



Opinions

Office of the Vermont Secretary of State

Vol. 11, #6

June 2009

2009 Poster and Essay Contest Winners Announced.

See page 7

Quote of the Month

Do not go where the
path may lead;
go instead where there is no path
and leave a trail.

Ralph Waldo Emerson

In this Issue

Quote of the Month.....	1
Voice From the Vault.....	2
Opinions of Opinions.....	4
Civics Behind the Scenes....	7
Upcoming Events.....	10
Tip of the Month.....	11
Municipal Calendar.....	11

A Message from the Secretary

I bet you would not guess it from meeting me, but my husband Paul is in a blues band. Actually, it is his band. When he turned 40 he decided that he had always wanted to play harmonica and sing the blues – and that if he waited much longer he would never get to it.

So, he took some harmonica lessons, bought amplifiers and microphones and found other people to practice with. By the time he was fifty he had started a band – the Great Brook Blues Band. It is a hobby-band, and they are great! No one is in it to get rich – rather, the goal is to have fun and to get paid enough to at least reimburse the band members for gas money and dinner. The family jokes that it is Paul’s mid-life crisis band.



Over all, Paul’s musical career has been a great thing for the family.

Putting aside the fact that he is the only one of us who would choose voluntarily to listen to blues music, the kids are proud of him for setting out a new goal for himself and then achieving it. I love listening to him sing, and seeing how much he has grown musically. But occasionally his band commitments rub up against his family obligations. (Like this past winter when Paul scheduled a gig on February 14th without first checking to see whether his “valentine” minded.)

Well this month, Ari, our youngest, is graduating from middle school. And, unfortunately, Paul and his band are scheduled to play at the very same time as part of concert in the park series in a neighboring town. I know, some of you are probably thinking – “graduating from middle school? They sure do go overboard with graduations.” And, of course, Paul agrees with you, there. But I believe these rites of passage are important.

In Ari’s class the teacher required each student to write a graduation speech. And even though only a few of the kids were picked to deliver their speech at the graduation ceremony it was a great exercise. It required each of them to reflect on their past three years as middle school students - what they learned, special experiences they had, and how they grew individually and as a class. It made them think about what they would miss – but also, what they were looking forward to as high school students.

I always find it moving to see the class standing together waiting to receive their certificates. We have known most of the kids since pre-school and I love seeing how they have grown and changed over the years. At this age the girls invariably tower over most of the boys; and while some of the kids still look very much like kids, with others you can begin to see how they will look as adults. Moving on to high school is a big deal, and for many students the initial transition to high school will be a real challenge. By taking a moment to reflect on the transition it reminds us not to take these changes for granted.

Change is not easy. Rites of passage help us pause for a moment to celebrate and embrace change. It is important to mark the changes in our lives, whether it is by holding a graduation ceremony...or starting a mid-life band.

Deborah L. Markowitz, Secretary of State

Voice from the Vault

Gregory Sanford, State Archivist

VSARA's First Year

A year ago July 1st the Vermont State Archives and Records Administration (VSARA) was launched. It has been, within the current economic climate, an interesting year for launching anything. Still, as our first anniversary approaches, significant progress has been made.

The expansion of our authorities to include records management necessitated drafting a new mission statement based on our statutory mandates found in 3 V.S.A. §117. The new statement emphasizes our record management responsibilities and allows us to prioritize our efforts within a context of dwindling resources. A personally difficult decision was to drop archival management down the priority list, largely because of the pressing need to modernize and standardize record management practices. The statement is at <http://vermont-archives.org/about/mission/mission.htm>.

Within records management it was clear that we had to forge active partnerships with agencies to assist them in meeting legal requirements for having a current and comprehensive records management program. With consolidation we therefore created a record analyst unit under the direction of Tanya Marshall. The hiring of Scott Reilly and Katie Sherman as record analysts marked a move to professionalize records management by requiring formal records training.

A Targeted Assistance Program (TAP), modeled after a similar program at the National Archives and Records Administration, was created as the vehicle for working with agencies. Agencies formally agree to participate in TAP through a memorandum of understanding and commit to forming a TAP team including the agency record officer, business office, and legal counsel. This required defining the duties of agency record officers and having agencies assign a staff person as record officer or as record liaisons. A series of workshops were given to increase awareness of record management benefits. The record analysts help agency TAP teams identify what records they produce or acquire and identify legal requirements governing those records in order to determine how long they have to be retained as well as whether the public records were open or exempt from disclosure.

