



# Opinions

Office of the Vermont Secretary of State

Vol. 13, #6

June 2011

## Secretary of State's Office ON THE MOVE!

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## Quote of the Month

“Imagination is more important than knowledge. For knowledge is limited to all we now know and understand, while imagination embraces the entire world, and all there ever will be to know and understand.”

- Albert Einstein

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## A Message from the Secretary

### We have moved – to our new location as of June 6, 2011

It is with great pleasure that I announce that the offices of the Secretary of State have relocated to 128 State Street, effective June 6, 2011.

The decision to move the office out of the Redstone building and into 128 State Street will ensure our services will be easily accessible to the public and to the legislature. We spend a great deal of time at the Statehouse during the legislative session, and being this close will allow for increased availability and accessibility.

We are committed to being more accessible to the public—to our constituents—whether it is an individual seeking information, lobbyists looking to file their disclosure reports, town clerks with an election question, or businesses needing to access our Corporations division.

Our new location is centrally located and it will be easy to stop in and utilize our services.

It is especially important to me that the citizens of Vermont have open and easy access to their government, and I welcome folks to stop in and see our new space, meet our staff, and know that we are available and ready to respond to their needs with friendly, competent customer service, whether over the telephone or in person.

We will be hosting an open house sometime in the near future for constituents, lawmakers, and businesses to see our new offices.

To continue our theme of improving efficiency and productivity, please let us know if you are willing to receive our **Opinions** newsletter electronically by contacting us at:

- email: [secretary@sec.state.vt.us](mailto:secretary@sec.state.vt.us)
- fax: 802-828-2496
- post: 128 State Street, Montpelier, VT 05633-1101

We ask that you include the information from your current **Opinions** mailing label. Thanks for your dedication and hard work in serving Vermonters,

James C. Condos, Secretary of State



# Voice from the Vault

## by Gregory Sanford, State Archivist

### Records Management and Zombies

You certainly appear dead, but before burial your friends and relatives want to be sure. To avoid premature burial in the days before embalming and cremation pretty much settled the matter there were various ways to test one's deadness. These included jamming needles under fingernails, slicing feet with razors, and in what appears to me a surefire method, inserting a red hot poker in the place we generally agree "the sun don't shine."\*

Inadequate testing could lead to horrible consequences from having to read *Pride and Prejudice* and *Zombies* to watching what will undoubtedly be a summer blockbuster on Abraham Lincoln and the undead. Of course waiting too long to bury the dead can be equally macabre. I am, of course, referring to *Price v. Town of Fairlee* (No. 2010-125; April 29, 2011; <http://info.libraries.vermont.gov/supct/current/op2010-125.html>).

Public records left lying about after their legally adopted "interment" date may come back to haunt you. Ballots cast in Fairlee during the 2006 elections are a case in point.

Under 17 V.S.A. §2590(d) ballots for state and local candidates shall be sealed for 90 days "after which time they may be destroyed" (federal ballots have a longer retention). Nearly two years after the 2006 elections and long after the 90 days had elapsed Fairlee resident Timothy Price sought access to the ballots and tally sheets. The records had not been destroyed as allowed by statute and Mr. Price wished to examine them to see how effectively they had been counted (readers may recall that the 2006 elections saw the outcome of the state auditor race reversed after a recount). During Mr. Price's sustained suits to gain access to the records Fairlee destroyed them.

We don't have the space for details, but in April the Vermont Supreme Court found that since the ballots had not been destroyed and were only sealed for 90 days they had become public records on the 91st day, available for inspection. The Court also addressed the destruction of the ballots and may have opened the door for more serious penalties in the future for the unauthorized destruction of public records.

Meanwhile like *Godzilla*, some public records became re-animated by exposure to nuclear power. Entergy filed a lawsuit against the State causing a legal hold to be placed on all public records relating to Entergy Nuclear Vermont Yankee LLC or Entergy Nuclear Operations Inc. A legal hold means that even records eligible for destruction under an approved record schedule cannot be destroyed; it is the equivalent of the red hot poker (to put a hold on your records at the record center go to <http://vermont-archives.org/records/handbook/pdf/VSARA0009.pdf> and [http://vermont-archives.org/records/handbook/forms/VSARA-20\\_RetentionHoldRequest.doc](http://vermont-archives.org/records/handbook/forms/VSARA-20_RetentionHoldRequest.doc)).

I all too often hear, even from record officers (sigh), that managing records is too burdensome, too distracting from "real work." Good records management, however, helps identify when records no longer have a legal, administrative, or informational purpose, allowing for their orderly destruction. This is not to hide information, but rather to facilitate access to records that do have current value. Indeed, good records management can facilitate the identification of any records that may need to be temporarily held beyond their retention period.

