



Opinions

Office of the Vermont Secretary of State

Vol. 14, #2

February 2012

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Quote of the Month

Adopt the pace of nature: her secret is patience.

-Ralph Waldo Emerson

A Message from the Secretary

As we move further into 2012, we at the Secretary of State's office are gearing up to support you, Vermont's municipal officials. Beginning with Town Meeting on March 6th, and all along the way up to and through the general election in November, we are here to help you.



Our Elections Division is prepared to offer guidance as well as the usual assistance you receive from our office during election years. Please do not hesitate to send an email or call our office at 828-2363.

You will also find many helpful items on our website – so check it out – the answer to your question may be right at your finger tips. <http://vermont-elections.org/>

Another piece of innovation – Election Night Reporting – will be operational during this March's Presidential Primary. This will allow town clerks around the state to report the primary results in a simple to use format (following the same type of system as the Absentee Ballot Portal). Our strong belief is that this will reduce the number of phone call interruptions that the clerks have to deal with as they are trying to finish their ballot counts and paperwork; and provide more consistent reporting of vote tallies. On election night, March 6, you will be able to watch the unofficial results on the web. The week before the election, we will post the link on our elections page.

Finally, I want to comment on the large amount of inquiries we continue to receive regarding Open Meetings and Public Records. I am thrilled that people are asking these questions. I hope that our Vermont Transparency Tour helped stimulate discussions that have led to the increase of calls to our office on these issues. Together, we will continue to make Vermont one of the most, if not the most, transparent state in the country. Thank you for your assistance in making that happen. I know Vermont's citizens expect it from us, and furthermore, they deserve it.

Sincerely,

James C. Condos, Secretary of State

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Voice from the Vault

by Gregory Sanford, State Archivist

Sexing Chicks and the Appraisal of Public Records

Egg producers faced an economic problem: it was impossible to determine the sex of new-born chicks. Weeks would go by in which the farmer had to feed hens and unwanted (and unknown) males alike. Many great minds hatched solutions only to end up with egg on their faces (Aristotle thought a long egg equaled male while Pliny thought the opposite; egg size, however, isn't a sex indicator).

During the 1920s the Japanese discovered that by squeezing a day-old chick's intestines it was possible to see slight anatomical differences in the cloaca that indicated the bird's sex. Thus males could be quickly culled and feed expenses reduced.

A good sexer sexes 1,200 chicks an hour with 98 to 99% accuracy. Trainees might have to sex 250,000 chicks before becoming proficient in recognizing the estimated thousand variations in the cloacae.*

Sexing chicks is not unlike appraising public records. We don't want to pay for the upkeep of records whose value has ended. We need ways to recognize the variations in public records so we can correctly determine which to cull, and when. Good record analysts, like good chick sexers, must quickly handle large volumes and have sufficient training and experience to develop contexts for accurately interpreting what they see.

The analogy is not precise. We prefer knowing the "sex" of a record before it is hatched. Records have more than one "sex," which can change with time. We need to know what combination of administrative, legal, or historical values reside in records and how long they persist. We need to know what functions, legal requirements, and business processes caused the records to be created. We need to know about the public entities that created the records and if the records have value to others.

Often folks think archival means old. While some of the archival records we hold are now old, once they were day-old chicks. Someone, for example, had to decide to preserve a manuscript version of Vermont's 1777 Constitution (ironically no one in government did and the State had to buy it back at an auction).

A few records are designated as archival by law. Until recently, if Vermont appraised its records it did so idiosyncratically. Microfilmed public records were considered permanent, regardless of their content or value. This may reflect a paper-world belief that if records didn't take up physical space they didn't need to be managed. We hear the digital equivalent of this when we are told there is no need to appraise records since digital storage doesn't take up physical space and is cheap; we can retain everything.

The Vermont State Archives and Records Administration (VSARA) was created in part because government recognized a need to better appraise and manage its records. Our record analysts work with public agencies, including municipalities, to appraise and schedule their records. A schedule describes the record and how long it must be retained. A general schedule covers records common across government; an agency schedule addresses records unique to an agency's functions and activities (see <http://vermont-archives.org/records/schedules/index.htm>).

Appraisal and scheduling are more than setting retention periods. This is where understanding context comes in. Prior to VSARA's creation state employee time reports were microfilmed and treated as permanent records. Our alternative approach was to guide the Department of Human Resources through a set of core questions. What are time reports? Why were they created? What purposes and functions do they serve? A purpose might be to get a paycheck or provide evidence in a dispute over hours worked. A function might be providing evidence for audits.