TAP also required developing a suite of tools to support a consistent approach to creating agency records management programs. One key tool is VCLAS which provides a common vocabulary for describing functions, activities and records. Under the old system agencies identified records in an ad hoc, idiosyncratic manner so that common activities/records across agencies lacked a common nomenclature. In an extreme, but not uncommon, approach agencies might simply identify records as "miscellaneous," "historical," or simply "old files." That obviously made it impossible to know what records were in any series thus described.

One product of VCLAS is the ability to create general schedules that agencies can use to develop consistent record series titles/retention periods for records commonly found in offices. Three general schedules have already been approved. Agency specific record series are also developed through TAP with the Professional Responsibility and Labor Relation boards being the first entities to have approved schedules.

There are numerous TAP efforts under way, with several more pending signed agreements. The Vermont Municipal Clerks and Treasurers' Association requested a memorandum of understanding

form and we will begin a TAP with them as soon as the form is signed. We look forward to working with the VMCTA in creating new schedules for municipal clerk and treasurer records.

The collaborative effort with the Enterprise Project Management Office within the Department of Information and the Attorney General's office, known as the Information Strategies Taskforce on Archives, Records and Technology (iSTART), continues though the consolidation has streamlined that work. The goal is to establish best practices that among other things will allow digital records to be managed as digital records, eliminating requirements to print out or microfilm the records. Another goal is to build recordkeeping rules into the implementation of enterprise technologies; without those rules the likely result would be to re-create the record management problems experienced under the old paper-based system.

There have been many difficult decisions as the new program took shape. It was decided to drop the reformatting section. Though the reformatting/microfilm staff were able and dedicated, a careful analysis of the unit revealed a host of issues. There was a perpetual backlog of filming projects; for example approximately 88 percent of the record series at the record center scheduled to be filmed

had not had any filming done in three years or more. Several semi-active records series were routinely filmed, requiring re-filming or the physical scratching off of images every time the files were changed. Conversation with several agencies revealed that they were only filming the records because their often out of date disposition orders required them to do so. The fact that the records were often unmanaged meant that transitory records were intermingled with records with longer retentions and unnecessarily filmed. Combined with aging film equipment and the need to control what came into the record center rather than focusing on managing what was already here, our analysis supported this necessary, but nonetheless, difficult decision.



In March the Archives staff at Redstone moved to Middlesex uniting all of VSARA's staff at one location. The renovated reference room was opened, new policies and procedures put in place, and the workflow has improved. Requests for birth, death or marriage records as well as agency requests for files are now addressed in two days (walk in vital record requests are handled immediately). Genealogy requests are also usually handled within two days, but no more than a week.

The capital bill contains money to complete construction of new vault areas and other work that will allow us to complete the move to Middlesex (currently some archival records remain at Redstone and are available only by appointment). The work should be done by the end of this year.

So this has been an exciting, if occasionally exhausting, year. It could not have been done without a great staff willing to identify and implement new procedures. I hope anyone who is interested will stop by and enjoy the new reference room. For those who may want to know more about what we are doing go to the managing records section of our website at: <http://vermont-archives.org/records/>