Whether it is the legal and credibility costs to Fairlee because it did not destroy records when it could and did when it probably shouldn't have, or the need for agencies to review all their extant records that may be subject to a legal hold, failure to manage records is rarely a good practice and can raise grave issues.

To learn more about VSARA's record management program go to: <http://vermont-archives.org/records/>.

\* I unearthed this information from Mary Roach, "*Stiff: The Curious Lives of Human Cadavers*"

# Opinions of *Opinions*

## by Secretary of State Jim Condos

1. Each polling place must be in a public place in the voting district (unless all districts in your town vote at one polling place) as designated by the Board of Civil Authority; however, the voters may designate different polling places at an annual or special meeting. 17 V.S.A. §§2501, 2502. We strongly encourage Boards of Civil Authority and/or town voters to do everything possible to choose polling places that are ADA accessible and that are nonsectarian whenever possible. Although rulings in court cases in other states have upheld the use of a church all-purpose room when absolutely no other public place is available, it is a best practice to take this time between elections to find and designate a truly public place. If the BCA votes to use a different polling place for the primary and general elections, the BCA should advertise this in the community in addition to the required posting of warnings.
2. The Board of Civil Authority may meet from time to time to change the hours when the polling place will be open for a particular election or for all future elections. It is our general advice that having consistent hours helps voters to know when they can count on the polling place to be open, but if the BCA believes it is in the best interest of the municipality, the BCA can vote to change the hours for voting. 17 V.S.A. §2561
3. The Town Clerk shall be the presiding officer unless the town by previous vote at an annual meeting or by charter has provided otherwise. 17 V.S.A. §2452(a). However, if a town clerk will be unavailable or unable to serve at a particular election, then the Board of Civil Authority shall 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 shall appoint a presiding officer for each additional polling place. 17 V.S.A. §2452(b)
4. If there are not going to be enough members of the board of civil authority available to staff the polling places, then prior to the day of the election, the Board of Civil Authority shall appoint a sufficient number of voters from each district to serve as assistant election officials for each polling place. 17 V.S.A. §2454. The BCA 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.
5. The selectboard and school board may loan money to each other secured by a note signed by the selectboard or school board as the case may be. 16 V.S.A. §429. The note shall stipulate the terms and the notes shall be payable upon demand or mature within three months from the date of issue. Obviously, a board needs to have the funds available and be willing to cooperate. This is just a reminder that this option may be helpful in some towns and in some circumstances.
6. Special town or special school district meetings may be held on any day chosen by the legislative body, as long as appropriately warned. If other town or school boards want to meet on the same day, there is no prohibition preventing several meetings from being concurrently scheduled. We suggest that it is a best practice for the chair of a board to consult with other town boards in order to coordinate meetings with a “master calendar” before signing the official warning, but it is not required by law.



7. A person can be added to the checklist in your town by filing an “intent to register” under 17 V.S.A. §2144(b) if the voter will be a resident on the day of an election. This provision was added to allow a person who knows he or she will be closing on a house or moving into a town on November 1st or March 1st to meet the 5 p.m. voter registration deadline by filing an “intent” or application with the town clerk. On Election Day, if the person has become a resident, the person is then added to the checklist by the BCA members present at the polling place. A person cannot submit an application because they are looking for an apartment in town, or they want to live in your town, but haven’t yet found a residence.
8. When a town or school district or other municipal corporation uses the Australian ballot system of voting for the budget, if the budget is defeated, the legislative body may warn another election on a revised budget with at least seven days warning and with at least 5 days notice of the informational meeting. 17 V.S.A. §2680(c) and (g). The vote must also be in the same location as the first vote. 17 V.S.A. §2680(c). We suggest that boards consider giving at least 10 to 15 days notice and try to keep the voting on Tuesdays when voters expect elections. Also, the board needs to make arrangements with the town or school clerk so that absentee ballots are available as soon as possible. The normal 30 to 40 day warning period for a special meeting or election does not apply to Australian ballot budget votes when the budget has failed to pass at all prior annual and special meetings.
9. The Vermont Public Records Law provides that minutes of ALL meetings of public bodies, including committees and subcommittees, shall be available for inspection and/or for purchase of copies upon request after five calendar days from the date of any meeting. 1 V.S.A. §312(b) Some boards mistakenly believe that they can wait until five days after the minutes have been approved at the next meeting of the board. This is not the case. Draft minutes must be made available five days after the meeting. The person drafting the minutes can boldly stamp them “DRAFT” on each page, or write DRAFT across the top, but the intent of the statute is that interested persons must be able to review the minutes five days from the meeting.
10. Although some towns or boards post minutes on the bulletin board or on a website, this is done as a courtesy only. The law does not require posting of minutes.
11. Minutes must contain at least the following: list of board members present; list of all other active participants; all motions, proposals, and resolutions made, and what action taken or disposition was made; and the results of any votes, with a record of individual votes if a roll call vote was requested. If a clerk or secretary to the board attempts to include too much additional discussion with attribution to participants, or to characterize discussions, a board can be forced to spend too much time “correcting” the minutes. Minutes are not intended to be a transcription of the discussion but rather a clear summary of action taken. 1 V.S.A. §312(b)(1)

