



# Opinions

Office of the Vermont Secretary of State

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2008

## Election Procedures Workshops

Secretary of State Deb Markowitz and Director of Elections Kathy DeWolfe will be presenting workshops focusing on election day procedures: from opening the polls through reporting election results to the Secretary of State's Office.

*See page 3 for remaining schedule and registration information.*

## Quote of the Month

Democracy is the theory that the common people know what they want, and deserve to get it good and hard.

H. L. Mencken

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## A Message from the Secretary

After ten years in public office I have become something of an expert on parades. At some time or other I have marched in parades in towns from Brattleboro to Lyndon, from Swanton to Bennington. I can tell you which ones are short (Cabot) and which ones are long (Vergennes). I have to admit though, that I have never been one of those politicians who loves parades. I am never sure if people really want to see their public officials and candidates, or if we distract from the local groups, the floats and the marching bands. I always feel awkward walking down the street in front of a big banner with my name printed in bold letters.



That being said, I have gotten over my reluctance to march because parades have been a great way to include my family in my political life. Starting back when we pulled my youngest along in a red wagon (when he was two), the kids loved to parade. As they got older they would bring a friend or two and we would make a day of it with a swim and creemees or a picnic and canoe ride on the way home. Even my husband comes along. Indeed, there have been many parades when we were not placed near any marching bands and my husband's harmonica rendition of "When the Saints Go Marching In" made our walk much more enjoyable.

And of course, while some people prefer politicians to stay home, many Vermonters like to see their elected officials marching. It is an old civic tradition that reminds us of how small Vermont is and how accessible our government is here. It also provides an opportunity for people to shake hands with and talk to people they only know from the newspaper or the nightly news.

This past Independence Day my family and I again broke out the banner and marched. One of the parades we participated in was in my home town of Montpelier. It was a beautiful evening with a large and welcoming crowd and a great feeling of community spirit. Unfortunately the good feelings were ruined when a person ran up to Governor Douglas and assaulted him with a cream pie as he walked in the parade.

While the security issues raised by the incident are troubling, it is equally troubling to think that a pie in the face could be considered by anyone to be a legitimate political statement. (He was apparently protesting one of the governor's vetoes.) It is one thing to disagree with a public official and it is quite another thing to demonstrate that disagreement by assaulting or attempting to publicly humiliate the official.

Vermont is a special place, in part, because elected officials – from United States Senator to selectboard member - march in our parades. A pie in the face is not funny. Indeed, it hurts our democracy by making our officials feel less safe when participating in public events. As this political season begins let's use this pie incident as an unfortunate reminder that there is no room in civil society for personal attacks; and there is certainly no room for physical attacks – even for those involving just a cream pie.

Deborah L. Markowitz, Secretary of State

## The Dog Days of Summer

The “dog days of summer” originally referred to the days when Sirius, the Dog Star, rose at the same time as sunrise. More generally they now refer to the period from July 3<sup>rd</sup> to August 11<sup>th</sup> as a period of stagnation brought on by hot, humid weather. This year there is nothing stagnant about the dog days of summer for the new Vermont State Archives and Records Administration (VSARA).

VSARA came into being on July 1<sup>st</sup> through the merger of the Public Records Division within the Department of Buildings and General Services with the State Archives within the Office of the Secretary of State. This new division within the Secretary's Office is responsible for providing records and archival management services to state agencies. Created through Act 96 of 2008, VSARA's authorities are primarily found in 3 V.S.A. §117 and 3 V.S.A. §218.

We have been spending our days doggedly addressing the myriad administrative details associated with the merger and laying the groundwork for a sustained review of our existing programs and how they further our mission. At the same time we are working with architects and Buildings and General Services on the design and construction of a new archives and reference facility at the Middlesex record center. If all goes well (and that is always a fateful phrase) we will slowly be consolidating our operations at Middlesex as construction moves through several phases. By January 2010 the physical consolidation of our offices should be complete.



Several of you have inquired about what all this will mean for the management of municipal records. Initially there will be few visible changes as we look at our current services. Existing municipal record series and disposition orders will remain in effect. Lisa May and the micrographics unit will continue to microfilm municipal records under the current system.

One immediate change will be that questions on municipal record scheduling and retention should be directed to Tanya Marshall rather than Mark Reaves. Tanya, who is in effect my deputy, is our senior records analyst in charge of appraising records and establishing record schedules on how long records need to be preserved. Tanya can be reached at (802) 828-0405 or at [tmarshall@sec.state.vt.us](mailto:tmarshall@sec.state.vt.us).