Opinions of *Opinions*

Secretary of State Deb Markowitz

- 1. Meeting minutes must be available five days after the meeting.** The Vermont public records law provides that minutes of ALL meetings of public bodies, including committees and subcommittees, shall be available for inspection and/or for purchase of copies upon request after five days from the date of any meeting. 1 V.S.A. §312(b) Some boards mistakenly believe that they can wait until five days after the minutes have been approved at the next meeting of the board. This is not the case. Draft minutes must be made available five days after the meeting. The person drafting the minutes can boldly stamp them “DRAFT” on each page, or write DRAFT across the top, but the intent of the statute is that interested persons must be able to review the minutes after five days from the meeting. The clerk of the board (minute preparer) must submit a copy to the town clerk or a public official in the town office so that the minutes can be inspected and copied.
- 2. Minutes of meetings do not have to be posted.** Although some towns or boards post minutes on the bulletin board or on a website, this is done as a courtesy only—the law does not require posting of minutes. 1 V.S.A. §312 only requires that minutes be made available for inspection and copying within five days of the meeting.
- 3. Minutes are not transcripts of the proceedings.** Minutes must contain at least the following: list of board members present; list of all other active participants; all motions, proposals, and resolutions made, and what action taken or disposition was made; and the results of any votes, with a record of individual votes IF a roll call vote was requested. If a clerk or secretary to the board attempts to include too much additional discussion with attribution to participants, or to characterize discussions, a board can be forced to spend too much time “correcting” the minutes. Minutes are not intended to be a transcription of the discussion but rather a clear summary of action taken for future reference. 1 V.S.A. §312(b)(1)
- 4. Voters or BCA designate polling place locations.** Each polling place must be in a public place in the voting district (unless all districts in your town vote at one polling place) as designated by the board of civil authority; however, the voters may designate different polling places at an annual or special meeting. 17 V.S.A. §§2501, 2502. We strongly encourage boards of civil authority and/or town voters to do everything possible to choose polling places that are ADA accessible and that are nonsectarian whenever possible. Although rulings in court cases in other states have upheld the use of a church all-purpose room when absolutely no other public place is available, it is a best practice to take this time between elections to find and designate a truly public place.
- 5. BCA sets polling hours for elections.** The board of civil authority may meet from time to time to change the hours when the polling place will be open for a particular election or for all future elections. All polls must stay open until 7:00 p.m. It is our general advice that having consistent hours for polling places encourages voters to know when they can count on the polling place to be open but if the BCA believes it is in the best interest of the municipality, the BCA can vote to change the hours for voting. 17 V.S.A. §2561
- 6. Special town or special school district meetings may be held on any day chosen by the legislative body, so long as appropriately warned.** If other town or school boards want to meet on the same day, the meeting places need to be separated, but there is no prohibition to prevent several meetings from being scheduled simultaneously. However, it may not be appreciated by voters who are interested in attending both or all of the meetings. We suggest that it is a best practice for the chair of the boards to consult other town boards in order to coordinate meetings with a “master calendar” before signing the official warning, but it is not required by law.
- 7. After election or appointment to fill a vacancy, a constable (and certain other elected officials) must take the oath of office BEFORE participating in any official duties. 24 V.S.A. §831.** Case law in Vermont is very clear that the oath must be administered before official action can be taken. A person could be exposing himself to personal liability for damages for attempting to take “official” action prior to taking the oath. Although no other town official can “force” another elected official to take the oath, the town clerk could explain the necessity to the newly elected person. If an elected official refused to take the oath of office, we suggest that you consult your insurance carrier to see if this will impact your public officials’ coverage and also consult your town attorney.
- 8. The selectboard has the sole responsibility for appointment of members of the zoning board of adjustment or development review board. 24 V.S.A. §4460.** In some towns the selectboard may ask the zoning board or development review board for suggestions of who to appoint to fill the vacancy – but ultimately, the decision rests with the selectboard. The selectboard also decides the number of members and the term lengths for the members. When a vacancy occurs, the selectboard should post a notice of the vacancy, and may request interested persons to send a letter of interest or resume and may invite interested persons to “interview” with the board. However, the statute does not specify the particular procedures to be used. It is a best practice to set up a fair procedure to allow all interested persons to be considered, but the law does not require a set procedure.



9. **A person cannot be added to the checklist by filing an “intent to register” under 17 V.S.A. §2144 unless the voter will be a resident on the day of election.** The “intent to register” provision was added to the law in order to allow a person who knows they will be closing on a house or moving into a town after the registration deadline, but on or before Election Day, to meet the voter registration deadline by filing an “intent” or application with the town clerk. On Election Day, if the person has become a resident, the person is then added to the checklist by the BCA members present at the polling place. A person cannot submit an application because they are looking for an apartment in town, or they want to live in your town but haven’t yet found a residence.



10. **When a budget is rejected by Australian ballot the legislative body may hold a vote on a revised budget with seven days notice.** When a town or school district or other municipal corporation uses the Australian ballot system of voting for the budget, if the budget is defeated, the legislative body may warn another election on a revised budget with at least seven days warning with at least five days notice of the informational meeting. 17 V.S.A. §2680(c) and (g). The vote must also be in the same location as the first vote. 17 V.S.A. §2680(c). We suggest that boards consider giving at least 10 days notice and try to keep the voting on Tuesdays when voters expect elections. But the statute does provide latitude for failed budget circumstances. The normal 30 to 40 day warning period for a special meeting or election does not apply to Australian ballot budget votes when the budget has failed to pass at all prior annual and special meetings.

11. **Budget rejected by floor vote needs 30 to 40 days before a new budget can be voted on.** If a budget is voted for the town or school district from the floor at a traditional town meeting, and the budget article is defeated, the legislative body must warn another special meeting for not less than 30 nor more than 40 days. Of course, this does not happen very often because at a traditional town meeting the budget article can be amended from the floor. If the voters are unhappy with the budget presented by the board it may revise or lower the budget during the meeting. Moderators can educate the voters about the best process to use to vote amendments so that the article is not defeated before a satisfactory budget number is determined by the voters.

