

Opinions

Office of the Vermont Secretary of State



Vol. 5, #11

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A Message from the Secretary

Last week municipal clerks and treasurers from all over New England came to Vermont for the annual New England Association of Clerks and Treasurers meeting. This meeting provided an opportunity for

Vermont's clerks to highlight the beauty of Vermont, shopping opportunities in Burlington and to share information about issues and challenges with clerks and treasurers from around the region.

It was interesting for me, as a speaker and visitor to this meeting, to see how much we have in common with other New England states. We all share the challenge of meeting the mandates of the Help America Vote Act; we share the challenge of moving toward electronic government in our offices, and we are all faced with a public that increasingly demands access to our information 24/7.

All of these issues - and more - were discussed over the few days the clerks converged in Burlington. Yet, the value of the meeting can be measured by more than the usefulness of its educational sessions. I could see that many of the clerks who attended left feeling energized

from the informal sharing of information and common interests with colleagues from around the region.

Whether it is the annual town officer's trainings, or seminars put on by my office or VLCT, it is important for local officials to take time to come together to meet, share ideas and information. Congratulations to the Vermont clerks for their hard work to ensure that the meeting was a success.

Deborah L. Markowitz, Secretary of State

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Breaking the Mold

By Gregory Sanford, State Archivist

I confess that during late night rummagings through my refrigerator I occasionally unearth food with longer beards than the state archivist. Mold can be fascinating, but it usually not welcome on food or records. In recent weeks, however, I have heard from several clerks, and one librarian, who have had to deal with mold in their offices.

The Archives is currently blessed with a UVM graduate intern through a program of the Snelling Center on Government. Lois Coulter, a graduate student in Historic Preservation, has been helping the Archives update its disaster plan. I asked Lois to write up a short piece on mold and records

The Problem of Molds in Collections, by Lois Coulter

“Molds” and “mildew” are the generic terms given to a wide variety of molds, mildew, fungi, algae, rusts and yeasts which feed on living or organic material. While dormant mold spores cause little damage, active mold colonies excrete an enzyme that breaks down the host material, weakening and altering paper and book bindings; many molds contain pigmentation that irreversibly stains paper, cloth or leather. In addition, several varieties of molds result in respiratory ailments making the presence of active mold colonies a significant health hazard.

Microscopic spores are everywhere, transmitted by air currents as well as contact with humans or animals. Once established, spores may remain dormant until environmental conditions are favorable for growth. Molds require only high humidity and warm temperatures to become active. A musty odor, the presence of stains or the appearance of a fine web of filaments or a bushy growth of almost any color indicate an outbreak of mold. The sudden appearance of mold in a collection is a signal that changes in the environment have allowed the spores to germinate.

Mold species commonly found in libraries and archives prefer the starches, gums and gelatin found in book bindings and the cellulose fibers that make up paper. “High temperatures, poor air circulation, dim light, and accumulated grime assist and accelerate the growth of mold once it has germinated, *but only high relative humidity and moisture contents of the substrate can initiate and sustain mold growth.*”¹

In outbreaks involving less than 300 cubic feet of records, where no toxic molds are present, enlisting outside aid is not necessary. When mold is detected, a mycologist should be consulted to determine the mold species. Some molds are highly toxic to humans and require more specialized treatment.



People with compromised immune systems, asthma and other respiratory ailments as well as diabetics, those on steroid treatments, and people with serious allergies should not be exposed to either the area where the mold outbreak occurred or to the infected items. All others should wear protective clothing and HEPA filter masks when exposed to active mold colonies.

Once an active mold colony is discovered, three actions must be taken: establish the cause of the environmental changes, isolate the infected items, and thoroughly clean and dry the affected areas. Reducing the humidity and increasing air circulation is essential to discouraging mold growth. Optimum relative humidity is below 50% with a temperature in work spaces below 70°F. Discovering the source of the environmental change is also essential to preventing the further proliferation or recurrence of mold colonies. Regulating the environment to maintain a steady temperature and relative humidity is sound collection management policy.