Another change is the addition of two record analysts. On July 7<sup>th</sup> we welcomed Scott Reilly and Katie Sherman to our staff. They will work under Tanya's supervision. The record analysts will directly assist public agencies in identifying what records are produced by what mandates and business processes and what legal, administrative or other requirements govern how long the records should be retained. This more active partnership with public agencies has several goals, most notably in developing a common vocabulary for describing similar business activities and record types. Another goal would be to establish, where appropriate, common retention periods for similar records. This will replace the current, more reactive practice of addressing requests on an ad hoc basis which has led to thousands of disposition orders incapable of supporting a consistent and comprehensive (enterprise) approach to public records.

We have already encountered the pent up desire for more consistent guidance on managing records. To avoid being overwhelmed by hundreds of individual requests we are asking public agencies seeking to update their record management programs to submit requests to our Targeted Assistance Program (TAP). TAP is described on our website at: <http://vermont-archives.org/records/tap/index.htm>.

In other words, instead of trying to address individual requests from 246 municipalities, and thus recreate the failed ad hoc approach of the past, we are asking for municipal clerks or treasurers to identify specific records project, organize a project team, and then submit their request to Tanya. Given the limited resources of municipalities we recommend that TAP proposals be developed in connection with the Vermont Municipal Clerks and Treasurers' Association, the Vermont League of Cities and Towns, an active county association of clerks, or some other organization that can help sustain a project. As I write this I understand that the municipal treasurers are exploring a possible TAP request.

When appropriate the Enterprise Project Management Office (EPMO) of the Department of Information and Innovation will join the partnership for a more complete business/workflow analysis and to add an enterprise approach that may contribute to a more comprehensive application of record management practices, including the management of digital records.

VSARA is also developing training opportunities and tools for those responsible for managing public records. As with most of our initial efforts, the focus will be on state government records officers but we will also develop workshops and other tools for custodians of public records at the municipal level. Many of you may have attended one such presentation, given by Tanya on June 3<sup>rd</sup> at St. Michael's College.

These are, for VSARA, hardly the lethargic dog days of summer. A lot is going on; a lot remains to be done. We recognize that it will take time to turn our records program in a new direction. To effectively address decades of good faith but ad hoc and even inconsistent approaches we need to proceed in a thoughtful and structured way. We ask for your patience as we seek to improve our services. I believe that by working together we can create a program that will make us all more effective in our jobs while allowing our public records to become a resource for Vermonters.

## Congratulations!

The following municipal officials recently retired from service. Please join us in wishing them well!

Bonnie Reynolds, Springfield Town Clerk-Treasurer  
 Michalina Wasung, Townshend Treasurer  
 Jeannette Farmer, St. Johnsbury Assistant Town Clerk

And...please welcome Meredith D. Kelley as the new clerk-treasurer in Springfield!

## In Memoriam

As we went to press we received the sad news of the unexpected passing of Anne Haley, Shrewsbury's town clerk.

Anne will be dearly missed and please know that our thoughts are with her family and friends during this time of sorrow.

## Upcoming Events

### **2008 Elections Procedures Workshops**

These workshops are for town clerks, board of civil authority members, justices of the peace, and any other election officials. Secretary of State Deb Markowitz and Director of Elections Kathy DeWolfe will cover election day procedures from opening the polls through reporting election results to the Secretary of State's Office. If you are interested in attending, contact your local town clerk to register.

<b><u>DATE</u></b>	<b><u>TOWN/CITY</u></b>	<b><u>TIME</u></b>	<b><u>LOCATION</u></b>
<b>Monday, August 4</b>	<b>Montpelier</b>	<b>6-7:30 p.m.</b>	<b>City Hall</b>
<b>Tuesday, August 5</b>	<b>Weathersfield</b>	<b>6-7:30 p.m.</b>	<b>Town Office</b>
<b>Thursday, August 7</b>	<b>Lyndon</b>	<b>6-7:30 p.m.</b>	<b>Public Safety Building</b>

**1. Listers may not chase sales.** Sales chasing occurs when listers revalue recently sold properties at the sale price and leave unsold properties alone. Spot listing violates the proportional contribution clause of the constitution and it also violates Vermont law which provides that “[t]axes shall be uniformly assessed on the lists of the persons taxed, unless otherwise provided by law.” 32 V.S.A. § 4601. Spot listing violates these principles of fair taxation because it treats similar properties in the town differently simply because the property was newly sold. This is true even if the value set on sold properties is the sales price adjusted by the common level of appraisal (CLA). This is because the CLA developed for tax rate setting purposes is generally higher than the actual level of assessment in town.

**2. At least three members of the BCA are needed to conduct a tax appeal.** A quorum of the board of civil authority as well as the number needed to make a decision (or take action) is set by specific authority in 24 V.S.A. § 801 where it states that “the act of a majority of the board present at the meeting shall be treated as the act of the board...” This means that any number of board members (although never less than three, as three are needed for the inspection committee) that attend a duly warned meeting for a tax appeal can take action and make a decision. When towns have a great number of appeals filed the BCA will sometimes split into smaller groups of three to five members to hear individual appeals so that every board member does not have to hear every appeal. Note that only those board members who have heard the appeal and who have heard the report of the inspection committee (or is part of the inspection committee) can participate in the decision on an appeal.