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Opinions of *Opinions*

by Secretary of State Jim Condos

Moderators Tip for Town Meetings

During a traditional floor voting town meeting, any voter can rise to challenge any ruling on motions or points of order by the moderator. This is done by the voter rising immediately after the ruling to state: I rise to challenge the ruling of the moderator. If the ruling is challenged, the moderator must put the issue to a vote of all legal voters present and the majority vote will control.

Roberts Rules includes this procedure to allow the majority of those voters present to decide what is fair and just under the circumstances AND because it is difficult for any moderator to know every rule and anticipate every type of motion that may be presented.

We strongly suggest that moderators explain this ability of voters to challenge his or her rulings at the beginning of the meeting. You could simply read the two paragraphs above.

Many wise moderators encourage voters to challenge a ruling when the moderator is in doubt by prefacing the ruling by saying something like “The chair is doubtful, but rules that” This phrasing allows the moderator to tell the voters that he or she is unsure of the ruling and encourages a voter who questions the ruling to rise to challenge.



Opinions

- 1. There are separate offices for Town and Town School District Moderators. The town school district must elect a moderator as the first order of business or by Australian ballot, if the district has voted to elect all officers by Australian ballot.** Although the same person may serve as both Town Meeting Moderator and School District Moderator, separate candidacies, and in Australian ballot districts, separate petitions are required.
- 2. At the beginning of Town Meeting, it is a best practice for the moderator to review the basics of Roberts Rules and the procedures that will be used in the meeting.** Vermont law allows towns to adopt modifications to Roberts Rules, so if your town has done so it important to remind voters. This helps voters to be able to participate fully in the meeting. It is especially important for the moderator to remind the voters that any person present can rise to challenge the ruling of the moderator on any motion or procedural issue, and if there is a challenge, then the ruling will be decided by the voters present. (See tip of the month.)
- 3. The best practice for Moderators at the annual meeting is to refrain from speaking to the legality of an article or giving an opinion regarding the legal effect of taking action on or passing over an article.** While as moderator you have a desire to be helpful, it is the moderator’s role to manage the process and procedures of the meeting with the primary purpose of seeing that the will of the electorate is given effect, with fairness and impartiality to all legal voters who are participating. Even a well intentioned comment regarding the legality or impact of an article could be misunderstood as showing partiality for or against an article. If there is truly no one else in the room that can answer a question, and you feel compelled to enter the discussion, you should call for a moderator pro tem to take over, and step down while you participate in the debate. Usually however, there are others who can answer the question, or let the electorate decide how to vote on the article without any opinion. If you really want to participate in the debate and try to affect the outcome of the vote, then you should step down and have a moderator pro tem take over.

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Sexing Chicks...continued from page 2

How long do time reports serve those purposes/functions? Are there legal requirements governing their use and retention? Are there other purposes beyond the creating agency's that have to be considered? Are there better records for documenting these secondary uses? Does the record have a continuing value and should it be transferred to the archives?

The answers shape appraisal, which in turn shapes retention. Often answering these questions helps an agency better understand and control its own business processes. In this case the answers determined that time reports were not permanent and only needed to be kept one year after audit. Since time reports are common to all agencies they are in the general schedule for "payroll management records" under "reports" (http://vermont-archives.org/records/schedules/general/pdf/GRS-1009.1103_PayrollRecords.pdf).

As agencies adopt the new schedules we can reduce the volume of time reports in the record center, including 3,916 microfilm rolls dating from 1929 to 2008, when we stopped microfilming records. It also means that the current 292 boxes of post-2008 reports won't grow indefinitely.

That is one value of appraisal applied to all government records. It may not be sexy but it ain't chickenfeed either.

*I plucked the story of chick sexing from Joshua Foer, *Moonwalking with Einstein; the Art and Science of Remembering Everything*.

Opinions of Opinions...continued from page 3

7. **When the electorate has voted at a Town meeting to establish a reserve fund, such as a Highway Capital Reserve Fund, the selectboard is authorized by statute to expend those funds for purchase of capital assets for the maintenance and improvement of highways and the selectboard does not need another article to approve each expenditure (so long as the expenditure is for the purposes for which the fund was established.) 24 V.S.A. §2804.** If the selectboard wants to use the funds for some other purpose, then the board needs to warn an article for voter approval to use the funds for a different purpose.
8. **When local officers are elected by paper ballot during the traditional open floor town meeting, a majority of all votes cast for any office is required for an election. 17 V.S.A. §2660(b).** The law requires that the selectboard, listers and auditors must be elected "by ballot". If a majority is not achieved on the first ballot, voting continues. If no person has obtained a majority by the end of the third vote, the moderator shall announce that the candidate receiving the lowest number of votes in the last vote and any succeeding vote shall no longer be a candidate, and the voting continues until a candidate receives a majority.
9. **When local officers are elected by Australian ballot, the person receiving the most votes shall be declared elected to that office. (Plurality is all that is required.) 17 V.S.A. §2682(c).**
10. **If the person receiving the most votes is a write-in candidate in an Australian ballot election, the person must have received at least 30 votes OR the votes of 1% of the registered voters, whichever is less. 17 V.S.A. §2683(c).**

