

# Opinions

Office of the Vermont Secretary of State



Vol. 9, #10

November 2007

## A Message from the Secretary



A few years ago my daughter was assigned a Veterans Day project for school and she was asked to interview a veteran in her life. Her first call was to my father, but he told her that while he was happy to be interviewed that she should probably speak to someone who served in a war. After some discussion, she decided to interview a friend who had served as a helicopter pilot in the Vietnam War, rescuing injured soldiers. My father's demurrer was not surprising to me; as long as I can remember he has never considered himself a "veteran."

My father grew up during the time when every young man was expected to serve his country before entering fully into adulthood. He was a first generation American. His upbringing was marked by the belief that he was fortunate to be an American, and that with hard work and a good education he and his brothers and sister could achieve the American Dream.

My father was drafted into the army in the late 1950s, after deferring so that he could complete college and then law school. For my father, military service was an obligation of citizenship. But it was also a broadening experience; he met people from all over the country, and it brought him to Europe (he spent most of his service stationed in Germany). He tells funny stories about his time in the army; from pretending he could type so that he could get a coveted job as a secretary, to narrowly missing being sent to the desert in Lebanon because his car broke down while he was on leave with my mother who was visiting from the United States.

Looking back at my daughter's decision in class those few years ago, I wish that I had insisted that she interview

my father. He would have told her that he did not consider himself a "veteran" because his sacrifice was not as great as those who risked their lives by serving in a conflict. But he would have also told her about how much he values service. How service to one's country, or to one's community, enriches not only the community, but also one's own life.

This Veterans Day let's honor all of the people who have served our country; whether it was during times of war, or during those precious times of peace.

Deborah L. Markowitz, Secretary of State

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## Wells Goodwin and the Memory of War

I have long been haunted by Wells Goodwin. I confess I do not know much about Mr. Goodwin of Newbury except that the Vermont general assembly honored him on the occasion of his 100<sup>th</sup> birthday on November 9, 1894. According to the resolution (No. 350, Laws of Vermont, 1894), Mr. Goodwin was the last surviving veteran of the War of 1812 living in Vermont. I stumbled upon the resolution several years ago when looking for something else. I made a note of it since I found it to be poignant.

According to the resolution Mr. Goodwin had served until wounded at the Battle of Niagara (also known as the Battle of Lundy's Lane) in Ontario on July 25, 1814. It was one of the bloodiest battles fought on Canadian soil, with both sides suffering about 900 casualties. Wells Goodwin was one of the 572 wounded among the U.S. troops serving under Generals Winfield Scott and Jacob Brown.

Half a century later, during the Civil War, the aged General Scott still remembered the valor of the Vermonters at Lundy's Lane and reportedly said, "I want your Vermont regiments, all of them. I have not forgotten the Vermont men on the Niagara frontier."

It is the Civil War that stirs my empathy for Wells Goodwin. The last veteran of the War of 1812 living in Vermont had no one left to share living memories of that service. By 1894 that war was cast in the shadow of Vermont's great Civil War sacrifices and in Newbury, and across the state, veterans of that conflict received our attention and honor. In one battle, the Wilderness (May 5-6, 1864), Vermont troops alone suffered more casualties than the entire U.S. force at Lundy's Lane. Who wanted to listen to Mr. Goodwin's recollections of his long ago war when the horrors of the Wilderness, the Seven Days, or Gettysburg were so fresh?

Of course, time constantly shuffles the deck and Gilbert C. Lucier of Jay eventually assumed Wells Goodwin's role. When Mr. Lucier died on September 22, 1944, he was the last Civil War soldier residing in Vermont, surrounded by veterans of World War I and in the midst of a global conflict against which even the Civil War paled in terms of human tragedy. When Harriet H. Holmes of Northfield, a Civil War nurse, died on August 5, 1945, Vermont's last direct link to that conflict was gone. By then Vermont's WWII veterans held our attention and respect.

And now the veterans of World War II are fading from the scene. There are reportedly less than 4 million WWII veterans left nationally (figure from 2004) and they are passing at a rate of a 1,000 a day. A glance at the obituary pages confirms that terrible attrition. There are fewer than 6,000 WWII veterans currently living in Vermont.

Sadly, each generation produces new veterans of military conflict; there are currently, according to the federal Department of Veterans Affairs, 54,531 veterans living in the state. The current conflicts in Iraq and Afghanistan will add to that total even as time does its relentless subtractions from earlier veterans.