12. **The selectboard or school board can warn a special meeting to reconsider the same article as many times as it wishes during a year, except for bond votes.** Voters may only petition for reconsideration of an article once on the same article or issue during a twelve-month period. However, except for bond votes which are limited to twice in a calendar year or any 12 month period, the legislative body can take an issue back to the voters more than once if they believe that passage of the article is in the best interests of the town. 17 V.S.A. §2661

13. **Summer employment of minors will be subject to child labor laws.** An employee must be at least 16 years old to work in most non-farm jobs. No person who is under 18 years old may work in any occupation declared hazardous by the Secretary of the USDOL or the Commissioner of Labor. These include, in part, driving a motor vehicle and being an outside helper on a motor vehicle, using power-driven hoisting apparatus, power-driven circular saws, band saws, and guillotine shears, roofing operations, or excavation operations. (For a complete list visit http://labor.vermont.gov/Portals/0/Wage%20Hour/child_labor_pamphlet.pdf)

Children age 14 and 15 MAY NOT work in any of the hazardous occupations above and may not work in construction or repair jobs, driving a motor vehicle or helping a driver, power-driven machinery or hoisting apparatus other than typical office machines, processing occupations, public messenger jobs, or transporting of persons or property. (For a complete list visit http://labor.vermont.gov/Portals/0/Wage%20Hour/child_labor_pamphlet.pdf)

Children age 14 and 15 MAY work no more than three hours on a school day or 18 hours in a school week; eight hours on a non-school day or 40 hours in a non-school week. Also, work may not begin before 7 a.m. or end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Note that different rules apply in agricultural employment.

14. **Planning commission may pick newspaper in which to advertise public hearings.** Vermont statutes require that public hearings be advertised in papers of general circulation in the community. 24 VSA § 4444. Where more than one paper serves a particular community, it is the board who is advertising that must determine which newspaper should be used. Although the selectboard determines the newspaper that is to be used for publishing town meeting warnings, there is no law that gives the selectboard authority to designate the newspaper used by other boards 17 V.S.A. § 2641(b) That being said, we believe it is best practice for all town boards to publish their notices in the same paper so the public know where to look for information about the town. However, so long as the planning commission uses a paper that serves the area, they will comply with the law.

15. **Board doesn’t have to put person on agenda.** The open meeting law gives the public the right to be present and comment on the business of the local board. The board sets its own agenda and no citizen has the right to require the board to “put them on the agenda.” That being said, most boards provide a general invitation to hear from the public at some point during the meeting at which time this citizen should have an opportunity to speak.

16. Listers can't be forced to use an appraiser. The law gives the listers the duty to examine and appraise the property in the town for the purpose of setting the grand list. The law provides that "When a board of listers are of the opinion that expert advice or assistance is needed in making any appraisal required by law, they may, with approval of selectmen or by vote of the town, employ such assistance." 32 V.S.A. § 4041. No law would require them to do so.

17. Selectboard may hire appraiser when the town cannot find enough listers to perform duties. In 2003, in response to the difficulties many towns were having finding people willing to serve as listers in their towns, and the need to keep the town's appraisals up to date, the legislature added the following provision. "Notwithstanding any other provisions of law to the contrary, in the event the board of listers of a municipality falls below a majority and the selectboard is unable to find a person or persons to appoint as a lister or listers, the selectboard may appoint an assessor to perform the duties of a lister. . . until the next annual meeting." 17 V.S.A. § 2651c. The appointed person need not be a resident of the municipality and has the same powers and is subject to the same duties and penalties as a duly elected lister for the municipality.

18. Listers should never appraise their own property or property of family members. It is a conflict of interest for a lister to appraise property that is his or her own, or the property of a family member. It is important that the community have faith in the objectivity of the tax appraisals. An important way to maintain that faith is by ensuring that listers do not participate in assessments of property where they might have a real or financial interest.

19. Confidential memos may not be private. Even if the selectboard receives correspondence marked "confidential," it may be a public record. Merely marking something secret doesn't make it so under Vermont's Access to Public Records law. The document must be statutorily defined as not a public document. 1 V.S.A. § 317(b).



20. The selectboard and school board may loan money to each other secured by a note signed by the board. 16 V.S.A. §429. When a school board or selectboard loans the other municipality funds, the board should sign a note that stipulates the terms, and the note must be payable upon demand or mature within three months from the date of issue. Obviously, the boards need to have the funds available and be willing to cooperate, but we felt it was worth a reminder since this option may be helpful for the management of cash-flow in some communities.

21. Office hours may be altered during clerk's vacation. Even town clerks can go on vacation – provided they make an arrangement to have someone else – an assistant – open up the office and the vault in order to make the public records available. No law requires the assistant clerk to maintain the same hours as the clerk (in one instance, the assistant, who ordinarily works very part time for the town, will open the office on request). So long as the clerk posts an advance notice to let the public know what the temporary times or arrangement will be, and the records are available during his or her absence, the legal requirement that "the files and records in the office of the clerk shall be available for inspection upon proper request at all reasonable hours" will be met. 24 V.S.A. § 1165.