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

Town Meeting Reflections

In 2008, VPR's Steve Delaney narrated a collage of images and voices that looks at the 'enduring civil forum' of Town Meeting, its importance to Vermont life and the challenges to grassroots democracy during changing times. On a YouTube video clip, Delaney starts off with a West Windsor election of the moderator. A chorus of ayes rings out followed by a single 'no' that brings forth much laughter. UVM professor and Town Meeting expert Frank Bryan is interviewed and he talks about the hallmarks of this unique form of direct democracy where each voter can also be a legislator. You can find the video on YouTube by typing in Town Meeting Tradition or by clicking on this link:

<http://www.youtube.com/watch?v=-9-J1yDcjXs>

Also in 2008, photographer Sandra Elkin came home to Vermont to do some first-hand investigation of our democratic process. On her website, www.reflectionsondemocracy.com, Sandra introduces her project: "In Vermont the clerks are the neighborhood watchers of the most cherished expression of our freedom – elections... I visited 19 women clerks in small towns in Vermont. I asked them about the health of our democracy and what was threatening it."

This is what Craftsbury Town Clerk Yvette Brown said about town meeting in particular: "The town meeting is a lot of things but it is where you get explanations. With your town budgets you hear reasons why they might need to buy a new truck. Same with the school budgets, you hear reasons. They come out so they can discuss it and we always have great discussion within our town meetings."

The Office of the Secretary of State offers information to schools and municipalities about town meeting.

- ☛ Vermont Town Meeting Coloring & Activity Book, K - 3rd grade
- ☛ Town Mouse and Country Mouse Go To Town Meeting, 4th - 6th grade
- ☛ Town Meeting Day: A Vermont Tradition, 7th - 12th grade
- ☛ A Citizen's Guide to Vermont Town Meeting, 9th grade – Adult (available in PDF only)

Please consider downloading the PDF versions for your use from our website

http://www.sec.state.vt.us/kids/town_mtg.html, or order online through the same link.

"Helping my students to find their place in our community and to see themselves as citizens who can make a difference is my reason for teaching middle school. The Town Meeting Day publications from our Secretary of State's office made explaining the ins and outs of town meeting engaging and easy for them to understand. My students were able to follow the procedures and understand the flow of the meeting and I am grateful for such wonderful teaching resources!"

Alison Levy, Essex Middle School

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

Elections Calendar

FEBRUARY 2012

February 1 (Wednesday)

In Australian ballot towns, a candidate may withdraw by notifying the municipal clerk in writing no later than 5:00 p.m. (Wednesday after the filing deadline). 17 V.S.A. § 2681(d)

In Australian ballot towns, supplementary petitions for municipal candidates whose original petitions were defective must be filed no later than 5:00 p.m. (Wednesday after the filing deadline). 17 V.S.A. § 2681(e)

In Australian ballot towns, candidates for municipal office must file a consent of candidate form with the municipal clerk by 5:00 p.m. (Wednesday after the filing deadline). 17 V.S.A. § 2681(a)

February 5 (Sunday)

This is the last day that the warning and notice for the presidential primary and town meeting may be posted (30 days before the election). 17 V.S.A. §§ 2521(a) and 2641(a)

Checklist must be posted in two or more public places in the town in addition to being posted at the town clerk's office in towns with population over 5,000. In towns with less than 5,000 population, the checklist must only be posted in one place in addition to the clerk's office. 17 V.S.A. §§ 2141, 2521(a) Last day to hold first public hearing on charter amendments if article is to be voted at town meeting. First public hearing shall be at least 30 days before the meeting. 17 V.S.A. § 2645(a)(3)

February 15 (Wednesday)

Last day to post sample ballots (for the presidential primary) in the same places as the warning, notice, and checklist (not later than 20 days prior to town meeting). 17 V.S.A. § 2522(a) In Australian ballot towns, ballots for local officers and local public questions shall be prepared by the town clerk and available not later than 20 days before the election. 17 V.S.A. § 2681a(a)

First day for legislative body to post warning for public informational hearing (to be held on or after 2/25/12) on any public question to be voted by Australian ballot at town meeting. 17 V.S.A. § 2680(g)

February 24 (Friday)