**3. BCA members who appeal their taxes are disqualified from participating in any appeal.** Some members of the board may not be eligible to serve on tax appeals. Members who appeal their taxes or who have any interest in property under appeal are prohibited from serving on the board for tax appeal purposes during the year the property is under appeal. 32 V.S.A. § 4404(d). This means that if a BCA member’s spouse has a business property that is being appealed this BCA member may not participate in any of the appeals. Note that BCA members who have grieved to the listers and decided not to the appeal to the board are not disqualified from hearing tax appeals.

**4. BCA members may not participate in an appeal involving a close relative or friend.** Board members must step down from any appeal that involves a relative, by blood or marriage, who is a first cousin, niece, nephew, aunt, uncle, parent, grandparent, or sibling. 12 V.S.A. § 61. In addition, BCA members should avoid the appearance of a conflict by stepping aside when former business partners, friends or enemies appeal their taxes, or any situation in which the member might not be able to render a decision squarely on the evidence and the merits, leaving all personal considerations aside.

**5. A person who withdraws an appeal “with prejudice” may not bring the same appeal in the next year.** If a person appeals their taxes but then withdraws the appeal “with prejudice” it is as though they lost the appeal. This means that unless there was a general reappraisal or a change to the property they may not bring back the same appeal in the next year. 32 V.S.A. § 4468.

**6. Conservation commission must follow open meeting laws.** The conservation commission is a public body created by the selectboard or municipality and governed by state law. As such, it comes under the requirements of the open meeting law. This means that the commission must make available to the public the time and place of its regularly scheduled meetings, and it must publicly notice any special meetings of the commission. It should have an agenda available prior to its meetings, minutes must be made available within five days of any meeting and the public need to be given an opportunity to be heard. 1 V.S.A. § 312.

**7. Some conservation commission members may live outside of the municipality.** The conservation commission is considered an advisory board. It can be created by a vote of the municipality or by the legislative body. The legislative body appoints members to the conservation commissions. According to law the commission “may be composed of professional and lay members, a majority of whom shall reside within the municipality creating the commission.” 24 V.S.A. § 4433.

**8. Voters may petition to overturn selectboard decision to reject a proposed zoning ordinance.** In many Vermont towns decisions to adopt zoning ordinances, amendments or repeals are made by a vote of the selectboard. However, if a selectboard votes to adopt or reject a proposed regulation the voters may petition for a vote on the matter. The law provides: “Notwithstanding subdivision (c)(1) of this section [permitting the selectboard to vote to adopt, amend or repeal a proposed ordinance], a vote by the legislative body on a bylaw, amendment, or repeal shall not take effect if five percent of the voters of the municipality petition for a meeting of the municipality to consider the bylaw, amendment, or repeal, and the petition is filed within 20 days of the vote. In that case, a meeting of

the municipality shall be duly warned for the purpose of acting by Australian ballot upon the bylaw, amendment, or repeal.” Note that although this section does not speak specifically to a decision of a board to reject a bylaw I believe the language of the statute is broad enough to permit the voters to petition for a vote on a selectboard decision to reject a proposed bylaw. 24 V.S.A. §4442(d)

**9. Towns have the power to discontinue a highway’s use.** Vermont law gives the selectboard the authority to “discontinue a highway or bridge wholly within the town after following the procedures of sections 708-711 of this title.” 19 V.S.A. § 771. Under sections 708-711, voters or landowners in the town may petition the selectboard to have a highway discontinued. The selectboard must examine the premises and have a public hearing before it can make a decision. If the board decides to discontinue the highway, the discontinuance must be in writing, giving a complete description of the highway. 19 V.S.A. § 710. The selectboard’s order to discontinue the highway must be recorded in the town clerk’s office. 10 V.S.A. § 711.

**10. Discontinued highway reverts to adjoining landowners unless designated a trail.** When a town highway is discontinued, the actual ownership of the right-of-way reverts to the owners of the adjoining land so long as the discontinued road is not designated as a trail. 19 V.S.A. § 775. If the road is located between the lands of two different landowners, it is returned parcel to which it originally belonged. And if this cannot be determined, then the highway right of way will be divided evenly between the owners of the lands on each side. However, if the selectboard members designate a discontinued road as a trail, then the town continues to hold the right-of-way. Keep in mind that a trail is not considered a highway and the town is not responsible for maintaining it. 19 V.S.A. § 302(a)(5).