In many cases the passing of those generations of veterans appears to go unremarked. In the quick research I did for this column I could not readily find reference to the last Mexican War or Spanish-American War veterans living in Vermont. We are even uncertain about who was the last World War I veteran living in Vermont. It is believed that honor went to the late Rollin Jack Grace, who in 2002 became the first recipient of Vermont's Veteran Medal.

This Veterans Day we should give pause and reflect on all those Vermonters who have served in our country's wars, whether in time shrouded conflicts or during the current war.

## Resources for Veterans

The Vermont Office of Veterans Affairs has discharge records for most Vermont veterans. This is a particularly useful resource since the 1973 fire at the National Personnel Records Center destroyed nearly 80% of the Army and Air Force discharge records held by the federal government.

The Veterans Affairs website is at: <http://www.va.state.vt.us/>.



The Veterans Affairs' claim assistance program helps all Vermont veterans access information on federal health care and monetary compensation programs. It also provides a first in the nation "Thank You" booklet listing all available services for veterans. For a copy of the booklet call (888) 666-9894 or (802) 828-3379.

The State Archives holds various records related to Vermont's military activities. Go to the Archives record series database and you can search by various terms (war, pensions, etc). The site is at: <http://vermont-archives.org/research/database/series.asp>. The Archives is currently improving access to Vermont's adjutant general and other military records and will add a new finding aid to the record series database once completed. In the meantime, the current finding aid can be accessed by going to the Buildings and General Services website at: [http://www.bgs.state.vt.us/gsc/pubrec/referen/finding\\_aid.htm](http://www.bgs.state.vt.us/gsc/pubrec/referen/finding_aid.htm).

# Opinions of *Opinions*



- 1. Voters who move must be sent “challenge letters” so they may be removed from the checklist.** Challenge letters must be sent to voters who the board of civil authority believes have moved out of town. 17 V.S.A. §2150 outlines the process to challenge voters and also how to purge voters who have not responded to the challenge letter. These voters may be removed from the checklist if they respond to the challenge letter with permission to remove, if they register to vote in a new town or state, or if they fail to vote in two general elections after the challenge letter has been sent. It is our strong suggestion that each town clerk implement monthly or quarterly reviews of the checklist so that challenge letters are sent soon after a voter moves. Town clerks report that when the challenge letter is sent just after a move, there is a much higher response rate so that the person can be removed from the checklist immediately. For more information, please refer to the election bulletins that provide step-by-step directions to assist towns with the challenge letter process.
- 2. Towns must affirm that they have completed the challenge process by September of each odd-numbered year.** If your town has completed the challenge letter process that is required at a minimum by September of each odd-numbered year, the town clerk must send an email or letter to the Elections Division stating that the challenge process has been completed as required by 17 V.S.A. § 2150(d)(7). If you have not already sent this letter or email, please send it now!
- 3. Selectboard serve as sewer commissioners unless it decides to constitute a separate board.** Vermont law provides that “the selectmen of a town, the trustees of a village, the prudential committee of a fire or lighting district, or the mayor and board of aldermen of a city, shall constitute a board of sewage system commissioners.” 24 V.S.A. § 3506. However, the legislative body may vote to create a separate board of sewage system commissioners. If it does so it may not have fewer than three or more than seven members, who must be voters of the municipality. The term of office is four years, and members may be removed by the legislative body for “just cause.” 24 V.S.A. § 3506(b).
- 4. Town may require connection to public sewer system.** If a town or city extends its sewer system, it can adopt an ordinance to require that all adjacent property owners connect to the public system and abandon private septic systems. 24 V.S.A. §3509. The sewage commissioners may require the owners of buildings, subdivisions or developments abutting a public street to connect to the municipal sewage system.
- 5. Voters must vote to collect interest on overdue bills.** Water or sewer commissioners can charge interest on delinquent payments for water and/or sewer **ONLY** if the voters of the municipality have approved an article in the warning to collect interest on overdue water or sewer bills. 24 V.S.A. §5151 and 32 V.S.A. §5136. The article must be voted in the same manner as the vote to collect interest on delinquent taxes, and likewise stays in effect until voted otherwise at a subsequent meeting.
- 6. Water/sewer commissioners may adjust charges to cover the costs of the service.** Vermont law permits the water/sewer department to charge “rates and rents” for the water and sewer service. Unlike the selectboard who must pass a budget and then set the tax rate, the water/sewer commissioners must charge enough to pay the costs of providing water and sewer services. That being said, the money collected for the water and sewer services may be used only to support the water/sewer system. As a practical matter, this means that if they undercharge and have a deficit they can increase the billing rate to make up the difference. 24 V.S.A. § 3507.

