



Opinions

Office of the Vermont Secretary of State

Vol. 13, #4

April 2011

2011 Poster and Essay Contest

Deadline:

April 11, 2011

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Betty Poulin
Secretary of State's
Director of Business Division
Retires



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Quote of the Month

"If liberty and equality, as is thought by some are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost."
Aristotle (384 BC - 322 BC)

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A Message from the Secretary

Let's talk about open government and transparency. Good government is open government.

Governor Shumlin and I support legislation that has as its primary goal improving access to public records. A bill to that effect (H. 73) is currently moving through the General Assembly.

Access to government records is important to our democratic process and the overall function of government. By Vermont law, "any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business" is a public record. Some public records are exempt, in whole or in part, but they are still public records and must be managed in accordance with law. Proper public records management is the key to access.

Both state and local governments must strive to do a better job of records management as we all try to deal with the tremendous volume of paper records, and an even greater volume of electronic records. We must be prepared to embrace shifts in our attitudes and recognize the changes in our current culture of records management to let the sun shine in and on government – let's work together to restore faith in government.

A hearty congrats to several towns celebrating a significant milestone this year:

- Brandon, 250 years old
- Poultney, 250 years old
- Shoreham, 250 years old

And congratulations to Betty Poulin, Corporations Director for the Office of the Secretary of State, who retires after serving Vermont for 32 years! We will miss you!

As I mentioned last month, we continue to look for ways to reduce costs as our general fund budget for FY12 will be reduced by 12 percent. One way is to send this publication, *Opinions*, electronically. We currently mail out over 3000 copies at a cost of \$15 per person per year. Please let us know if you are willing to receive *Opinions* electronically by contacting us at:

- email: secretary@sec.state.vt.us
- fax: 802-828-2496
- post: 26 Terrace St., Montpelier, VT 05609-1101

We ask that you include the information from your current *Opinions* mailing label.

Thanks and enjoy your spring!

James C. Condos, Secretary of State



Voice from the Vault

by Gregory Sanford, State Archivist

Opening Government Information

In 1810 Peter Durand, a British merchant, patented the tin can. Within three years the first commercial canning factory was opened. By 1846 new inventions allowed tin cans to be manufactured at the rate of 60 an hour, ten times the previous rate.

The tin can was a tremendous advance in the long term storage and transportation of food. Some credited it with improving nutrition and health by allowing for the year round availability of fruit and vegetables. Though tin cans eventually raised their own health concerns, for most of the 19th and 20th centuries they were considered an unadulterated boon.



There just one nagging problem: how could consumers open the cans without either destroying the contents or injuring themselves? Early cans were fairly heavy and users had to open them with a hammer and chisel. Soldiers—and tin cans made the transportation of food for armies easier—used their bayonets. Some shopkeepers opened the cans for customers.

Ezra Warner of Waterbury, CT came to the rescue when he patented a can opener in 1858, which was described as a crudely shaped combination of a sickle and bayonet. The key can opener—still found on some sardine cans—came along in 1866. William Lyman of Meriden, CT invented the first rotating wheel can opener in 1870, which was improved upon in 1925 with the two wheel can opener we are now familiar with. In 1931 the first electric can opener, using the two wheel design, was sold. The pop-top joined us in 1959.

The evolving interplay between creating a new storage container (1810) and then figuring out how to effectively release its contents (1870) is fascinating. All of which leads us to the use of information technologies and access to records.

The March 5, 2011 New York Times carried an article by John Markoff entitled, “Armies of Expensive Lawyers, Replaced by Cheaper Software.” In 1978 a law suit involving five television studios launched a discovery process (locating documents germane to the case) that examined six million documents and cost \$1.1 million, mostly to pay for months of research by lawyers and paralegals. In contrast a January 2011 discovery search analyzed 1.5 million documents for less than \$100,000.

Between those two law suits records had become largely digital, computer speeds increased, and new applications were developed to unlock specific records from millions of files. These applications can find specific words, patterns of words, and even patterns of behavior within records. Of equal, if not greater importance, the need to plan and manage records from their point of creation became widely recognized as key to improving access and retrieval.

And so we come at last to Vermont public records. There has been much discussion of late over how (or whether) to recapture labor costs associated with responding to public record requests. House Government Operations, for example, heard testimony from agencies that had to respond to “voluminous” record requests involving everyone from their attorneys to their IT staff.