**11. Reclassification of highways decisions subject to selectboard’s discretion.** A reclassification of a highway from class four to three (or vice versa) are subject to the same formal notice, site inspection, hearing, report with findings, survey, certificate of opening, and notice to the property owners as for laying out or discontinuing highways. 19 V.S.A. § 708(a). The selectboard members perform a quasi-judicial function when they hear and decide classification petitions. *Hansen v. Town of Charleston*, 157 Vt. 329, 597 A.2d 321 (1991). Although the selectboard members have broad discretion, they must keep the interests of the town in mind when making their decision. In deciding whether to reclassify a highway, the board should consider whether the increased traffic and development likely to result from the reclassification is in accordance with the town plan. 19 V.S.A. § 708(b).



**12. Landowners who request highway upgrade may be required to pay the costs.** If individual property owners (rather than the town) petition to reclassify a highway from class four to class three, 19 V.S.A. § 711(b) authorizes the selectboard members to require the petitioners to bear the cost of the upgrade as a condition to reclassification.

**13. Public meetings are for public business only.** Under the open meeting law, a public meeting occurs when a quorum of a public body meets to discuss public business. However, if a majority of the members of the public body want to meet for a social occasion or take a class together, they can do so without it being an open meeting so long as no public business is discussed. There is nothing wrong with the board members enjoying each other’s company at a holiday party, camping in the White Mountains, or going to an educational seminar. Indeed, in one town a local business invited individual board members to a presentation about its future plans in the community. So long as the board members refrained from discussing the business of the town at this presentation the public meeting law would not apply.

**14. What exactly is an executive session?** An executive session is a part of a public meeting from which the public is excluded. The open meeting law has a specific section, 1 V.S.A. § 313, dedicated to addressing how a public body enters into executive session. There must be a motion made to enter into executive session that is passed by a majority vote. The motion must include the subject to be discussed and if the board wishes to go into executive session to discuss contracts, labor relations agreements with employees, arbitration, mediation, grievances, civil actions, or prosecutions by the state, then the board must make the case that “premature general public knowledge would clearly place the state, municipality, other public body, or person involved at a substantial disadvantage.” “No formal or binding action shall be taken in executive session except actions relating to the securing of real estate options...” 1 V.S.A. § 313(a). Minutes of the executive session need not be taken. The law also provides a short list of what are permissible subjects to discuss in executive session. Remember that executive sessions should only be used for extraordinary circumstances. The reasons for executive sessions must be clear, explicit and must be consistent with the statutory checklist. Keep in mind that the intent of the open meeting law is to allow citizens to stay informed and to participate with their local public body. The Vermont Supreme Court has also stated that any exceptions will be narrowly construed.

**15. Information about time and place of regular meeting must be publicly available.** The time and place for regular meetings of any public body may be designated by charter, regulation, ordinance, bylaw, or resolution and this information must be made available

to the public upon request. 1 V.S.A. §31(c)(1). Many selectboards and school boards establish their regular meeting schedule by a resolution at the first organizational meeting after election at Town Meeting. Once established, the board does not have to “warn” each regular meeting, although the board must make the agenda available to the news media or any person upon request prior to the meeting. Many towns have a practice of posting the agenda and distributing it to the media on a regular basis.

**16. A board may change its regular meeting time and place as it wishes.** A board can change its regular meeting schedule by adopting a new resolution at any time. The law does not limit the designation to the organizational meeting. However, when a board has changed the schedule in this way it should make some effort to let the public know so that the people who regularly come to these meetings are not caught off-guard.

**17. Meeting minutes can be brief.** Minutes of a meeting of a public body should not attempt to be a transcript of the meeting or a complete restatement of all public discussion at the meeting. 1 V.S.A. §312. The law requires only that minutes include the names of everyone who participates, the subjects discussed, motions made and actions taken. It is good practice to keep the minutes short and sweet so that the public can tell what action was taken at the meeting. Too much detail can cause citizens and/or board members to spend more time at meetings debating the accuracy of the “transcriptions” and dialogue recorded in minutes of past meetings, than on the new action items.

**18. Listers meetings must be open to the public – but listers can work outside of board meetings.** When listers meet it must be at a publicly noticed special or regular meeting of the board. However, the law permits listers to perform site visits and clerical work outside of board meetings. The law also provides that “routine day-to-day administrative matters that do not require action by the public body, may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.” 1 V.S.A. § 312(g).

**19. Zoning administrator may go on to public portion of property to investigate violation.** A zoning administrator must investigate possible violations whenever he or she reasonably believes that one exists. 24 V.S.A. § 4445. However, the zoning administrator may not trespass and must obtain permission from the property owner to enter the property to investigate. If the property owner refuses to



allow the zoning administrator to gain entry, the administrator has a number of recourses. The zoning administrator can travel onto the public portions of a property, such as driving up the driveway or walking up to the front door (or back door if it is obvious that this is the primary access), to determine whether there is a violation. The zoning administrator can obtain a search warrant to enter private property to search for a violation. And lastly, the zoning administrator can issue a “Notice of Violation” to the property owner based on his or her reasonable belief that a violation exists. If appealed to the zoning board or development review board, the refusal of the property owner to allow an inspection of the premises may be considered when determining whether a violation exists.