Isolation of affected materials deters the spread of the mold. Infected items should be sealed in a plastic bag and removed to a clean area with relative humidity below 45% for decontamination. Once in a clean environment, the items should be removed from the plastic bag to discourage further mold growth. Wet or damp materials should be dried immediately or frozen until appropriate treatment options can be undertaken. All dry materials



should be cleaned with a soft brush to remove remaining mold spores.

Exposure to ultraviolet light will inhibit mold growth and may kill molds (sustained exposure to UV light, however, is not good for records).

The area where the mold outbreak occurred should be disinfected with a mild bleach solution. All HVAC system components in the area will require cleaning and disinfecting as well. Until the affected area is thoroughly cleaned, removed items should not be re-filed. “Spores, active or dormant, are ubiquitous. Although it is impossible to get rid of all the spores, mold growth can be controlled.”² Finally, before any new material is introduced to the collection, it should be quarantined and carefully inspected for any signs of mold or insect activity.

The most important step is the careful regulation of relative humidity in the collections storage area. “Problem environmental conditions that may contribute to higher humidity levels need to be corrected. Repair leaking pipes, gutters and downspouts, cracked windows, a problem roof, deteriorated brick, masonry pointing, or cracked walls.”³ Regular inspections of the HVAC systems, regular cleaning and the maintenance of good air circulation in the storage areas will help keep the area free of the media required to nourish spores.

(Footnotes)

¹ Managing a Mold Invasion: Guidelines for a Disaster Response, Conservation Center for Art and Historic Artifacts

² Emergency Salvage Of Moldy Books And Paper, Northeast Document Conservation Center

³ Mold and Mildew: Prevention of Microorganism Growth in Museum Collections, National Park Service

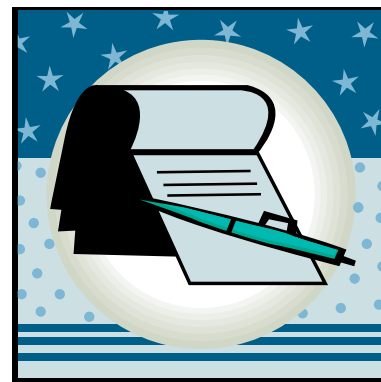


Opinions of Opinions

- 1. Executive Session Can Include People Who Are Not Board Members.** Vermont law permits a board to go into an executive session to discuss a variety of matters. 1 V.S.A. § 313(b) provides that “attendance in executive session shall be limited to members of the board . . . and in the discretion of the public body, its staff, clerical assistants, its legal counsel and persons who are subjects of the discussion or whose expert information is needed.”
- 2. Board Cannot Eject Member From Executive Session.** In one town a dissenting member of the board routinely informed the public and press about what was discussed during their executive session. There is no way the board can prevent this from occurring. Although the board can publicly express its displeasure, the law does not permit the board to exclude or eject one of its members from a meeting. 1 V.S.A. § 313(b)
- 3. Board May Eject Unruly Member of Public.** On occasion a member of the public will disrupt a meeting. In such a case the chair of the board should first try to calm the individual down and restore order. If this is not possible the chair can call on the town constable to remove the individual from the meeting. 1 V.S.A. § 312(h).
- 4. School Board May Act With Majority of Those Present.** Most local boards can only act when a majority of the full board is in agreement. 1 V.S.A. § 172. Not so for school boards. According to 16 V.S.A. § 554, while a majority of the members of the board shall constitute a quorum, the concurrence of a majority of members present at a school board meeting is necessary and sufficient for board action.
- 5. School Board Follows Roberts Rules; Selectboard Can Create Own Procedures.** Vermont law requires school board meetings to be conducted using Robert’s Rules of Order. 16 V.S.A. § 554. For small school boards we recommend that the board use Robert’s Rules for Small Boards. In contrast, the law is silent about what procedures the selectboard and other local boards should follow. Accordingly, these boards can adopt their own rules of order. This can be, but does not have to be, Robert’s Rules. We recommend that board’s commit to writing the procedures they follow so that all board members and members of the public will know what to expect.
- 6. Board May Draw Orders Without Quorum In Some Cases.** Vermont law permits the selectboard (and other boards that have authority to draw orders directly from the treasurer) to authorize one or more members of the board to draw orders directed to the treasurer to pay the expense of the town. Orders must state definitely the purpose for which they are drawn and serve as full authority to the treasurer to make the payments. The full board must be provided a record of the orders drawn in this manner. 24 V.S.A. § 1623.