Certainly, trying to integrate searches of both digital records and legacy formats (paper, microfilm, etc) in responding to public record requests can be challenging. Those challenges increase given our long history of neglecting effective records management. This failing is exacerbated by digital records which need to be managed from their point of creation. We have talked about all this before in previous a column.

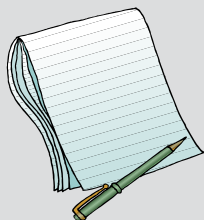
The most common objection we hear from agencies is the amount of time it takes to effectively plan their information systems. In a state government of reduced resources and increasing demands there is an understandable tendency to seek short-term IT responses over long-term planning.

The benefits of effective planning are, however, immense. There are ready examples of this. When you visit your local library, in person or online, you find information structured so you can identify categories of books (fiction, non-fiction, poetry, etc); you can search by subject (gardening, for example); and find where the book is located.

State government can appear as a dysfunctional library where books are simply thrown on shelves without a common classification system; common subject headings; or any way of knowing whether they are accessible or not. This saves immense amounts of up front costs, but kicks the can down the road by increasing long term retrieval costs (if retrieval is possible at all). Even the advent of new, improved “can openers” cannot improve access to unlabeled or mislabeled information containers.

Which raises the question of whether those seeking public records should be expected to pay the additional costs associated with retrieving poorly managed records? Can we legally define and discourage “voluminous” record requests in a world where vast amounts of well-managed data can be easily accessed? Should we charge for the right to inspect public records at the same time we are providing more and more records for inspection, free of charge, online? These questions deserve more than canned answers.

Tip of the Month



This month’s tip came from Richard McCoy, Public Health Statistics Chief of the Vermont Department of Health.

Cremations

We are aware that town clerks occasionally receive questions about burials and cremations. In recent years, the Vital Records Office has received calls asking if outdoor, open-air cremations are allowed. (For example, can we cremate a body in an open space on private land?)

The Department of Environmental Conservation has released a revised memorandum on this subject. The memorandum is posted on the Health Department web site at:

<http://healthvermont.gov/vadr/burial/cremation.aspx>

In short, open-air cremations are prohibited. The Vermont public health laws prohibit all open-air cremations. 18 V.S.A. §§5302 and 5319(a) Additionally, combustion devices used for cremation purposes are subject to regulatory requirements for crematories.

We encourage town clerks to direct any questions or challenges to the DEC contact listed in the memorandum.

If you have a tip to share, contact Alison Kaiser at akaiser@townofstowe.vermont.org

Opinions of *Opinions* by Secretary of State Jim Condos

- 1. The time for dog licensing and tags is here.** Just a brief reminder that the dog must wear the “license” tag required by the Vermont Statutes, and that is sufficient proof that the dog has been vaccinated for rabies. An additional “rabies” tag is not required. (20 V.S.A. §3581)
- 2. At an annual or special meeting, every voter has the right to rise to appeal or challenge the ruling or decision of the moderator if the voter believes that a ruling is not correct.** Robert’s Rules recognize the authority of the voters present to both determine any special procedural rules the body wants to adopt at the beginning of the meeting, and to question the moderator’s ruling on any issue. Many moderators will indicate by voice cadence when the moderator is in doubt about a ruling and some moderators may even say, “The moderator is in doubt but rules that . . .”. Any voter can rise to appeal a ruling. The appeal or challenge takes precedence unless it is made when a pending question is not debatable (such as a motion to call the question). The appeal or challenge must be seconded (the same as for a motion). The moderator may speak during the debate on the appeal or challenge to give rationales for his ruling. A majority vote is required to overrule the ruling of the moderator so a tie vote sustains the ruling of the chair.
- 3. If an annual meeting is adjourned to a time and date certain to continue the meeting, the adjourned session can only include completion of voting and discussion of articles which were in the original warning.** The adjourned session is a continuation of the original meeting and therefore does not require a new warning. New articles cannot usually be added between the annual meeting and the adjourned session. If the adjourned meeting date is more than 32 days after the annual meeting date, the selectboard or school board would have time to give 24 hour’s notice of a board meeting to pass a motion to warn any new articles, and to record and post the warning for 30 days before the meeting. In most cases, the adjourned meeting date is within two or three weeks of the annual meeting so the board will need to either warn a special meeting or save articles for next year.
- 4. If the candidate elected to an office does not want to accept the office to which he or she was elected, whether from the floor or by Australian ballot, the office must be filled by appointment by the Selectboard made by motion in a duly warned meeting, or if for school director, by the school board in a duly warned meeting.** The town clerk or selectboard DO NOT ask the second place candidate if he or she wants to accept the office.
- 5. If there is a tie for local office in an Australian ballot election, if one of the tied candidates files a letter of withdrawal within five days the town clerk can certify the other candidate as the winner. If there is no withdrawal, then a runoff election must be held.** 17 V.S.A. §2682(e). The law requires a runoff election between only the two candidates who were tied in the original election and there is no write-in line on the ballot.
- 6. While 17 V.S.A. §2661 provides a method for reconsideration of public questions and budgets, the election of officers cannot be reconsidered by filing a petition with the legislative body.** The only way to challenge or contest the election of an officer is by filing a petition with the appropriate Superior Court. (17 V.S.A. §2603) The statute sets out that you must allege either errors sufficient to change the outcome of the election, fraud in the process sufficient to change the result, or that for any other reason, the election is not valid.