**20. Resignation does not have to be in writing.** There is no legal requirement in Vermont that a resignation be in writing. It is sufficient that the official communicate his or her resignation to the selectboard. It is, however, good practice to have a written resignation that can be filed with the town clerk along with oaths of office and records of appointments. If the resigning official does not submit a written resignation, the selectboard minutes which reflect receipt of the oral resignation should be included in the town’s file as a record of the resignation.

**21. Resignation is effective upon receipt.** In one town a person proffered his resignation to the selectboard who did not take a formal action to “accept” the resignation. The next day the official called the board chair and asked to revoke the resignation. Although the courts have not directly addressed this issue in Vermont, it is our belief that the Vermont courts would hold that the resignation is effective upon receipt – with no official action of the board necessary to make it effective. We base this decision on the fact that in Vermont the board does not have authority to reject the resignation. By receiving the resignation the board is performing a ministerial function. Of course, the board could choose to reappoint the official to his or her former position.

**22. A road foreman and a road commissioner can be the same person.** Unless a town has voted to elect its road commissioner, the road commissioner is appointed by the selectboard. There is no reason that the road foreman who is hired to oversee most of the work on town highways cannot also serve the town as the road commissioner. This is because in most towns the road commissioner’s principal duty is keep the selectboard up to date on the state of the town roads. Note that the road commissioner no longer has any independent authority - whether he or she is elected or appointed. 19 V.S.A. § 304 (a)(16) provides that “road commissioners, elected or appointed, shall have - only the powers and authority regarding highways granted to them by the selectmen.” This means that in some towns the road commissioner has no duties at all. In most towns one of the selectboard members serves as road commissioner.

**23. Justice of the peace nominations take place in early September.** The law provides that between Friday, September 5th and Friday, September 12th, 2008, justices of the peace may be nominated by major or minor party caucus, may be nominated by major or minor party committee if the caucus fails to meet, or an individual may submit a petition as an Independent to be placed on the ballot for the

General Election on November 4, 2008. 17 V.S.A. § 2413. The Elections Division has sent a memorandum to each major and minor state party chair outlining the procedures for nomination of justices of the peace. We also sent a copy of this memo to every town clerk for reference. Generally, the major parties set a date for all town caucuses at the end of August (the caucuses must meet before the first Tuesday in September). Each party can nominate a full slate of justices of the peace (as many JPs as your town has voted to elect). It is the responsibility of each state party chair to send copies of the instructions and forms to all town party chairs. Historically, some town major party committees have agreed to only nominate one-half the number of JPs; however, this is NOT legally required and is not a binding agreement. Town party committee chairs and party members should call state party officials for more information regarding nomination of justices of the peace.

**24. Applications to the Checklist (voter registration applications) must be received by the town clerk where the applicant has his or her legal address on or before 5 p.m. on Wednesday, September 3, 2008, in order to be able to vote in the Primary Election on September 9, 2008.** 17 V.S.A. §2144(a) and (b). If you are assisting in a voter registration drive, please make certain that all applications are in the offices of the town clerks before the deadline.

**25. A friendly reminder to town clerks that each town party chair is entitled to one free copy of the checklist in the 30 days prior to an election.** 17 V.S.A. §2141. Any other person can request a copy of the checklist and pay the per page or per disk fee. Whether the requestor is a campaign person or a salesman, the checklist is a public record that can be obtained upon request and payment of the established fee. As the elections draw near, you may receive more requests for checklists. You are not obligated to provide the checklist sorted by street address. Your only obligation is to provide the name and address of each voter on the checklist upon payment of the fee.

**26. Candidates should not serve as election officials with some exceptions.** Vermont law provides that no candidate shall serve as an election official in any election in which his or her name appears in a contested race (more than one candidate) for that office, unless the office is for town clerk, treasurer, moderator, justice of the peace, ward clerk or inspector of elections (an office in which being an election official is an integral part of the responsibilities of office). 17 V.S.A. § 2456. In addition, any candidate disqualified to serve as an election official and any spouse, parent or child of such candidate, cannot deliver absentee ballots. 17 V.S.A. §2538.

**27. BCA must appoint assistant election officials.** 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 in each polling place. 17 V.S.A. §2454. The board shall make an 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 undertaking any election activity. The oaths are on page two of the 2008 Elections Procedures.