7. Board May Submit Minutes of Meeting To Draw Orders On Town Accounts. If a selectboard chooses it may simply submit to the town treasurer a certified copy of those portions of the selectboard minutes, properly signed by the clerk and chair or by a majority of the board, showing to whom, and for what purpose payments by the town are to be made by the treasurer. The certified copy of the minutes serves as full authority to the treasurer to make the approved payments. 24 V.S.A. § 1623.



8. Treasurer May Not Make Payment Unless Law For Drawing Orders Is Followed. If a board has not voted to permit less than a majority to draw orders on the town accounts, the treasurer may not write a check at the request of less than a majority of the board. This means that if a board does not have a quorum present at its meeting it may not authorize the payment of town expenses. In some situations a special meeting or an emergency meeting of the board may be warranted to ensure that required payments be made in a timely fashion. 24 V.S.A. § 1576.

9. Lost Minutes Won't Invalidate Decisions. If a decision was made at an open meeting of the town, the fact that the minutes of the meeting were later misplaced or lost will not result in the invalidation of the action taken at that meeting. *Town of Rutland v. City of Rutland*, 170 Vt. 82 (1999).

10. Action Taken In Violation of Open Meeting Law is Not Void. 1 V.S.A. § 312(a) provides that “no resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at [an] open meeting . . .” The Vermont Supreme Court has held that this section does not provide that an action taken at an improperly closed meeting is void, but rather, that action taken outside an open meeting is ineffective unless ratified in an open meeting. Once the decision is ratified the action is effective and binding. *Valley Realty v. Town of Hartford*, 165 Vt. 463 (1996).

11. Old Roads Don't Go Away From Lack Of Use. Vermont law is clear that a town highway cannot be abandoned or discontinued without following the required statutory procedures. *In Re Bill*, 168 Vt. 439 (1998). Moreover, a landowner has no right to adverse possession over a town road, even if the landowner has built a building on it and has maintained that building for over 15 years. 19 V.S.A. § 1102. Even if the town fails to maintain a road, and even if that road drops off the maps of the town, if an old road was never discontinued then the town retains the right of way. *In Re Bill*, 168 Vt. 439 (1998).

12. Landowner Can Request Permission to “Pent” a Road. With the permission of the selectboard a landowner can place an unlocked gate across a public highway. The board can designate where this gate may be placed. 19 V.S.A. § 304(a). The board’s permission must be in writing and recorded in the town clerk’s office. Note that this will not cause a reclassification of the road, so the procedures for reclassification do not have to be followed. Pent roads originated as a way to permit a farmer to use land on both sides of the road for grazing. Now, it is a way for landowners to slow down ATVs and other vehicles using the road.

13. Some Tax Exemptions Must Be Voted On By Town. The basic rule is that real and personal property of an organization that is used primarily for health or recreational purposes is not automatically exempt from taxation. However, the property can be made exempt by a vote of the municipality. 32 V.S.A. § 3838(7).

14. Travel Trailer May Be Taxed If It Remains In One Place For Too Long. Generally, motor vehicles that are registered for use on the highway cannot be taxed as real property. An exception exists for trailer coaches (a trailer or semi-trailer designed to be towed by a motor vehicle and equipped or used for sleeping or living quarters). A trailer coach may be taxed as real property by the town in which it is located if it stays on the same trailer site or camp site for more than 180 days during the 365 days prior to April 1. A trailer coach is not taxed as real property if it is stored on property on which the owner resides in another dwelling as a permanent residence. 32 V.S.A. § 3692.

15. If Town Extends Sewer System It Can Require Property Owners To Connect. If a town or city extends its sewer system, it can adopt an ordinance to require that all adjacent property owners connect to the public system and abandon private septic systems. 24 V.S.A. §3509. The Sewage Commissioners may require the owners of buildings, subdivisions or developments abutting a public street to connect to the municipal sewage system.

