



Opinions

Office of the Vermont Secretary of State

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November 2011

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Transparency Tour in full swing!

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Dates, Times and Places of 6 last Transparency Tours

Quote of the Month

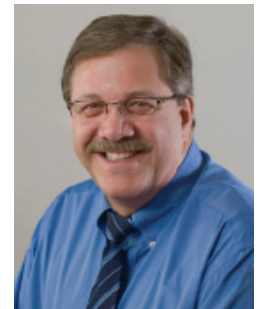
"A person without humor is like a wagon without springs. It's jolted by every pebble on the road."
--Henry Ward Beecher

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A Message from the Secretary

Greetings from Montpelier! As always, it has been a busy time here at the Secretary of State's office. In late September I traveled to Taiwan with the National Association of Secretaries of State (NASS) and in mid-October I attended the Business Identity Theft Forum in Atlanta, again with NASS.



My active participation with this group allows me to meet many other Secretaries of State, and share and collect information regarding pressing issues and proposed innovative solutions to the challenges our states currently face. As a new Secretary, I consider my colleagues in NASS to be excellent resources. I am bringing valuable knowledge and the benefits of other states' experiences home to Vermont and sharing this information with division directors for application, where appropriate.

As many of you know, the Transparency Tour is well underway. We are averaging 25-30 attendees at each presentation, and the discussions have been rich and valuable to all of those in attendance. The feedback we are receiving from citizens, local municipal employees and state officials who have attended has been overwhelmingly positive. We've also adjusted and improved the presentation based on feedback from participants. Town clerks and other local municipal employees have appreciated that the meetings are happening locally, in their own communities. No one has had to drive more than one hour to attend one of the sessions. This also allows us to discuss and address real-life questions and challenges that are facing a particular community, which I think is really important. Thank you for caring enough to dig deep into the issues related to public records and open meetings. They are very important components of our democracy.

In the month of November, we will complete the tour (see page 7 for the dates and locations of the last six presentations), and we will post both the Power point presentation and additional handouts on our website for future reference. If for some reason, you have not signed up to attend one these meetings, I encourage you to do so. You will find it is worth your time and effort.

As always, thank you for all of the good work you do at the local level to make municipal government accessible and transparent and by so doing fulfilling the expectations of our citizens and maintaining the integrity of your public office.

James C. Condos
James C. Condos, Secretary of State

Voice from the Vault

by Gregory Sanford, State Archivist

Getting Steamed: Vermont's Energy Debates

Finding cheap, clean, accessible, and, in recent years, renewable energy sources has long generated vigorous public dialogue. The heat of those dialogues is often stoked by related issues such as the environmental impacts of our energy choices. Currently Vermonters are commenting on the viability and environmental impact of wind power on places such as the Lowell ridge line; debating the relative costs and risks associated with nuclear power and Vermont Yankee; and weighing in on the State's proposed 2011 comprehensive energy plan (<http://www.vtenergyplan.vermont.gov/>).

Such dialogues are a long standing tradition. In October 1794 residents of Castleton petitioned the general assembly, enumerating "the repeated injuries we sustained as to our Health and damage done by overflowing with WATER at some seasons of the year, the most fertile and valuable part of some of your PETITIONERS improved land..." The water overflow was from dams built to power local mills deemed essential to the economy. The dams penned large quantities of water to use during the drier summer months. The problem, according to the petitioners, was that when the water was drawn down it left "a noisome putrid stench which pregnates, the AIR to such a degree, as to convey sickness and death to the Inhabitants at several miles distance..."

The mill owners countered with their own petition. Their mills were "Useful and Necessary to the Public." They complained that "a Litigious Neighbor" kept bringing lawsuits against them, "the Patriotic Proprietors" of the mills, "with a view to force them to Cut down their Dam, or to Teize Tantalize, and wear them out."

So there we were, 17 years into Vermont's existence and three years into statehood, doing battle over whether the economic benefits of an energy source—dammed water—outweighed its environmental and health impacts. Water power, and particularly hydroelectric power, became one of the dominating public energy debates of the 19th and 20th centuries. By the late 19th Century Vermont governors spoke of Vermont's "white coal" and called for the full exploitation of this renewable resource. Of course, as with any energy source, there were costs and questions about who should bear those costs.