*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.*

# Civics Behind the Scenes

by Olivia Gay, Civic Education and Voter Outreach Coordinator

## High School Voter Registration Activities

The week of High School Voter Registration is now past with a number of schools taking advantage of the Secretary of State's materials to register young voters. At Mount Mansfield Union High School in Jericho, Secretary Condos joined Representatives Anne O'Brien and Bill Frank, community member Marshall Paulsen, Jericho Town Clerk Jessica Alexander, and MMU teachers to offer students the chance to become voters. Other participating high schools include Bellows Falls, Blue Mountain, Essex, Harwood, Leland and Gray, Montpelier, Mt. Anthony, North Country, and South Royalton.

High School Voter Registration activities continue right through graduation, such as Hardwick's Hazen Union High School tradition described below by Hazen Government and History teacher Mike Metcalf who is also an adjunct at Johnson State College and a Justice of the Peace in the Town of Greensboro.

*"A significant majority of our departing seniors are 18 years of age by graduation day in June. Among a number of requirements, to graduate from Hazen a student must pass a government class. During finals week, students who are of age are encouraged to complete the Voter's Oath form. As we lead the senior class through the annual rehearsals for graduation, final checks are done to see that all eligible voters have properly enrolled.*

*For the last almost quarter of a century, just before school officials present the diplomas at Commencement, I have been privileged to register members of the class to vote. I generally offer a brief review of recent news on the "Democracy Front" - the last quarter century has seen the fall of dictatorships across much of the world and the fits and starts attendant with emerging democracies - then I ask all graduating seniors who are eligible and have enrolled to stand and raise their right hands. I then administer the Voter's Oath prescribed in the Vermont Constitution.*

*After the ceremony audience members who have moved or were never registered sometimes seek me out to register. I keep a stack of registration forms in my classroom and I often find that people appreciate having someone talk them through the process as well as remind them of voter requirements and procedures such as: people may sign their own Voter's Oath forms in Vermont and it is possible to register via the "Motor-Voter" bill when renewing a driving license.*

*Short of the diploma itself, one of the most important things we may endow our graduating seniors with is the confidence to participate in our democracy and to provide the means to register to vote to make that participation possible."*

The Secretary of State's office extends appreciation and thanks to all the people who continue to include young people in the democratic process by registering them to vote.

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

## **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 - 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 - 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



*Just a  
Friendly  
Reminder*



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

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 p.m.**  
Pavilion Building, Montpelier, VT

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

**Tuesday, June 14, 2011, 5:30-7:00 p.m.**  
Rutland City Hall, Rutland, VT

**Wednesday, June 22, 2011, 5:30-7:00 p.m.**  
Municipal Office, St. Johnsbury, VT

**Monday, June 27, 2011, 5:30-7:00 p.m.**  
Brattleboro Savings and Loan, Brattleboro, VT

### ***ON THE MOVE!***

June 6, 2011- The Secretary of State's offices have moved from the Redstone Building to 128 State Street, Montpelier, VT -05633-1101. Our phone numbers and emails will remain the same. Thanks for your patience during our move, which took place on Friday, June 3rd and Saturday, June 4th.

### ***WE WANT TO KNOW!***

If you have any news or upcoming events you'd like us to add to our newsletter, please let us know. We're happy to add this information here!

### ***REMINDER!***

Our next Opinions will be a combined July/August issue. Send us your fall upcoming events now and we'll include them!

# Opinions

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June 2011

128 State Street  
Montpelier, VT 05633-1101  
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RETURN SERVICE REQUESTED

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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: [secretary@sec.state.vt.us](mailto:secretary@sec.state.vt.us)

or post: 128 State Street, Montpelier, VT 05633-1101.

Be sure to include the information from your current *Opinions* mailing label as well as any changes that you would like to have made.

*Thank you for helping us keep Opinions running efficiently!*