22. Conservation commissions may be created by the vote of the municipality or by vote of the legislative body. 24 V.S.A. § 4501 provides that a conservation commission may be created at any time when a municipality votes to create one, or, if the charter of a municipality permits it, when the legislative body of the municipality votes to create one. A conservation commission may have not less than three nor more than nine members. The statute specifies that members are appointed for four-year terms. Unlike the planning commission or zoning board, all conservation commission members must be residents of the municipality. 24 V.S.A. § 4502.

23. Selectboard can alter size of conservation commission under some circumstances. When a conservation commission is created by resolution of the selectboard the board can later, by resolution, change the size of the commission. If the size is reduced, any vacant seats will first be eliminated, and any additional reductions will occur as the terms of the board members expire. The authority of the selectboard to change the size of a conservation commission is less clear in cases where the commission was created by vote of the municipality. It is clear that if the vote to create the commission included a reference to the size of the commission that this cannot be altered without a vote of the municipality. However, if the commission was created without reference to a particular size then it is likely that a court would find that the selectboard has the authority to increase or decrease the membership, as it deems appropriate.

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

Missy Shea, Civics and Voter Outreach Coordinator

2009 Poster & Essay Contest Awards Day

The results are IN! The Secretary of State's Annual Vermont Poster and Essay Contest is a good way to get students and their teachers excited about Vermont history. By being focused on our state constitution at various age-appropriate levels, our youngest citizens begin to develop an appreciation for Vermont's unique and hard-earned past. It is Secretary Markowitz's hope and intention that an introduction to Vermont's past through the Poster and Essay Contest will lead students to developing a deeper interest in participating in shaping Vermont's future.

Students, their teachers, and their families will meet Secretary Markowitz, and get a rare view of the Vermont Constitution courtesy of State Archivist Gregory Sanford. They will also get special tours of the State House and the Vermont Historical Society Museum. A lunchtime ceremony will be held at the State House, and recognition certificates will be awarded. Additionally, contest winners will receive a \$100 check, to be used by their classroom or local public library for the purpose of purchasing civic education or Vermont history materials. Congratulations to the following! Go to www.sec.state.vt.us/kids to view more entries.

Grades K-2, Vermont State Symbol:

Individual Winner: Benjamin Carpenter, Homeschooled, age 7, Poultney, "Butterfly in Red Clover".

Individual Honorable Mention: Riley Earle, Bridgewater Village School, Mrs. Fitzpatrick's grade K, Bridgewater, "Vermont State Seal".

Class Winner: Theresa Jakubowski's class, Clarendon Elementary School, grade 2, North Clarendon, "Monarch Butterflies".

Class Honorable Mention: Bradley Bender's class, Rutland City Public School, grade 2, Rutland City, "Hermit Thrushes".

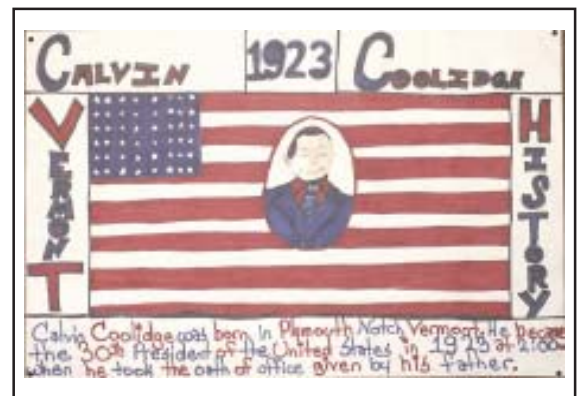


Grades 3-5, Vermont History:

Individual Winner: Emily Ballou, South Royalton School, Ms. Kurash's grade 4, South Royalton, "Calvin Coolidge".

Individual Honorable Mention: Posy LaBombard, Waitsfield Elementary School, Mrs. Kingsbury's grade 2/3, "Samuel de Champlain".

Class Winner: Georgeanne Baker's class, Waitsfield Elementary School, grade 3, "Scenes from Vermont History".



Vermont Constitution Essay

Grades 6-8 Co-Winners

Will Adkisson, Browns River Middle School, Mrs. Babbitt's grade 8

Athens vs. America

When the founding fathers wrote the Constitution, they had a difficult choice to make. Should they have a true democracy, where the people govern directly, or should they have a representative democracy, where the people govern through their elected officials? They chose a representative system. The Vermont Constitution is equally demonstrative of this. Voters cannot directly propose amendments to the state constitution through ballot initiatives, like they can in California and other states. This is a good thing. If Madison or Jefferson had wanted us to be able to have free reign in our own constitutions, he would have written the federal document differently.

