss board business outside of a public forum is an executive session.** This is used when the board is acting in a legislative capacity and the subject that needs to be discussed fits into one of the reasons listed in 1 V.S.A. §313 to go into executive session. To enter executive session, there must be a motion stating the statutory reason with specificity, the motion must be seconded and passed by 2/3 vote of the members present. No action can be taken in executive session and the board can only discuss the subject that it publicly announced.
- 10. Deliberative session is used when a board is acting in a quasi-judicial capacity, such as zoning board applications or tax appeals, and when the statutes require that the board must issue a written decision that will be subject to appeal.** After the board has heard all of the evidence in a hearing affording due process to the applicant, the entire board that will be participating in the decision meets in private to weigh the evidence and make its decision. Deliberative sessions do not need to be warned and the board can reach its decision during the session. Frequently, after the decision is reached, one member is designated to draft the written decision and circulate it to other members. The intent of a deliberative session is to allow a board to have candid discussions to weigh the evidence and to reach a decision. The deliberative session should be attended by all board members that will be participating in the decision.



*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.*

## Sad News

All of us at the Secretary of State's office were sad to hear of the passing of Sutton Town Clerk, Dorreen Devenger, who passed away at the age of 84. Dorreen had just been re-elected to her 50th year as Town Clerk in March. She was a wealth of information to all those who knew her and she will be missed by all.

The Secretary extends his sincere condolences to her family and all those who loved her.

*Just a  
Friendly Reminder*



## **Justice of the Peace and BCA Workshops**

**An overview of J.P Duties from Tax Appeals to Marriages**

**Presenters include Deputy Secretary of State Brian Leven and Charles Merriman, Esq.**

The first 30 minutes of the evening will focus on the duties of the Justice of the Peace and is intended for newly elected J.P.'s and those who would like a refresher. The remainder of the session will include an overview of the election function, performing marriage ceremonies, tax abatement and tax appeals. The workshop will include time for questions and an opportunity to meet other Justices of the Peace and BCA members. Please join us. To request a registration form, please contact Nancy Lynch at 802.828.2148 or [nancy.lynch.sec.state.vt.us](mailto:nancy.lynch.sec.state.vt.us).

**Thursday, June 9, 2011 5:30-7:00 pm** - City Hall, Montpelier

**Tuesday, June 14, 2011 5:30-7:00 pm** - Rutland City Hall, Rutland

**Wednesday, June 15, 2011 5:30-7:00 pm** - Colchester Meeting House, Colchester

**Wednesday, June 22, 2011 5:30-7:00 pm** - Municipal Offices, St. Johnsbury

# Civics Behind the Scenes

by Olivia Gay, Civic Education and Voter Outreach Coordinator

## Announcing the 2011 Winners of the Poster & Essay Contest!

After considering well over 300 entries from exceptionally talented Vermont students, we have chosen the winners of the 2011 Poster & Essay Contest. The Secretary of State extends his sincere thank you to all the students who submitted entries, as well as to the teachers, administrators and family members who supported their efforts. It is our continued hope that students not only have fun producing creative works pertaining to Vermont, but, more importantly, that the value of our great and special state will be deeply instilled in our young citizens. Congratulations to all of the students who participated this year!

The winners are listed below.

### Grades K-2 Poster Contest on Official Vermont Symbols

**Class Winner:** Waitsfield Elementary School, Tom Young, Teacher

**Individual Winner:** Lily Welch, Thetford Elementary School

**Honorable Mentions:** Cynthia Sheeran, Essex Elementary School; Emily Kenyon, Bellcate School; Toni Turner, Bethel Elementary School; Rui Huang, Randolph Elementary School

### Grades 3-5 Poster Contest on a Vermont History Theme

**Class Winner:** Robinson Elementary School, Beth Hahr, 4th Grade Teacher

**Individual Winner:** Ian Carpenter, BFA Fairfax Elementary School

**Honorable Mention:** Class: Hardwick Elementary School, Maureen Demers, 4<sup>th</sup> Grade Teacher; Gabrielle Ochs, Orwell Village School; Rachele Reicken, Castleton Elementary School; Abbygale Karlen, Brownington Central School

### Individuals: Grades 6-8 Essay Contest on the Vermont Constitution: Civic Virtues

**Winner:** Maggie McCaffrey, U32 Middle School

**Honorable Mentions:** Asher Lehrer-Small, Brown's Middle School; Kelsey Parker, Dummerston School; TJ Beaumier, Avalon Triumvirate; Sarah Henderson, Good Shepard Catholic School; Hannah McKay, U32 Middle School

Winning entries will be posted on line soon at <http://www.sec.state.vt.us/kids/index.html>

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## The 2011 High School Voter Education Registration Week - May 23-27

If you are not already involved in educating and registering eligible students at your local high school, please consider volunteering your time to help out by contacting Olivia Gay, Civic Education and Voter Outreach Coordinator, via email at [olivia.gay@sec.state.vt.us](mailto:olivia.gay@sec.state.vt.us), or by calling her directly at 828.1296.