7. **Municipal audit must include audit of municipal water/sewer system.** The annual report for a municipality should include an audit of the municipal sewer and water systems. The report should indicate how much money was collected in “rates and rents” and how much was spent to pay for the cost of running the system and to repay any long term debt. 24 V.S.A. § 1681. In addition, all of the records of the department, including the records of delinquencies are open to public inspection under the public records law. 1 V.S.A. § 316.
8. **The majority of members of a planning commission must reside in town.** Vermont law does not require every member of the planning commission to live in the town where they serve. So long as a majority of the members are residents, the selectboard may appoint non-residents to serve. The statutes allow non-residents to serve in order to allow the planning commission to have members with special expertise from outside of town. 24 V.S.A. §4322.
9. **Planning commissioners serve at the pleasure of the board.** A member of a planning commission may be removed at any time by the unanimous vote of the selectboard. 24 V.S.A. §4323(a). The statute does not require that planning commissioners only be removed for cause, consequently the board may remove planning commissioners for any or no reason. Note that elected planning commissioners may not be removed by the board. 24 V.S.A. § 4323(c)(4).
10. **There is no statutory requirement that members of the development review board reside in town.** 24 V.S.A. §4460. Vermont law is silent about whether members of the DRB must be town residents or voters in the town where they serve. Consequently, the selectboard is not limited in its appointment to this board.
11. **DRB members may only be removed for “cause.”** Unlike members of the planning commission, members of a development review board or zoning board of adjustment are protected from arbitrary removal. The law provides that these board members may only be removed “for cause” by the selectboard after being given written charges and a public hearing. 24 V.S.A. §4460. The reason for this is to prevent the selectboard from trying to influence the outcome of particular permit proceedings by removing or threatening to remove board members.
12. **A proposed zoning bylaw, amendment or repeal must be adopted in its entirety according to the procedures set out in 24 V.S.A. §4442.** Citizens cannot petition to have a proposed bylaw voted on separately section by section. However, five percent of the legal voters of the town can petition the planning commission to ask for amendment(s) to any section or repeal of any section(s) of the zoning bylaw. 24. V.S.A. §4442.
13. **Town clerk/treasurer may serve as village clerk/treasurer.** Vermont law permits the same person to be elected to serve as town clerk-treasurer and also as village clerk-treasurer. There is no statutory conflict and in many situations each municipality benefits from the knowledge and experience of the candidate who has already served in one of the positions.
14. **Town must separately elect clerk and treasurer.** Even though most towns elect one person to serve as both the clerk and treasurer, these positions are separate offices. A person who wishes to run for these offices must submit two separate nominating petitions (for towns which elect officers by Australian ballot.) The ballot must list each office as a separate race, and in towns that vote on the floor, each office must be separately voted. 17 V.S.A. § 2646.



**15. Local candidate petitions for office for town meeting must be specific.** Vermont law requires candidates to petition to get on the ballot for local office in municipalities that use the Australian ballot system for election of officers. These petitions must clearly indicate the office and the term length for the office the candidate is seeking (particularly when there is more than one position open with different terms of office.) 17 V.S.A. § 2681(b). A candidate cannot circulate a petition for signatures without a term length and then add or change the term length after signatures have been obtained. For example, a candidate cannot circulate a petition for selectboard without indicating which term he or she is seeking. However, it is okay for a person to circulate two or three different petitions for selectboard, one petition for the one year seat, one for the remaining year of a three year term, and one for the three year term, and then wait until the filing deadline to decide which petition to submit to the town clerk.

**16. There is no limit on who may request abatement on behalf of a taxpayer.** The law does not limit who may request tax abatement on behalf of a taxpayer. It is not unusual for a lister, delinquent tax collector or a family member to make a request on behalf of a taxpayer; however, in most cases it is the taxpayer him or herself, or a person who has a legal interest in the property who requests an abatement of taxes. Generally it is important to have the taxpayer involved for an abatement request to be successful since they will have access to information that will be important for the board to consider when making its decision.

**17. Joint petition may be submitted for social service agency funding articles.** Vermont statutes require the selectboard to warn articles requesting funding if they are submitted by petition signed by five percent of the legal voters of a town. No law permits the board to limit the scope and content of the articles. 17 V.S.A. § 2642. Consequently, social service agencies may join together in circulating a petition signed by five percent of the legal voters. The petition may include one article that asks for funding for a number of agencies, or it may include several articles asking for funding for different agencies. We generally suggest that social service agencies present each request in a separate article so that the votes for each agency will be taken separately at town meeting, but there is no law that requires this. Indeed, if an article that includes a combined request is voted on the floor the moderator may entertain a motion to divide the question so that each request may be taken up separately. 24 V.S.A. § 2691.