*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

We received this idea from Brenda Davignon, Assistant Town Clerk in Rockingham, regarding write-in campaigns:

If a candidate inquires about the use of "stickers" or labels for a write-in campaign, Vermont law allows a voter to affix a sticker to the ballot. Please tell the candidate and your election officials the following:

- The sticker or label must be less than 3/8 inch high so that it can fit on the line for the write-in for the office.
- Persons handing out stickers must follow the Presiding Officer's policy for where campaigning can take place outside the polling place.
- Election officials should check voting booths to remove any papers or stickers that may have been left behind by a voter.
- A sticker placed on the write-in line for a race on a ballot is considered a vote for the candidate even if the oval is not filled in—a sticker is treated exactly the same as if the voter wrote in the name.
- In vote tabulator towns, election officials must review all ballots to look for write-in names including stickers to be hand counted.

Please submit your Tip of the Month to John Cushing at [jcushing@town.milton.vt.us](mailto:jcushing@town.milton.vt.us)

# Municipal Calendar

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## AUGUST 2008

- 2 Last day for officials who have received supplementary petitions from candidates to notify the secretary of state of the status of such petition (not later than two days after the last day for filing supplementary petitions). 17 V.S.A. §§ 2103(13), 2359
- 5 Town clerks receive at least five copies of the 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)
- 10 Last day for posting the warning and notice for the primary (30 days before the election). 17 V.S.A. § 2521(a)
- 10 The checklist must also 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 over 5,000 population. In towns with less than 5,000 population, the checklist must only be posted one place in addition to the clerk's office. 17 V.S.A. §§ 2141, 2521(a). In towns that divide their checklist, that portion of the checklist that applies to the district should be posted in each district.
- 11 Town clerks must receive primary ballots (not later than 30 days before the election). Clerks should store the ballots, except those used for sample ballots and early or absentee ballots, in a secure location until the date of the election. They must return receipts for ballots to the secretary of state as soon as possible. 17 V.S.A. §§ 2479, 2103(13)
- 15 Last day for town clerk to electronically transmit a copy of the grand list, tax rates, and assessed tax amount to the director of property valuation and review. 32 V.S.A. § 5404(b)
- 16 Bennington Battle Day. 1 V.S.A. § 371(a)
- 20 Last day for town clerks to post sample ballots (for the primary election) in the same places that have previously posted copies of the warning, notice, and checklist (20 days before primary). 17 V.S.A. § 2522(a)
- 25 Candidates for state office, state senate, state representative, political parties, and political committees, who have made expenditures or received contributions of \$500.00 or more must file campaign finance reports with the secretary of state by 5:00 p.m. 17 V.S.A. §§ 2811(a)(1), 2103(13) (25<sup>th</sup> of each month.) Candidates for the state senator or state representative must also file such reports with the clerk of the candidates' respective senate or house district (the same clerk where the candidate files nominating petitions). 17 V.S.A. § 2811(e)
- 26 Last day to post notice (in three public places) of party caucus to nominate candidates for justice of the peace (seven days before caucus). 17 V.S.A. § 2413 (d)
- 28 Last day for U.S. Congressional candidates to file FEC 12-day pre-primary reports (July 1-Aug. 24). 2 U.S.C. § 434(a)(2)
- 29 Last day for political parties in towns of population more than 1,000 to publish notice of caucus to nominate candidates for justice of the peace in a newspaper having general circulation in the town. (three days before caucus) 17 V.S.A. § 2413(d)
- 30 Voting machines 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)

## SEPTEMBER 2008

- 1 Labor Day. 1 V.S.A. § 371(a)
- 1 (During the eight days immediately preceding election day and on election day) Town clerk must give each part of justices one part of the list of ill or physically disabled applicants to be visited, together with early or absentee voter ballots and envelopes for each. 17 V.S.A. § 2538(b), (c)
- 2 Candidates for county office (probate judge, assistant judges, state's attorneys, sheriffs, high bailiff and justice of the peace) to file ten-day pre-primary campaign finance reports with the county clerk with whom nomination papers were filed. If a filing deadline falls on a Saturday, Sunday or legal holiday, then the deadline shall be extended to the next business day. 17 V.S.A. §§ 2821 and 2103(13)
- 2 On or before the first Tuesday in September, upon the call of the town committee, party members in town may meet and nominate candidates for justice of the peace. 17 V.S.A. § 2413 If no caucus is held, the town committee meets and nominates candidates for justice of the peace. 17 V.S.A. § 2381(a)(3)
- 3 Last day, until 5:00 p.m., to apply for addition to the checklist to vote in the primary. Clerks' offices must be kept open from 3:00 p.m. to 5:00 p.m. to receive applications. 17 V.S.A. §§ 2144(a) and (b), 2103(13)