7. **Unless your town or city charter provides authorization, there is NO RECALL of selectboard members, school board members or other local elected officials in Vermont.** However, if you have a three member selectboard or school board in your town and you and other citizens are concerned that the board is not being responsive to important issues that are being raised by the legal voters, then voters can submit a petition asking to increase the size of the selectboard to five members. The petition must be signed by at least 5 percent of the voters on the town checklist and should ask the selectboard to warn a special meeting to consider the petition. In the petition, the article needs to specify whether you want the two additional members to serve one-year terms or two- year terms. If you ask for two year terms for the two additional members, then in the first year, one of the members would be elected to 1 year remaining of a two year term so that the terms will be staggered. 17 V.S.A. §2650
8. **As tax appeal time nears, remember that on appeals from the listers decision to the Board of Civil Authority, the BCA may increase, decrease or sustain the appraisal. (32 V.S.A. §4409)** Once the taxpayer raises the issue of the property's valuation, the BCA must make findings to support what the BCA believes to be the correct valuation of the property, even if that is an increase. The same is true for further appeals to the State Board of Appraisers or the Superior Court.
9. **If a taxpayer succeeds on appeal, and it is determined that he or she has been over assessed, then the taxpayer is entitled to a credit from the municipality, and if the municipality has voted to collect interest on delinquent taxes, then the taxpayer must be repaid interest at the same rate. (32 V.S.A. §4469, §5136)** A municipality can choose to pay the taxpayer in a lump sum, but the statute only mandates a credit.
10. **A town may vote to pay a salary or other compensation for collection of taxes in lieu of fees and commissions to the collector of taxes or collector of delinquent taxes.** 24 V.S.A. §1530, allows towns to vote a salary for the delinquent tax collector in lieu of fees or commissions. If this is voted at an annual meeting, the fees and commissions shall be turned in to the municipal treasurer at least once a month.
11. **When a budget vote fails, forcing additional vote(s) until the budget passes or for reconsideration of an article by Australian ballot, there is case law that indicates that all the votes on a budget (until there is a passed budget and reconsideration if requested) are part of the same election.** It is our advice that because the series of votes until a budget is passed and/or reconsideration is requested is all one election, the town clerk must honor a request for an absentee ballot as being a request for all ballots until the budget is finally passed. A reconsideration or a vote following a failed budget is really an extension of that annual meeting where the article was first presented, and absent voters should continue to participate until the final determination is made on the article. A Vermont Supreme Court case on an analogous set of facts confirms this interpretation. The court held that a vote on the reconsideration of an article must be done using the same voting system as the system used for the original vote.
12. **If you receive a petition to return to a voice vote and discontinue Australian Ballot for your town or school district budget, the vote to discontinue is a public question and must be considered by voice vote from the floor, unless your town or district has already voted to consider all public questions or this specific public question by Australian ballot. 17 V.S.A. §2680.** There are sometimes very strongly held differences of opinion on the benefits of floor debate and voice votes vs. Australian ballot. Some districts have gone back and forth on the form of voting several times. However, unless there has been a vote to do any public question, including the specific public question of how to vote on the budget by Australian ballot, the vote must be by voice from the floor. All charter adoptions/amendments are required to be done by Australian ballot.

Disclaimer

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.