**18. Majority of board must vote for motion in order for a board to act.** A selectboard must have a majority of the full board vote in favor of a motion in order to pass the motion even if some members of the board are absent or have recused themselves from the vote. 1 V.S.A. § 172. For example, a five member selectboard must have at least three members voting in favor of a motion in order for it to pass. If only three members are present and voting, then all three members must vote in favor of the motion in order to take action.

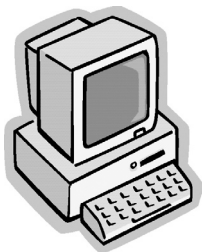
**19. School boards may have a majority of those present in order to pass a motion.** School boards operate under a special statute, 16 V.S.A. § 554, that changes the general rule for board voting so that a school board needs a quorum (majority of the board) to be present, but then only requires the majority of those present to vote in favor of a motion for the motion to pass. For example, on a union high school board composed of 15 total members, if only nine members are present at a meeting, only five members need to vote in favor of a motion for it to pass.

- 20. Bonding requires special procedures to be followed.** 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 necessary steps for warning with bond counsel before the final time for posting of the warnings.
- 21. Licensed surveyor may enter property in order to survey property.** Vermont statutes provides that in the situation where there is a dispute about the boundaries between abutting parcels, a licensed surveyor, with the necessary assistants employed by a landowner involved in the dispute, may enter the disputed property for the purpose of “running doubtful or disputed lines and locating or searching for monuments, establishing temporary monuments and ascertaining and deciding the location of the lines and monuments of a survey, doing as little damage as possible to the owners of such lands.” 27 V.S.A. § 4.
- 22. Board must decide how it sets meeting agendas.** There is no law that sets out how a board is to determine its meeting agenda. The law only requires that some agenda be made available to the public prior to a regular meeting of the board, and that when publicly noticing a special meeting one must articulate the purpose of the meeting. 1 V.S.A. § 312. The board should establish how the board’s agenda is to be determined so that every board member has an opportunity to provide input into the agenda.

*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.*

## Tip of the Month

### New Feature Improves Duplicate Voter Search



When you are looking at your voter checklist, you can click the "Search the Statewide Checklist" button, which brings up the entire Vermont voter checklist. Now, when scrolling through that list, all of the voters in your town or city are easily visible in bold, blue font.

Likewise, when you open a voter's record and choose "Search for Duplicates," your voters are highlighted in blue font.

*If you have a tip you would like to share, please contact John Cushing, VMCTA President, at [jcushing@town.milton.vt.us](mailto:jcushing@town.milton.vt.us)*

### **Teaching Kids the Process for Positive Change**

I had a lively discussion with a much-loved and well-respected (retired) high school social studies teacher last week. We are both ardent believers in, and dedicated workers for, teaching kids about their civic rights and responsibilities. We want to get young people involved in shaping their world. Ultimately, I think we both agreed that students need to know and understand the systems that exist in order to use those systems as opportunities for positive change. I maintain that one of the most powerful of the existing systems is the legislative process, at the local, state, and national levels. Kids are not too young to learn about that process, and to get involved.

In 2005, our office teamed up with Alice Merrill, State House Tour Coordinator, and created a role-play tour for middle and high school students, so that they could learn the legislative process first-hand. Students visit the State House in Montpelier and engage in passionate debate. There are scripts for each part of the process to help the students prepare for their respective roles, from author of the bill, to lobbyist, to governor. The proposed legislation being deliberated would increase the minimum age for possession of tobacco products to 21 years of age, a complicated issue caught between individual rights and public health that is important to many younger citizens. The tour has been very popular with Vermont schools. But the whole thing is a little too involved and sophisticated for younger students. What could we do for them?

Secretary Markowitz conceived the idea of *Under The Golden Dome* as a way to make State House tours more engaging for younger students. The booklet is designed to help classes get the most from their field trips to Montpelier.

"*Under The Golden Dome* is designed to ensure that every student comes away from the Capitol with a deeper appreciation for the history of the building and the important work that goes on beneath its golden dome," explains Secretary Markowitz. "The booklet introduces elementary students to the history of the Capitol building as well as how the legislative process works. It will help keep students focused and engaged during their tour, and it provides additional activities that can be completed back in the classroom."

Her staff, including student interns Aleah Starr, Allie Francis, and Maayan Cohen, wrote and illustrated much of the book. They collaborated with Alice Merrill and David Schutz from the State House, and Sigrid Lumbra from the Vermont Department of Education, to create a booklet that is fun for the kids, but also helps teachers meet the outlined curriculum standards.