In the Vermont Constitution, an amendment may only be proposed by a Congressman every four years. Once proposed, 2/3 of the Senate and a majority of the House must pass it. But even after that, which can be difficult, the amendment isn't done. It sits for two years, after which it is again voted on by the House and Senate. This time, only a majority must vote for it. Only then is it put to the voters; if a majority of voters approve it, the amendment is adopted. The general public is only part of the voting once the proposed amendment has passed the House and Senate twice. This forces their representatives to propose the amendment, and to vote on it, before the people can even touch it, which is the very backbone of our government – a representative democracy, not a true democracy.¹

Our founding fathers were adamant that true democracy is ineffective. As Alexander Hamilton said, "A pure democracy if it were practicable would be the most perfect government. Experience has proved that no position is more false than this. The ancient democracies in which the people themselves deliberated never possessed one good feature of government. Their very character was tyranny; their figure deformity."² The group that wrote the Constitution obviously agreed, because the federal document is based on that fundamental principle, from the electoral college to the amendment process. Our government in no way resembles the ancient true democracies.

Athens was the one of the few governments that implemented true democracy. But if their history is examined, they went through constant turmoil, undergoing coups and revolutions every few decades. There was a revolt in 510 BC, a coup in 411 (that was overthrown in 403) and constant warfare. From wars with the Persians to land squabbles with the Spartans, to the eventual overthrow of the city-state by Alexander the Great, Rome, the Byzantine Empire, and the Ottoman Empire, Athens was not a happy place. Interestingly, the word tyrant originated in Greece. As Hamilton says, "The ancient democracies in which the people themselves deliberated never possessed one good feature of government. Their very character was tyranny; their figure deformity." While Athens is not a tyranny, as such, his point is clear. Athens had a chaotic government. Vermont, with its highly limiting amendment process, does not.

John Witherspoon, a signer of the Declaration of independence, is equally eloquent. "Pure democracy cannot subsist long nor be carried far into the departments of state — it is very subject to caprice and the madness of popular rage."³ In summary: the people aren't qualified to make their own choices. To use a real-world example, I was taking a class in which the students picked a discussion topic – one of a long list of potential apocalypses. Despite the many interesting topics, such as nuclear warfare and the effects of a destroyed moon, the majority of the class went with the joke topics, including the disappearance of chocolate from the world. If that isn't the madness of popular rage, I don't know what is.

But shouldn't the people have a voice? Wasn't the Revolutionary War fought for liberty and freedom? Yes, it was. But the founding fathers believed that the people couldn't govern themselves effectively. I know that I want someone smarter than me running my country. Representative democracy strikes a delicate balance: people don't govern themselves, but they still have a voice. If the public was meant to truly govern themselves, we would be living in another Athens. We have chosen a representative government – we must stand by it, whether in Vermont or the country as a whole.

So what does all this have to do with the amendment process? The answer: Everything. Our founding fathers decided that a true democracy was ineffective. If we wish to have a successful government, history tells us that we must eschew true democracy. We must stand by representative democracy because that is the foundation our government is based on. We can't change our minds now, two hundred years later, and say "Sorry, Jefferson – we've decided we'd rather be an Athenian democracy." This applies at the state level as well as at the federal, with the amendment process as well as the legislative branch. If you don't like it, argue with Madison.

(Footnotes)

1 <http://www.usconstitution.net/vtconst.html#Section72>

2 <http://www.ourrepubliconline.com/OurRepublic/Author/22>

3 <http://www.partyof1776.net/p1776/fathers/Witherspoon%20John/quotes/contents.html>

Anna Riley-Sheppard, Lamoille Union Middle School, Mr. Gilbertson's grade 8

Discussing Vermont's Constitution: Should It Be Easier To Amend?

If one were to ask the average Vermonter if they thought it should be easier to amend the Vermont Constitution, they would most likely reply, "Vermont has a Constitution?"

I apologetically admit that, just a small while ago, I was one in a crowd of those people. I don't mean to sound ignorant, but before my eighth grade social studies class began studying Vermont's Constitution, I had no idea it existed. However, I learned much from my recent studies of it and wonder that it is not discussed more thoroughly in our state's schools. After all, our very own Green Mountain State's Constitution is one of the strongest in the country, especially since it was written *before* the U.S. Constitution and has lasted from 1777 to the present day.