Last day for legislative body to post warning for public informational hearing (to be held within the ten days preceding the election) on public question to be voted by Australian ballot at a town meeting. 17 V.S.A. § 2680(g)

February 25 (Saturday)

First day for legislative body to hold public informational hearing on any public question to be voted by Australian ballot at town meeting (hearing shall be held within the ten days preceding the meeting). 17 V.S.A. § 2680(g)

Last day to post sample ballots (for the municipal election) in the same places as the warning, notice, and checklist (not later than 10 days prior to town meeting). 17 V.S.A. § 2522(a)

Selectboard must mail or otherwise distribute town meeting warning in annual town report by this date to avoid publishing warning in newspaper (at least 10 days before town meeting). 17 V.S.A. § 2641(b) Vote tabulators must be tested using official ballots that are clearly marked "test ballots" (at least 10 days before the election). 17 V.S.A. § 2493(b)

February 27 (Monday)

A local candidate who has made expenditures or accepted contributions of \$500 or more shall file a campaign finance report ten days prior to the election. 17 V.S.A. §§ 2822, 2103(13)

During the eight days preceding election day, and on election day, the clerk shall divide the list of ill and physically disabled early or absentee voters into as many equal parts as there are pairs of designated justices, and deliver those lists to the justices, together with early or absentee ballots and envelopes. 17 V.S.A. § 2538(b)

Elections Calendar, continued!

February 29 (Wednesday)

Last day, until 5:00 p.m., to apply for addition to the checklist to vote at town meeting. Town clerks' offices must be open from 3:00 p.m. to 5:00 p.m. to accept applications. 17 V.S.A § 2144(a) Please note that § 42 of the Vermont Constitution has been amended such that every person who will attain the full age of eighteen years by the date of the general election shall be entitled to vote in the primary election.

Last day, until 5:00 p.m., for people who are not eligible to register by this date but who will be eligible by election day to file a written notice of intent to apply with the town clerk and to request an early or absentee ballot. 17 V.S.A. § 2144(b) and (c)

Last day to receive a request for an application for addition to the checklist accompanying an early or absentee ballot request (by 5:00 p.m.). 17 V.S.A. § 2532(b) and (c)

MARCH 2012

March 1 (Thursday)

Town meeting warning must be published in newspaper by this date if town report has not been distributed otherwise (five days before the meeting). 17 V.S.A. § 2641(b)

Last day for town clerk to forward to the board of civil authority a list of voters added to the checklist (at least five days before town meeting). 17 V.S.A. § 2144b(d)

March 3 (Saturday)

Last day for the board of civil authority to designate pairs of justices of the peace, assuring a political balance in each pair, to deliver early or absentee ballots to ill and physically disabled voters (not later than three days prior to the election). 17 V.S.A. § 2538(a)

March 5 (Monday)

Voters, family members, authorized persons or health care providers may request early or absentee ballots until 5:00 p.m. or the closing of the town clerk's office on this day. 17 V.S.A. § 2531(a) Clerks must make a list of all early or absentee voters available upon request at their office. 17 V.S.A. § 2534

Board of civil authority must appoint a presiding officer if the town clerk or other regular presiding officer is unable to preside at the Australian ballot portion of town meeting or if more than one polling place is used. 17 V.S.A § 2452 The presiding officer of each polling place must also post a copy of the warning and notice, sample ballots and the current checklist in a conspicuous place in each polling place before the polls open on election day. 17 V.S.A. § 2523(a) and (b) The presiding officer shall make sure that signs informing voters of procedures for depositing ballots are placed on or near the ballot boxes before the polls open on election day. 17 V.S.A. § 2523(b)

Prior to the day of the election, board of civil authority must appoint assistant election officers for town meeting. 17 V.S.A. § 2454

Last day for legislative body to hold public informational hearing on any public question to be voted by Australian ballot at town meeting. 17 V.S.A. § 2680(g)

March 6 (Tuesday) PRESIDENTIAL PRIMARY AND TOWN MEETING

In presidential election years, a presidential primary for each major political party shall be held in all municipalities on the first Tuesday in March. 17 V.S.A. § 2701

A meeting of the legal voters of each town shall be held annually on the first Tuesday in March unless the town charter changes the date or the voters have voted to begin on one of the three days preceding the Tuesday. 17 V.S.A. §§ 2640(a) and (b), 2631 Clerks must make a list of all early or absentee voters available upon request in each polling place as soon as it opens. 17 V.S.A. § 2534

FOR THE COMPLETE 2012 ELECTIONS CALENDAR, PLEASE GO TO <http://vermont-elections.org/2012%20Elections%20Calendar%20FINAL.pdf>

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