There is a bigger idea at work here. Our communities, and society at large, benefit from introducing these students, early on, to the concept that there is a process in place which allows citizens to get involved in making the changes they'd like to see. And they need to know how that process works before they can use it effectively. Under *The Golden Dome*, used in conjunction with a trip to Montpelier and a tour of the State House, will help elementary students understand that a process for positive change exists, and it outlines how it works in the legislature at the state level. Our town meeting booklets, also part of our free civics education materials, examine the similar process at the local level.

It's especially helpful to town clerks and other local officials to have a knowledgeable citizenry. The Secretary of State's office (along with lots of other good folks, including my retired teacher friend) is trying to get a jump on this by working with Vermont teachers to introduce the concept of civic responsibility as early as possible.

Please encourage the teachers in your town to take a field trip to Montpelier. State House tours can be scheduled with Alice Merrill, State House Tour Coordinator, at 802.828.1411, or [amerrill@leg.state.vt.us](mailto:amerrill@leg.state.vt.us).

## Quote of the Month

**In the game of life it's a good idea to have a few early losses, which relieves you of the pressure of trying to maintain an undefeated season.**

**— Bill Baughan**

## November 2007

- 11 Veterans Day. 1:371
- 22 Thanksgiving Day. 1:371

## December 2007

- 1 Last day to pay property taxes in towns that voted to collect interest on overdue taxes. 32:5136(a)
- 14 Last day for listers to notify persons of omissions from inventory. 32:4086
- 25 *(70 days before Town Meeting)* First day to warn the first public hearing if a charter adoption, amendment or repeal is to be voted on at town meeting. 17:2641(a), 2645(a)(3)
- 25 Christmas Day. 1:371
- 30 Last day for listers to correct real or personal estate omission or obvious error in grand list, with approval of the legislative body. 32:4261
- 31 Town fiscal year ends, unless voted otherwise. 24:1683(c)

***The Municipal Calendar is provided by the Vermont League of Cities and Towns/Chittenden Bank and the Secretary of State's Office.***



## Municipal Budgeting and Financial Management

**November 15, 2007**

*Sponsored by VLCT Municipal Assistance Center*

Location: Montpelier Elks Club

Time: 8:30 am

Contact: Amanda Moran ([amoran@vlct.org](mailto:amoran@vlct.org))

Phone: 802/229-9111

Fax: 802/229-2211

Price: \$70.00 VLCT PACIF Members, \$100.00 VLCT Members, \$110.00 Non-memb

This workshop is designed for selectboard members, town managers, and administrators, treasurers and auditors. There is perhaps no topic more important to taxpayers than financial management. Come learn what your town can do to ensure a sufficient return on taxpayer dollars.

## The Vermont Planning Conference

**November 30, 2007**

*Sponsored by VT Planners Association and VT Dept. of Housing and Community Affairs*

Location: Vermont College/Union Institute

Contact: Sue Minter ([sue.minter@state.vt.us](mailto:sue.minter@state.vt.us))

Phone: 802-828-3119

Sustainability: a concept we're hearing about in every field, from energy, business, health care to growth and environment. Whether through concern for climate change, questioning our dependence on fossil fuels or planning for great neighborhoods, Vermonters are seeking ways to live and work more efficiently while enhancing the health and vitality of our communities for future generations.

At the 2007 Planning Conference, we'll celebrate examples of planning and implementing sustainable solutions for Vermont, hear inspirational speakers and discuss ways to conduct our local and regional planning activities within a framework that leads to more sustainable practices.

## Grant Management Workshop

**December 5, 2007**

*Sponsored by Vermont Municipal Advisory Commission*

Location: Old Dorm Lounge, Vermont Technical College, Randolph Center

Time: 10:00 am

Contact: John Cushing

Phone: 802/893-4111

Price: \$20.00 includes lunch at VTC

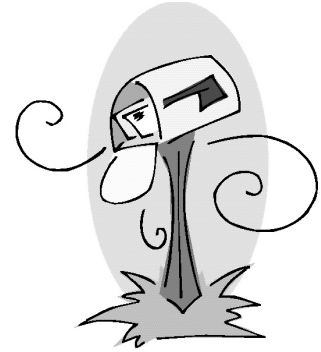
This training session presented by VMAC, will be especially helpful to anyone who deals with grant management including town clerks, treasurers, other municipal and state employees, as well as non-profit groups.

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*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: [gcolbert@sec.state.vt.us](mailto:gcolbert@sec.state.vt.us),  
or post: 26 Terrace St., Montpelier, VT 05609-1101.

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