- 3 Last day for town clerks to receive a simultaneous request for an application for addition to the checklist accompanying an early or absentee ballot request. 17 V.S.A. §§ 2532(b) and (c), 2103(13)
- 3 Last day for people who are not eligible to register by this date but who will be by election day to file a written notice of intent to apply with the town clerk and to apply for an early or absentee ballot. 17 V.S.A. §§ 2144(b) and (c), 2103(13)
- 4 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 election). 17 V.S.A. § 2144b(d)
- 5 First day for independent and minor political party candidates, nominees of major parties that have failed to nominate candidates in the primary, and candidates for the office of justice of the peace to file statements of nomination with the appropriate filing officer (not more than 60 days before the general election). 17 V.S.A. § 2386
- 6 Last day for the board of civil authority to designate pairs of justices of the peace, assuring political balance, to deliver early or absentee ballots to ill and physically disabled voters. (three days prior to the election.) 17 V.S.A. § 2538(a)
- 8 Board of civil authority must appoint a presiding officer if the town clerk or other regular presiding officer is unable to preside at the election or if more than one polling place is used. 17 V.S.A. § 2452
- 8 Prior to the day of the election, board of civil authority must appoint assistant election officers. 17 V.S.A. § 2454
- 8 Presiding officer must notify the election officers of their hours and duties. 17 V.S.A. § 2455
- 8 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)
- 8 Clerks must make a list of early or absentee voters available upon request in their offices. 17 V.S.A. § 2534
- 8 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)
- 8 The presiding officer shall also ensure 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)
- 9 PRIMARY ELECTION DAY- A primary election shall be held on the second Tuesday of September in each even numbered year for the nomination of candidates of major political parties for all offices to be voted for at the succeeding general election, except candidates for president and vice president of the United States, their electors, and justices of the peace. 17 V.S.A. § 2351
- 9 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
- 9 The presiding officer must post copies of the warning, notice, and sample ballots. Signs should be placed on or near the ballot boxes explaining procedures for depositing ballots. 17 V.S.A. § 2523
- 9 Polls must be open no earlier than 5:00 a.m. and not later than 10:00 a.m. (opening hour set by board of civil authority). Polls remain open until 7:00 p.m. 17 V.S.A. § 2561(a)
- 9 During polling hours presiding officer must ensure that there is no campaigning of any kind and no campaign literature displayed, placed, or distributed inside the polling place. On walks and driveways leading to a polling place, no candidate or other person may physically interfere with the progress of a voter to and from the polling place. 17 V.S.A. § 2508
- 9 For those who became eligible to vote after the first Wednesday prior to Election Day and had notified the town clerk of intent to apply for addition to the checklist, the town clerk shall act on applications until polls are closed. 17 V.S.A. § 2144(b), (c)
- 9 As soon as possible after the polls close, the presiding officer must examine entrance and exit checklists and prepare a statement of discrepancies. 17 V.S.A. § 2583(a)
- 9 Presiding officer directs election officials in counting ballots. 17 V.S.A. §§ 2581, 2582
- 9 Presiding officer must seal all ballots, exit checklist(s) and tally sheets. The entrance checklist must be kept out of the ballot bags and placed in a secure location. 17 V.S.A. §§ 2583(a), 2590(a), 2689
- 10 Representative district canvassing committees for single town districts meet at 10:00 a.m. to tally returns. 17 V.S.A. § 2368

PLEASE OVERNIGHT YOUR OFFICIAL RETURNS (ORV) to the Office of the Secretary of State, 26 Terrace Street, Montpelier, VT 05609-1101. We must data enter all results on Friday, Saturday, and Sunday in order to have the Statewide Canvassing Report for 10 a.m. on Tuesday.

- 11 In a manner prescribed by the Secretary of State and within 48 hours of the close of the polls, the town clerk shall deliver one certified copy of the official return of vote to the secretary of state, representative district clerk, senatorial district clerk and county clerk. 17 V.S.A. § 2588
- 12 Representative district canvassing committees in multi-town districts, and canvassing committees for state senator and county offices meet at 10:00 a.m. to tally returns. (Three days after the election.) 17 V.S.A. § 2368
- 12 Last day for canvassing committees in single town districts to prepare and sign certificates of nomination and mail or deliver in person to each candidate nominated a notice of nomination. (Within two days after the canvassing meeting) 17 V.S.A. § 2371(a)
- 12 Last day for validly nominated candidates to withdraw their names from the ballot by filing a written notice with the town clerk in the case of a justice of the peace, or with the secretary of state in the case of all other offices (third day following the primary). 17 V.S.A. § 2412
- 12 Last day for independent and minor political party candidates, nominees of major parties that have failed to nominate candidates in the primary, and candidates for the office of justice of the peace to file statements of nomination with the appropriate filing officer (third day following the primary election). 17 V.S.A. § 2386
- 12 Canvassing committee for single member district must also file with the secretary of state a list (the "canvassing report") showing the vote for each candidate of each party for each office. 17 V.S.A. § 2371(a)

**The Municipal Calendar is provided by the Vermont League of Cities and Towns/Chittenden Bank and the Secretary of State's Office. The Secretary of State's 2008 Election Calendar is posted online at [http://vermont-elections.org/elections1/critical\\_dates\\_2008.html](http://vermont-elections.org/elections1/critical_dates_2008.html)**

## Civics Behind the Scenes

Missy Shea, Civics Education and Voter Outreach

### *Honor A Vet With Your Vote*

We recently celebrated July 4<sup>th</sup>, the patriotic holiday that commemorates our nation's struggle to achieve independence, and create an enduring democratic government. American freedoms have been challenged many times over our relatively brief history, and our citizens have consistently stepped forward to defend our nation, especially our right to self-determination.