16. Water or Sewer Commissioners Can Charge Interest On Delinquent Payments if Voters Approve. Water or Sewer Commissioners can charge interest on delinquent payments for water and/or sewer ONLY if the voters of the municipality have approved an article in the warning to collect interest on overdue water or sewer bills. 24 V.S.A. §5151 and 32 V.S.A. §5136. The article must be voted in the same manner as the vote to collect interest on delinquent taxes, and likewise stays in effect until voted otherwise at a subsequent meeting.

17. The Majority of Members of a Planning Commission Must Reside in Town. The majority of members of a Planning Commission must reside in town; however, the Selectboard can appoint members from outside of Town. The statutes allow non-residents to serve in order to allow the planning commission to have members with special expertise from outside of town. 24 V.S.A. §4322.



18. A Member of a Planning Commission May Be Removed at Any Time. A member of a Planning Commission may be removed at any time by the unanimous vote of the Selectboard. 24 V.S.A. §4323(a) The statute does not require that planning commissioners only be removed for cause.

19. Development Review Board Members Do Not Have To Reside In Town. There is no statutory requirement that members of the Development Review Board reside in town. 24 V.S.A. §4461(a). The Selectboard can appoint all or some members of the Planning Commission to serve on the DRB or can appoint entirely different citizens.

20. A member of a Development Review Board or Zoning Board of Adjustment can only be removed “for cause” by the Selectboard after being given written charges and a public hearing. 24 V.S.A. §4461(b)

21. A Zoning By-Law, Amendment or Repeal Must Be Adopted In Its Entirety. A proposed zoning by-law, amendment or repeal must be adopted in its entirety according to the procedures set out in 24 V.S.A. §4404. Citizens cannot petition to have a proposed by-law voted on separately section by section. However, 5% of the legal voters of the town can petition the planning commission to ask for amendment(s) to any section or repeal of any section(s) of the zoning bylaw. 24. V.S.A. §4403(b)

22. ERRATA: Last month we mistakenly said that school districts must bid contracts over \$10,000. Act 12 of 2003 modified section 559 so that \$10,000 is now \$15,000. This means that the law requires public advertisement of all contracts over \$15,000 or an invitation to bid to three or more people or vendors capable of fulfilling a contract for: 1) the construction, purchase, lease, or improvement of any school building; (2) the purchase or lease of any item or items required for supply, equipment, maintenance, repair, or transportation of students; or (3) a contract for transportation, maintenance, or repair services. If the board receives fewer than 3 bids the Commissioner of Education can grant an exception to this rule. For school construction contracts of over \$500,000, the board must follow rules established by the State Board of Education, and receive suggestions and recommendations on bidders from the State Department of Buildings and General Services. 16 V.S.A. § 559. The amendment of section 559 also provides for contract renewal without a new bid under certain circumstances set out in the law. 16 V.S.A. § 559 (e)(7).

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 from the VMCTA



This month's tip is from Sandy Harris, Vernon Town Clerk and VMCTA President



When we upgraded our computers we kept one that is networked to ours on a “read only basis” for the land records indexes and day book. Even some of the “older” attorneys seem to enjoy using this as well.



If you have a good tip that you would like to share with our readers please email it to Sandy Harris at vernontc@sover.net or mail them to:

Sandy Harris- VMCTA President
Town of Vernon
567 Governor Hunt Rd
Vernon, VT 05354

How Social Service Agency Appropriations Get on the Ballot

Every year Vermont's towns appropriate hundreds of thousands of dollars to support social service agencies that provide services to their communities. In many town these gifts appear as separate articles to be voted by the townspeople. In other communities these amounts are wrapped into the "selectmen's budget" and included in the overall budget of the town.

The practice, of going directly to the voters for agency funding has proliferated in the past ten years as federal and state funding have been reduced. As a result of the increase in demand for assistance, town officials have adopted a variety of policies and practices about when and how agencies may request financial support from the voters of the town. Because state law also provides agencies the right to petition to be placed on the ballot, confusion abounds.



The following is a step-by-step guide to the process of getting on the ballot:

1. Who can ask for money?

The general rule is that a town may only spend taxpayer dollars for social service agencies that serve the community. According to 24 V.S.A. § 2691 a town or village may "appropriate such sums of money as it deems necessary for the support of social service programs and facilities within that town for its residents."