After the 1927 flood, plans were made for 85 Vermont flood control dams. One question was whether to build the dams higher than flood control required so they could be used to generate power. That sparked a concomitant debate over who should control the production of that power—the State or private utilities. Governor George Aiken fought for the State to control its natural resources and, in his 1937 inaugural, enumerated other problems with hydro power: "The fact that the cost of a development of this nature, with the expense of reservoir sites, the abandonment of farms, the loss of population, the sacrifice of recreational and industrial development, relocation of highways and other huge expenses, would run well up into the millions of dollars may be accepted without question."

Over time hydroelectric power, or at least large dam projects, lost favor because of environmental and other costs. We began to neglect or remove, rather than build, dams. Time, however, is not a simple linear progression of technologies and with the emergence of small scale hydroelectric turbines discussions about local hydro projects have revived.

"Local" may be the key word. Governor and later Senator Aiken was a leading proponent of the New York Power Authority that positioned Vermont for cheap energy, created out of state. Currently we look to large-scale Canadian hydro-electric facilities for power.

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Opinions of *Opinions*

by Secretary of State Jim Condos

1. It is a best practice for each legislative body, selectboard, school board, or other public body that owns buildings to adopt a policy outlining its requirements for use of town or school property by other groups. It is constitutionally permissible for a board to prohibit any and all use by outside groups. However, it is not good policy (may cause discrimination claims) allowing the use of the buildings by certain categories or types of groups and not other groups, unless there is a real difference in the type of use being requested. For example, it is reasonable and acceptable to limit use of certain rooms or spaces to groups of less than 30, or to meetings ending not later than 9 p.m. However, it may be discriminatory to allow the boy scouts to meet in a room, but to turn down a political caucus or a religious organization.

2. Social service agencies may join together in circulating a petition to be signed by 5% of the legal voters to ask to have an article or several articles placed on the warning for town meeting. However, if using a joint petition, we strongly suggest that each agency present its request in a separate Article in the petition so that the votes for each agency will be taken separately on the ballot or during the floor town meeting.

3. Property tax exemptions for volunteer fire department property must be voted on at Town meeting. 32 V.S.A. §3840. The exemption may be voted for ten years following the first vote and thereafter for five-year periods. The Vermont Listers Handbook provides a good discussion of property tax exemptions including a chart giving the source of funding for education property tax liability for locally voted exemptions. The handbook also includes a chapter on properties that are exempt under state or federal law, and another chapter on exemptions that must be voted by the town.



4. The age requirement for State Representative and State Senator are not clear in the Vermont Constitution. In discussions with staff at Legislative Council and the Office of the Attorney General, we agree that there is no clear statement of age requirements in either the constitution or the statutes. 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, Vermont Constitution, Chapter II, §14) and it is up to the Senate to judge the qualifications of its members (17 V.S.A. §2606, Vermont Constitution, Chapter II, § 19). 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.

5. The same person may run for the position of Town Clerk and the position of Town Treasurer but each office MUST be listed separately on the March town meeting ballot. There has been some confusion in some towns because the same person has held both offices for many years. Unless a town charter provides otherwise, the person must submit a petition for each office and must be shown on the ballot separately for Town Clerk and Town Treasurer. 17 V.S.A. §2646

(Opinions on Opinions)continued from page 3...

6. The term of office for Town Clerk or Town Treasurer is one year unless the town has voted to make it a 3 year term. If a town wants to switch back to a one year term, the selectboard can place an article on the annual town meeting to change back to rescind the change to a 3 year term and go back to a one year term for either office. 17 V.S.A. §2646(2) and (3).

7. As tax appeals are being held in a number of towns, remember that on appeals from the listers decision to the Board of Civil Authority, the BCA may increase, decrease or sustain the appraisal. (32 V.S.A. §4409.) Once the taxpayer raises the issue of the property's valuation, the BCA must make findings to support what the BCA believes to be the correct valuation of the property, even if that amount is higher than the listers' assessment. The same is true for further appeals to the State Board of Appraisers or the Superior Court.

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.

(Energy Debate)continued from page 2...

Water power has only been one part of our energy debates. Wood either used directly to heat or indirectly to create steam had its day. Wood and then coal fueled our transportation systems, notably trains. And again these energy sources raised issues. Senator Ralph Flanders noted in his autobiography that railroad engines without spark arrestors "sprayed burning brands over the countryside, setting grass and forest fires and burning down the wood bridges through which the trains passed." (Flanders, Senator From Vermont, 1961; pp 14-15). Farmers, among others, were not pleased and yet another energy source ended up in court. Wood and coal as energy sources were then largely replaced by oil and gas.