State of Vermont



House of Representatives

Montpelier, Vermont

Concurrent House Resolution

H.C.R. 98

House concurrent resolution congratulating the Vermont State Board of Nursing on its centennial anniversary

Offered by: Representatives Keenan of St. Albans City, Spengler of Colchester, Acinapura of Brandon, Batchelor of Derby, Donahue of Northfield, Frank of Underhill, French of Randolph, Haas of Rochester, Heath of Westford, Manwaring of Wilmington, Mrowicki of Putney, O'Brien of Richmond, Pearce of Richford, Pugh of South Burlington, Toll of Danville, Winters of Williamstown and Woodward of Johnson

Offered by: Senators Ayer and Kittell

Whereas, Vermont's nurses meet the health care needs of our most vulnerable citizens in a wide variety of settings, and

Whereas, by the early 20th century, the growing impact of the nursing profession on the lives of Vermonters required its closer scrutiny from state government, and

Whereas, as a legislative response, the 1910 General Assembly enacted "An Act to Provide for the Registration of Nurses" that became law as Act 219 on January 28, 1911 and established a board of registration of nurses, the predecessor of the Vermont State Board of Nursing, and

Whereas, as provided in chapter 28 of Title 26, the Vermont State Board of Nursing (the board) is a safeguard of public health through its examination and practice authorization of registered nurses (20,000), licensed practical nurses (2,200), licensed nursing assistants (4,200), and advanced practice nurses (550), and together they are the largest group of health care professionals in Vermont, and

Whereas, the board prescribes standards for continuing educational programs and requirements for nurses returning to practice after an extended absence, and

Whereas, another important administrative role for the board is to investigate allegations of unauthorized practice, unprofessional conduct, or incompetency and to take any necessary action in response to its findings, and

Whereas, over the last 100 years, the board has conscientiously served Vermonters and the nursing profession and continues to keep pace with advancements in nursing care and service delivery, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly congratulates the Vermont State Board of Nursing on its centennial anniversary, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont State Board of Nursing.



Shapleigh Smith, Jr.
Speaker of the House



Philip B. Scott
President of the Senate

Attested to:



Donald G. Milne
Clerk, House of Representatives

Betty Poulin Retires!



Certificate of Appreciation

is awarded to

Betty Poulin

in recognition of her more than 32 years of service
to the citizens of the

State of Vermont

James C. Condos
Secretary of State

March 31, 2011



2011 Poster and Essay Contest

The Secretary of State's Office is gearing up for the 2011 Poster and Essay Contest. Students from kindergarten to grade 12 are eligible to submit posters or essays about designated topics.

Contest Awards

A \$100 prize will be awarded to the First Place winners' classrooms for the purchase of materials, or to fund field trips, related to civics education or the study of Vermont. In the event that a First Place Winner is a Home Schooled student, a \$100 donation will be awarded to the public library of the student's choice.

First Place winners, their families, and their classes, as well as any Honorable Mention recipients and their families, will be invited to an awards ceremony on May 23, 2011 at the State House in Montpelier. They will also tour the State House and visit the Vermont Historical Society Museum.

All submissions must be postmarked by April 11, 2011, and sent to:

Olivia Gay
2011 Poster and Essay Contest
Office of the Secretary of State
26 Terrace Street
Montpelier, Vermont 05609-1101

or e-mail: olivia.gay@sec.state.vt.us

For contest rules and detailed information visit:

www.sec.state.vt.us/kids/contests-infopage.html

or contact

Olivia Gay by phone 802-828-1296 / e-mail olivia.gay@sec.state.vt.us

Civics Behind the Scenes

by Olivia Gay, Civic Education and Voter Outreach Coordinator

You Can Play an Essential Role in High School Voter Education and Registration Week

The 2011 High School Voter Education Registration Week has been scheduled for May 23-27. The Secretary of State's Office designates a special week each spring, encouraging schools to educate students about voter eligibility and voting procedures as well as holding voter registration drives, or planning one for later on. This year we will join the VT NEA in recognizing the 40th anniversary of the constitutional amendment to give 18 year olds the vote.

High schools are a place where adolescents develop and prepare for the future. Each student will emerge from high school as a young adult, a citizen with an important role to play in our democratic society. Students who are informed about their civic rights and responsibilities, are familiar with the process of voting, and actually registered to vote, are far more likely to vote during an election.

Election officers, legislators, and other volunteers such as the League of Women Voters are wonderful resources for getting students prepared to vote. Collaborating with schools to present voter education and to run registration drives also helps town and city clerks, because their involvement ensures that correct information is being given and the process is being properly followed. Such collaboration leads to a smooth inclusion on the voter checklist and young citizens prepared to take part in this basic democratic process.

If you are not already involved in educating and registering eligible students at your local high school, please consider volunteering your time to help out by contacting Olivia Gay, Civic Education and Voter Outreach Coordinator, via email at olivia.gay@sec.state.vt.us or by calling her directly at 828.1296.