The Secretary of State's Office is happy to offer the Honor a Vet with Your Vote program again this year. The Honor a Vet with Your Vote program provides personalized buttons to voters who wish to cast their vote in honor of a particular veteran. More than 2,000 veterans have been honored in this way since the program was first implemented for the 2002 elections.

This year we are encouraging town clerks and other town officials to sponsor an Honor a Vet with Your Vote button drive in your community. If you wish to run an Honor a Vet button drive we will send you all of the materials you will need, including posters advertising this important program, button order forms, buttons, and Sharpie pens for personalizing the buttons.

To sign up to run a button drive go to [www.govotevermont.com](http://www.govotevermont.com) or contact Missy Shea at (802) 828-1296 or e-mail [mshea@sec.state.vt.us](mailto:mshea@sec.state.vt.us).

Even if your community does not choose to sponsor a button drive, your voters can still participate by requesting a button from their local veteran's organizations or by ordering a button through the Secretary of State's Office at [www.govotevermont.com](http://www.govotevermont.com).

We look forward to working with you to honor the contributions of our nation's veterans.



## New Laws

July 1<sup>st</sup> a number of new laws that affect local government became effective. Here is a brief summary of some of those new provisions:

1. A local official who embezzles money can be removed from office pending the outcome of the charges as a condition of release set by the court. 13 V.S.A. § 7554. Note that if a local official is removed from office under this provision the selectboard can appoint a person to temporarily fill the position. 24 V.S.A. § 961.
2. Independent candidates, except for those running for president, no longer need to get their petition signatures verified by the town clerk. 17 V.S.A. § 2402. For state and congressional offices 500 signatures are now required for independent candidates, and independent candidates may begin to submit their petitions no sooner than the first Monday in June and no later than the third day after the primary election.
3. The polls may now be opened as early as 5:00 am. 17 V.S.A. § 2494. Voters may register to vote until 5:00 on the Wednesday before the election. You no longer have to be a notary to give someone the voter's oath, so long as you are over the age of 18, or the voter may simply attest to taking the oath. 17 V.S.A. § 2124.
4. In towns that hold Australian Ballot votes in the same location as they hold a floor meeting, public discussion of ballot issues will now be permitted, except for the election of candidates, despite the general prohibition against politicking in the polling place. 17 V.S.A. § 2640(c).
5. Employees will now have the right to take unpaid leave from work to attend Town Meeting, subject to the essential operation of the business or government. An employee must give the employer at least seven days notice if he or she wants to take advantage of this right to attend town meeting. Students who are over 18 also have the right to attend town meeting (unless the student is in state custody at a secure facility). These students may not be treated as truants for missing school to attend town meeting. 21 V.S.A. § 472b.
6. The selectboard may apply for grants and may accept and expend grants or gifts above those which are approved in the town budget. The selectboard shall include, in its annual report, a description of all grants or gifts accepted during the year and associated expenditures. 17 V.S.A. § 2664. And when it proposes a budget it may submit it as one article or as multiple articles. 17 V.S.A. § 2680.
7. If the voters of a municipality have, by vote, authorized the selectboard to adopt an ordinance that includes procedures that differ from those in state law for investigation of vicious domestic pets or wolf-hybrids then the local ordinance will apply. 20 V.S.A. § 3546. The legislative body of a city or town by ordinance may regulate the keeping, leashing, muzzling, restraint, impoundment, and destruction of domestic pets or wolf-hybrids and their running at large. 20 V.S.A. § 3549.
8. The selectboard must appoint from among the legally qualified voters a tree warden. The board may, but is no longer required to appoint fence viewers, inspectors of lumber, shingles and wood and weighers of coal. 24 V.S.A. § 871.

Note that there have also been a number of fee changes that will be reflected in the Vermont League of Cities and Towns updated fee poster that will be available soon. Also, our office has received several calls about the increase in license fees for domestic pets (Sec. 13 of Act 153). This fee increase is effective April 1, 2009.

# Mailing List Updates!

**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: [gcolbert@sec.state.vt.us](mailto:gcolbert@sec.state.vt.us),

or post: 26 Terrace St., Montpelier, VT 05609-1101.

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!***

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July/August 2008

Office of the Vermont Secretary of State

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