Again, the history of energy is not a linear progression and in 1975, during the OPEC oil embargo, a gubernatorial commission re-examined wood as part of our energy portfolio. The commission's report recommended wood-fired power plants but, after examining whether it was truly renewable, cautioned that "in the long run wood, like oil, may well be too precious for fuel and will be replaced by such energy sources as fusion power and solar derivatives like the sun and wind once these sources resolve their capital cost and energy balance problems." The report also cautioned against further increasing reliance on nuclear power. (The report can be found on our website at: <http://vermont-archives.org/research/spotlight/pdf/salmonrpt.pdf>; see in particular p.54).

Vermont's search for energy is long and fascinating but I am running out of steam and space. We await energetic researchers who can illuminate this history.

For more on OPEC-related energy policy see the July/August column <http://vermont-archives.org/publications/voice/pdf/runningonempty.pdf>. I offer a tip of the hat to Paul Gillies for providing the Senator Flanders quote. The quotes from the 1794 petitions can be found in Vermont State Papers, Volume X, General Petitions, 1793-1796.

Civics Behind the Scenes

by Olivia Gay, Civic Education and Voter Outreach Coordinator

Civics in Action and High School Innovation

Over the years there have been a number of initiatives focused on innovation in Vermont high schools, many of which offer practical experiences of civics in action.

One of these programs is YATST (Youth and Adults Transforming Schools Together) www.yatst.com. According to YATST director, Helen Beattie, there are currently 12 member high schools: Poultney, Mill River, Burlington, Craftsbury Academy, Spaulding, Windsor, Peoples Academy, Hazen Union, Harwood Union, Cabot, Big Picture School of S. Burlington HS & Twinfield Union. They share the common goal to “increase student engagement, learning and voice in decision making by creating a partnership between students, faculty and the community to increase relevance, relationships, rigor and shared responsibility in Vermont schools.” In pursuing this goal, students practice a key component of civic responsibility: the active and thoughtful articulation of values in the context of real-life experiences.

Mary Whalen, Twinfield teacher, noted: *"My Rights in Action class (YATST curriculum + my own civic engagement pieces) is truly a lab for democracy - from our first practices in respecting one another's major influences in life, diverse perspectives and deliberative dialogue to our data analysis and participatory action research. And what is best is that we aren't waiting for kids to "be 18" before they can play a meaningful role in their community or as citizens. YATST is about "beginning where you are at" to address issues that have meaning and incite justice and hope."* YATST is hosting a conference in Montpelier on November 11th called School Transformation: The "Great Expectations" Buzz! See the following link for more information and registration: <http://yatst.com/attachments/article/98/YATST%20November%202011%20Conference%20Brochure%20FINAL1.pdf>

In September, the Vermont Department of Education announced grant awards for 21st Century Innovative Programming to the following high schools: Bellows Free Academy/St Albans, Montpelier, Essex, Williamstown, Cabot, and Big Picture School of S. Burlington HS. At Big Picture South Burlington (<http://bigpicturesb.net/about>), the funds will be used to support programming where students are encouraged to explore their interests with the belief that students learn best when they are doing something that they are passionate about in the real world.

Sarah Bertucci, Big Picture Program Director, explained that Civic and Social Responsibility is one of five key outcome areas in which students must show substantial accomplishments for graduation. Students must complete a senior thesis project through which they make a contribution to a community. One student's project was to return to her birthplace in the Marshall Islands, bringing art supplies to schools. Bertucci notes that *"Translating ideas into reality, applying practical skills, and actually accomplishing a project, rather than talking about it in the abstract in a classroom, means that students push through obstacles in order to achieve their aims."* Students also engage in research and reflection, further deepening the learning that helps students grow into active participants in civic life.

Here at the Secretary of State's Office, we applaud these commitments to preparing students to pursue civics in action, and we hope that interested readers will go to the program websites to learn more about this important work. Explore the Secretary of State's Kids' programs and order materials online at www.sec.state.vt.us/kids/index.html or by calling (802) 828-1296 or (800) 439-8683. If you have any questions, please contact Olivia Gay, Civics Education and Voter Outreach Coordinator, at (802) 828-1296 or Olivia.Gay@sec.state.vt.us.