The Secretary of State's office has lots of great materials for voter education and voter registration drives in schools (or anywhere else)! Use this link to view our resources:

[http://www.sec.state.vt.us/kids/vtvotes/voter\\_registration.shtml](http://www.sec.state.vt.us/kids/vtvotes/voter_registration.shtml)

For more information about the Secretary of State's Office's Civics Programs or to order materials visit [www.sec.state.vt.us](http://www.sec.state.vt.us) or contact Olivia Gay at 802-828-1296 or email [olivia.gay@sec.state.vt.us](mailto:olivia.gay@sec.state.vt.us)

# Elections Calendar

## **MAY 2011**

30 - In towns using Australian ballot, town clerk may open and destroy used town meeting ballots and tally sheets, except as otherwise provided by law (90 days after town meeting election). 17 V.S.A. § 2590(d)

## **JULY 2011**

15 - Last day for U.S. Congressional candidates to file FEC quarterly reports for the July quarter (Apr. 1-Jun. 30). 2 U.S.C. § 434(a)(2)(B)

15 - Candidates for statewide office and general assembly who have made expenditures or received contributions totaling over \$500 must file a campaign finance disclosure report. 17 V.S.A. § 2811(d)

## **AUGUST 2011**

26 - TBD (Date dependent on caucus date, which is set by state chairman) First day for the chairman of a state committee of a political party to mail a notice of the date and purpose of the reorganizational caucuses to each town clerk and to each town chairman of the party. 17 V.S.A. § 2302 (14 days before date set for caucus which is set for a date between September 10 and September 30.)

## **SEPTEMBER 2011**

10 - First day for members of political party to meet in caucus in their respective towns. 17 V.S.A. § 2302

15 - By September 15 of each odd-numbered year the board of civil authority shall review the most recent checklist name by name and consider, for each person whose name appears on the checklist, whether that person is still qualified to vote. 17 V.S.A. §2150(c)

16 - (This could change depending on what the date of the caucus is set for.) Last day for the chairman of a state committee of a political party to mail a notice of the date and purpose of the caucuses to each town clerk and to each town chairman of the party. 17 V.S.A. § 2302

20 - Town clerks must send a letter certifying compliance with 17 V.S.A. §2150 to the secretary of state. 17 V.S.A. §2150(d)(7)

30 - Last day for members of a political party to meet in caucus in their respective towns. 17 V.S.A. § 2302

Within 72 hours after the caucus, the chairman and secretary of the town committee shall mail to the secretary of state, the chairmen of the state and county committees, and the town clerk a copy of the notice calling the meeting and a certified list of the names and mailing addresses of the officers and members of the town committee and delegates to the county committee. 17 V.S.A. § 2307

## **OCTOBER 2011**

17 (Monday) Last day for U.S. Congressional candidates to file FEC quarterly reports for the October quarter (July 1-Sept. 30). 2 U.S.C. § 434(a)(2)(B) and 17 V.S.A. §2103(13)

## **DECEMBER 2011**

26 (Monday) First day to warn the first public hearing if charter adoption, amendment or repeal is to be voted at town meeting (70 days before town meeting). 17 V.S.A. §§ 2641(a), 2645(a)(3) and (6)

# Upcoming Events

## May 2011

**May 23-** *Secretary of State's Annual Poster and Essay Contest Celebration*

## June 2011

**June 3-4-** *The Secretary of State's offices will be moving from the Redstone Building to 128 State Street!*

**June 9-** *JP/BCA Training- Memorial Room, Montpelier City Hall, Montpelier*

**June 14-** *JP/BCA Training – Alderman's Chambers, Rutland City Hall, Rutland*

**June 15-** *JP/BCA Training- Colchester Meeting House, Colchester*

**June 22** *JP/BCA Training- St. Johnsbury Municipal Office, St. Johnsbury*

### ***Secretary of State Jim Condos to Develop a "Vermont Transparency Tour"***

Secretary of State Jim Condos would like to announce the development of a "Vermont Transparency Tour" across the state to help educate/train local and state government officials on the laws regarding Access to Public Records and Open Meetings. Secretary Condos feels that a change of the culture and attitude towards access to public records and open meetings is important for both state and local government.

The Vermont League of Cities and Towns, Vermont School Boards Association, Vermont Municipal Clerks and Treasurers, American Civil Liberties Union, Common Cause, and the Vermont Press Association have all agreed that additional training is important and have offered their support of this endeavor.

Important to note, there is pending legislation under consideration in the legislature this session that, if passed, will provide greater transparency in public records and open meetings.

There will be at least 12 training sessions are occurring over this summer and fall.

The training sessions will be designed for all state and local government officials, and will allow any member of the public to attend. The initial idea is to schedule two sessions a day, for two days a week, over a three or four week period. The locations will be conveniently spread across Vermont.

We will keep you informed as dates and locations are set.

# Opinions

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May 2011

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