That being said, let us now turn to the issue of amending the Constitution. Information about the process can be found in Chapter II, Section 72. It tells us, "*At the biennial session of the General Assembly of this Senate by a vote of two-thirds of its member, [senators] may propose amendments to this Constitution, with the concurrence of a majority of the members of the House of Representatives with the amendment as proposed by the Senate.*"

How complicated! And according to Deb Markowitz, Secretary of State, "Proposals of amendment can [only] be initiated every four years by the senate," and the developments that follow can take many more years to complete. Then it becomes even more convoluted. *If the idea for the proposal of an amendment passes the two-thirds vote of the Senate, it still must win a majority vote in the House to even be suggested to the public as a proposed amendment! If this prevails, it gets sent back to the Senate and House for another vote, this time on the actual amendment, and can finally be transferred to the Vermont voters as a new amendment to the Constitution. However, if the House and Senate have just one small disagreement about the specifics of the text, the amendment must be amended by a specialized Conference Committee, and the whole process starts again.*

This detail of our Constitution has some Vermonters posing the question, "What happens when we desperately need to pass an amendment in a rapid manner? It would take years for it to pass! Shouldn't it be easier to amend the Vermont Constitution?"

Though I see the rationale for speeding up the amendment process, I believe it is satisfactory as is. For one thing, the amending procedure for the Vermont Constitution has been revised just three times. Either this means that the method of amending is so complicated that no one can get their proposals through, or it suggests that the process has simply never needed many changes. I believe the truth lies with the latter. If the Vermont Constitution truly and urgently needed amending, I trust we could find a way to make it happen. Even if this proved impossible we could pass a state law ensuring that the issue was temporarily taken care of, "until the real thing came along".

Now for a question of history: why did the writers of the Vermont Constitution choose to make such a difficult Constitution to amend? Truly, in comparison to ours, the U.S. Constitution is amazingly easy to revise. There, an amendment can be proposed at any given time by a two-thirds vote of both houses of Congress or by a national convention called at the request of two-thirds of state legislatures.

If you think this sounds easy, just look at California's Constitution. Amendments can be brought up anytime and, if they are voted in for a proposal, the state Legislature must provide a convention to vote on it within six months time. Also, Article 18, Section 4, reads, "*A proposed amendment or revision shall be submitted to the electors and if approved by a majority of votes thereon takes effect the day after the election...*"

At the other end of the spectrum lies New York. The amendment process of this Constitution is quite strict. Any amendment suggested to and voted on by both the House and the Senate, with a positive outcome, must then be sent to the attorney-general. *If the attorney-general approves of the Bill, he then has no more than twenty days to review it and write a letter to the Legislature concerning his opinion on the topic. Assuming this happens, the Bill goes through many more incarnations of the House and Senate before finally being proposed to the people for them to vote on. Now that is what I call tough!*

This brings me to my final point: where is the fine line between a law and an actual amendment? Most of the concerns of Vermonters could probably be assuaged by a simple law instead of an entire amendment. States laws can be passed quickly and without trouble and wouldn't carry the heavy load of an actual amendment. Also, as Marielle Rousseau, the former winner of an essay contest about the Vermont State Constitution, says, "*Vermont's Constitution has been in place for 227 (now 231) years and it has never served us wrong in this period of time. Its complicated process benefits us, as we can see from the fact that the Constitution has rarely needed amending, and if we were to change this process, we would no doubt be harming our law making process.*"

Our Constitution has done a good job taking care of Vermont. I don't believe it needs many changes, and most alterations Vermonters think of are fixable by creating a law. The long process of amending the Constitution ensures that we don't make any decisions we will later regret, and that is definitely a good thing.

Upcoming Events

Developing a Land Schedule

Instructors: Christie Wright and Teri Gildersleeve (sponsored by the Vermont Tax Department)

Date: Tuesday, June 16, 2009

Location: Vermont Technical College, Randolph Center

Time: 9:00 a.m. to 3:00 p.m.

Tuition: \$ 75.00 VT Town officers, \$100.00 Firms and others

Register online: <http://www.state.vt.us/tax/pvrlistereducation.shtml>

The basis of a good reappraisal is a land schedule that reflects a town's values. This session will show you how to gather and quantify your sales data, determine influencing factors and deal with sales outside your community. The morning session will cover the theory of land valuation and data gathering while the afternoon session will focus on developing the sales grid. Issues more specific to neighborhoods and lakefront properties will be discussed in the afternoon session. Recommended: Preparing for a Town Wide Reappraisal Course.

2009 Planning Law Review (Webinar)

Start Date: Wednesday, June 24

Start Time: 3:45 PM

Place: Vermont Law School in South Royalton, VT

Directions: <http://www.vermontlaw.edu/Directions.htm>

Coordinating Organization(s): Vermont Law School <http://www.vermontlaw.edu>

Cost: FREE

Contact for More Information: Peg Elmer at Vermont Law School

Phone: 831-1405

Email: pelmer@vermontlaw.edu

Summary: Keep current on Supreme Court, circuit, and state court decisions and legislative changes from the past year. Hear from the experts regarding digital signage, environmental regulation, regulatory takings, and how the comprehensive plan is faring in the courts. Learn about the nationwide ramifications of Oregon's Measure 37 and similar initiatives.