Elections Calendar

DECEMBER 2011

December 27 (Tuesday)

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)

JANUARY 2012

January 6 (Friday)

Last day to warn the first public hearing if charter adoption, amendment or repeal is to be voted at town meeting (60 days before town meeting). 17 V.S.A. §§ 2641(a), 2645(a)(3) and (6)

January 9 (Monday)

Presidential primary petitions and consent forms for major party candidates who wish to be on the ballot for a major party presidential primary shall be filed with the secretary of state not later than 5:00 p.m. on the first Monday after the first Tuesday of January, signed by at least 1,000 registered Vermont voters. The petitions must be accompanied by a \$2,000.00 filing fee and a consent of candidate to the printing of his or her name on the ballot. If the petition is accompanied by an affidavit of the candidate that the candidate and the candidate's campaign committee are without sufficient funds to pay the filing fee, the secretary of state shall waive all but \$300.00 of the payment. 17 V.S.A. §§ 2702, 2353, 2354, 2358

January 20 (Friday)

Town clerks will receive presidential primary ballots by this date (not later than 45 days before the election). Clerks should store the ballots, except those used for sample ballots and absentees, in a secure location until the date of the election. 17 V.S.A. §§ 2479

January 26 (Thursday)

First day town clerks may post warnings for the town meeting and the presidential primary election (40 days before the meeting). 17 V.S.A. § 2641(a)

Last day for receipt of petitioned articles to be added to the town meeting warning. (Petition must have been signed by five percent of the legal voters of the municipality.) 17 V.S.A. § 2642(a)

Last day for board of civil authority to designate polling places if necessary, divide the checklist according to geographic boundaries. 17 V.S.A. § 2501(a)

Official copy of proposed charter amendments must be filed in town clerk's office if vote is to be taken on town meeting day (10 days before first public hearing). 17 V.S.A. § 2645(a)(2) and (3)

January 30 (Monday)

In Australian ballot towns, nominating petitions for town offices must be filed with the clerk of the municipality no later than 5:00 p.m. (sixth Monday before the election) A nominating petition must be signed by 30 voters or one percent of the legal voters, whichever is less.

17 V.S.A. § 2681(a) and (b)

January 31 (Tuesday)

Town clerks receive at least five copies of the presidential primary warning and notice for each polling place in the town (at least five days before they must be posted). Blanks should be filled in on each warning by the town clerk, listing the polling place, address and the time polls open in each town. 17 V.S.A. § 2521(b)

In Australian ballot towns, town clerk receiving petitions for candidates running for municipal office must return any defective petitions to the candidate (within 24 hours of receipt).

17 V.S.A. § 2681(e)

Last day for U.S. Congressional candidates to file FEC election year year-end report. (July 1-Dec. 31). 2 U.S.C. § 434(a)(2)

Upcoming Events

UPCOMING MEETINGS AND CONFERENCES

NOVEMBER

16th-18th NEACTC- New England Association of City and Town Clerks will hold its 44th Annual Conference at the Hilton Mystic in Mystic, Connecticut. Look for more information at www.newenglandclerks.org/

Transparency Tour Dates, Times and Places!

Tuesday, November 1st, 6-8 pm, St. Johnsbury Middle School Auditorium, 257 Western Avenue, St. Johnsbury

Thursday, November 3rd, 6-8 pm, Morrisville Municipal Office Community Room, 43 Portland Street, Morrisville

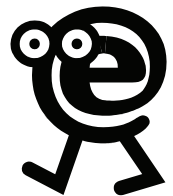
Monday, November 7th, 6-8 pm, Ilsley Public Library, Community Room, 75 Main Street, Middlebury

Wednesday, November 9th, 6-8 pm, Bennington Fire Facility, 130 River Street, Bennington

Thursday, November 17th, 6-8 pm, Rutland City Hall, Alderman's Chamber, 1 Strongs Avenue, Rutland

Tuesday, November 22nd, 6-8 pm, Bugbee Senior Center, 262 North Main Street, White River Junction

Please mark your calendars with the date and place that's most convenient for you and share this information with your colleagues.



LET US KNOW YOU'LL BE THERE!

Please contact Nancy Lynch if you need additional information and to **RSVP**. We want to make sure each venue will accommodate everyone who wishes to attend, so letting us know that you are coming---and to which location, will help us make these events comfortable for everyone! Nancy can be reached at 802.828.2148 or via email at nancy.lynch@sec.state.vt.us. Thanks so much and we hope to see you soon!

Opinions

Office of the Vermont Secretary of State
November 2011

128 State Street
Montpelier, VT 05633-1101
802-828-2363
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