Here at the office of the Secretary of State, we have relevant information for voter education and the materials needed for voter registration drives in schools (or anywhere else)! Use this link to view our resources: http://www.sec.state.vt.us/kids/vtvotes/voter_registration.shtml In order to give schools more resources, we are going to collaborate with Rock the Vote's Democracy Day efforts. Their program can be reached through their website: <http://democracyclass.com>

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

Elections Calendar

APRIL 2011

15 - Last day for U.S. Congressional candidates to file FEC quarterly reports for the April quarter (Jan. 1-Mar. 30). 2 U.S.C. § 434(a)(2)(B)

MAY 2011

30 - 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)

JULY 2011

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)(B)

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)

AUGUST 2011

26 - TBD (Date dependent on caucus date, which is set by state chairman) First day for the chairman of a state committee of a political party to mail a notice of the date and purpose of the reorganizational caucuses to each town clerk and to each town chairman of the party. 17 V.S.A. § 2302 (14 days before date set for caucus which is set for a date between September 10 and September 30.)

SEPTEMBER 2011

10 - First day for members of political party to meet in caucus in their respective towns. 17 V.S.A. § 2302

15 - By September 15 of each odd-numbered year the board of civil authority shall review the most recent checklist name by name and consider, for each person whose name appears on the checklist, whether that person is still qualified to vote. 17 V.S.A. §2150(c)

16 - (This could change depending on what the date of the caucus is set for.) Last day for the chairman of a state committee of a political party to mail a notice of the date and purpose of the caucuses to each town clerk and to each town chairman of the party. 17 V.S.A. § 2302

20 - Town clerks must send a letter certifying compliance with 17 V.S.A. § 2150 to the secretary of state. 17 V.S.A. § 2150(d)(7)

30 - Last day for members of a political party to meet in caucus in their respective towns. 17 V.S.A. § 2302

Within 72 hours after the caucus, the chairman and secretary of the town committee shall mail to the secretary of state, the chairmen of the state and county committees, and the town clerk a copy of the notice calling the meeting and a certified list of the names and mailing addresses of the officers and members of the town committee and delegates to the county committee. 17 V.S.A. § 2307

OCTOBER 2011

17 - Last day for U.S. Congressional candidates to file FEC quarterly reports for the October quarter (July 1-Sept. 30). 2 U.S.C. § 434(a)(2)(B) and 17 V.S.A. § 2103(13)

DECEMBER 2011

26 - First day to warn the first public hearing if charter adoption, amendment or repeal is to be voted at town meeting (70 days before town meeting). 17 V.S.A. §§ 2641(a), 2645(a)(3) and (6)

JANUARY 2012

5 - Last day to warn the first public hearing if charter adoption, amendment or repeal is to be voted at town meeting (60 days before town meeting). 17 V.S.A. §§ 2641(a), 2645(a)(3) and (6)
January 25 (Sunday)

25 - First day town clerks may post warnings for town meeting (40 days before the meeting). 17 V.S.A. § 2641(a)

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

**For additional information, visit the Elections Division's website at
<http://vermont-elections.org/soshome.htm>**

Upcoming Events

For detailed information and registration on events listed, visit the Vermont League of Cities & Towns website at: www.vlct.org/eventscalendar/

April 5, 2011

White River Jct. - Conducting Effective Lister Grievances and Property Tax Appeals

Sponsored by VLCT Municipal Assistance Center

April 6, 2011

Burlington - 2011 Town Officers Education Conference (TOEC)

Sponsored by UVM Extension

April 7, 2011

Middlebury - Conducting Effective Lister Grievances and Property Tax Appeals

Sponsored by VLCT Municipal Assistance Center

April 7, 2011

Johnson- 2011 Town Officers Education Conference (TOEC)

Sponsored by UVM Extension

April 20, 2011

Fairlee - 2011 Town Officers Education Conference (TOEC)

Sponsored by UVM Extension

April 26, 2011

Middlebury - Treasurers' Workshop

Sponsored by VLCT Municipal Assistance Center

April 27, 2011

Rutland - 2011 Town Officers Education Conference (TOEC)

Sponsored by UVM Extension

April 28, 2011

Springfield - Treasurers' Workshop

Sponsored by VLCT Municipal Assistance Center

April 30, 2011

Selectboard Institute II

Sponsored by VLCT Municipal Assistance Center

Opinions

Office of the Vermont Secretary of State
April 2011

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