Zoning Fair for Municipal Land Use Officials

Start Date: Wednesday, July 8

Start Time: 12:00 PM

Place: VLCT Offices in Montpelier, VT

Directions: <http://www.vlct.org/directions/>

Coordinating Organization(s): Vermont League of Cities and Towns <http://www.vlct.org>

Cost: FREE

Contact for More Information: Stephanie Smith at Vermont League of Cities and Towns

Phone: 802.229.9111 **Email:** ssmith@vlct.org

Website for information and/or registration: <http://www.vlct.org>

Other Notes: Participation is limited to 20 Attendees. Registration Deadline is July 1, 2009.

To Register: email Stephanie Smith, ssmith@vlct.org

Summary: This is an opportunity for Administrative Officers (Zoning Administrators), Planners, and Staff to Appropriate Municipal Panels to share examples of application forms (zoning, subdivision, flood plain, site plan, conditional use, variance, etc.), application checklists, and excerpted bylaws describing application process and requirements necessary for a complete application.

In addition to sharing forms and bylaws, there will be an opportunity for a round table discussion on the Zoning Administrator or Appropriate Municipal Panel's process to determine whether an application is complete and ready for review.

Municipal Calendar

JUNE 2009

1 - In towns using Australian Ballot, town clerk may open and destroy used town meeting ballots and tally sheets, except as otherwise provided by law (90 days after town meeting election). 17 V.S.A. § 2590(d).

1 - Deadline for listers to lodge property inventories with town clerk. 32 V.S.A. § 4007.

1 - (Within 60 days of petition) If a petition for reconsideration or rescission of a question considered or voted at town meeting has been filed, this is the last day on which a municipal vote may be held at a duly warned meeting. 17 V.S.A. § 2661(b).

4 - Last day for listers to lodge the grand list with town clerk for public inspection for towns of fewer than 5,000 inhabitants. 32 V.S.A. §§ 4111(d), 4341.

24 - Last day for listers to lodge the grand list with town clerk for public inspection for towns of greater than 5,000 inhabitants. 32 V.S.A. §§ 4111(d), 4341.

30 - End of fiscal year for all school districts, charter provisions notwithstanding, and for municipalities that have adopted July 1 through June 30 fiscal year calendar. 32 V.S.A. § 1, 24 V.S.A. § 1683(b), (c).

30 - Reminder for town clerk in municipality with fiscal year ending June 30 to publicly disclose fees kept as compensation for that fiscal year by July 30th. 24 V.S.A. § 1179.

JULY 2009

15 - Last day for U.S. Congressional candidates to file FEC quarterly reports for the July quarter (Apr. 1-Jun. 30). 2 U.S.C. § 434(a)(2)

15 - Candidates for statewide office and general assembly who have made expenditures or received contributions totaling over \$500 must file a campaign finance disclosure report. 17 V.S.A. § 2811(d), 2103(13)

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

Tip of the Month

Make room in your vault! On June 1, in towns that used Australian Ballot voting for Town Meeting Day, the town clerk may open and destroy used town meeting ballots and tally sheets (it's been 90 days since town meeting election). The ballot bags from the 2006 Primary and General Elections should be emptied already (retention time for those was 22 months).

If you haven't already purged voters who were challenged prior to November 2006 and who have not responded and not voted in a subsequent election, this should be done immediately. If you have not called a meeting of the BCA to go through your checklist and decide which voters should be sent a challenge letter, this should be done soon. Although the Vermont statutes require town and city clerks to certify to the VT Office of the Secretary of State that challenge letters have been sent in September of each odd numbered year (ONLY 3 MONTHS from now), our office strongly suggests that BCA's either meet more frequently to review the list or authorize the town/city clerk to send challenge letters. Towns that send challenge letters each month or at least each quarter report that progress is being made—voters tend to respond to the challenge letter when it is sent right after the voter moves instead of 18 months or 2 years later.

If you have a tip to share, contact John Cushing at jcushing@town.milton.vt.us.

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,

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!

RETURN SERVICE REQUESTED

www.sec.state.vt.us

802-828-2363

Montpelier, VT 05609-1101

26 Terrace Street

Redstone Building

June 2009

Office of the Vermont Secretary of State

Opinions

PRSR STD
U.S. Postage Paid
PERMIT NO. 147
MONTPELIER, VT
05609-1101