☛ **Note that, despite the statutory language, the Vermont Supreme Court has held that social service agencies physically located outside the municipality may be considered to be social programs within the village or town if the agency serves the residents of the municipality.** *Addison County Community Action Group v. City of Vergennes*, 152 Vt. 161 (1989)(this case also extended § 2691 to cities.)

The statute sets out the types of social service agencies for which a municipality may appropriate sums of money. These include, (but are not limited to) services for/involving:

- | | | |
|-----------------------|------------------------|---------------------------------|
| Transportation | Day Care | Disabled Persons |
| Nutrition | Senior Citizens | Drug and Alcohol Abusers |
| Medical | Children | |

Rehabilitative Services for persons with low incomes

Persons requiring employment to eliminate their need for public assistance.

2. How does an agency get a financial request on the ballot?

An organization's request for a town appropriation can be placed on the ballot in one of two ways.

- a) An agency can bring a petition, signed by 5% of the voters, to the selectboard by the 40th day before the date of the meeting. 17 V.S.A. § 2642(b). Note that more than one agency can join together to circulate a single petition in the community. Unless the petition includes these requests as separate articles, each asking for a separate appropriation, the town will have to vote on the proposed combined appropriations. (If voted on the floor, the meeting can always amend the article to increase or decrease the appropriation.)
- b) The selectboard may, on its own motion, include in the warning appropriations for non-profits that serve the town.

☞ **Some selectboards have an established policy about when it will include an appropriation request on the warning without petition. A typical policy is to automatically place on the warning the previous year's appropriations. In these towns, any non-profit that had not previously been given funds by the town, or an organization that wishes an increase in funding must still petition the town to get on the ballot.**

3. After the vote.

In the event that a social service agency receives an appropriation from the town, it can expect to receive a check from the town at the beginning of the town's fiscal year. If the appropriation is large, sometimes the agency and the town agree to two or three installments (perhaps to mirror installment payment of property taxes). In addition, state law allows the selectboard to require the agency to enter into a contract with the town to ensure that the appropriation is used to provide services to the town. 24 V.S.A. § 2692. A court will require that such a contract be reasonable. *Addison County Community Action Group v. City of Vergennes*, 152 Vt. 161 (1989).

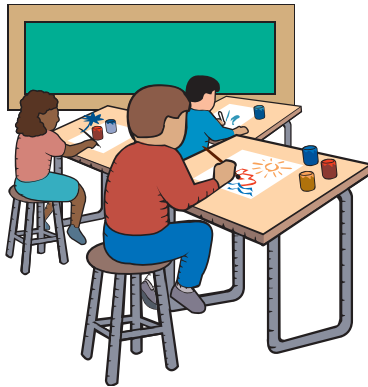


For more information see ***Getting on the Ballot: A Practical Guide For Social Service Agencies*** on the Secretary of State website at www.sec.state.vt.us (go to the municipal page and then to handbooks).

Announcing the 2003-04 Vermont Secretary of State's Poster and Essay Contest!

We are pleased to announce the 2003-2004 Vermont Secretary of State's Essay and Poster Contest. We are hopeful students will take part in this contest that promotes the history of Vermont, the Vermont Constitution and the importance of voting.

This contest is open to students at all grade levels. Those in grades K-2 may participate in a poster contest on Official Vermont Symbols. Students in grades 3, 4 and 5 are asked to draw posters with a Vermont History Theme. Students in grades 6 to 8 are asked to write on the topic of the Vermont Constitution and students in grades 9 to 12 are asked to write on the topic involving the importance of voting to democracy.



A good starting point for this contest is the Secretary of State's Kid's Page on the Internet. The web site is intended to supplement classroom studies and it can be of assistance to the students as they prepare for their posters or essays. Our web address is www.sec.state.vt.us. You can also view last year's winning entries.

As with any contest there will be prizes for students within each category. A distinguished panel of judges will review the entries and establish a winner in each category. Each of the four winners will receive a \$100 savings bond. His or her class will also be invited to be my guest for a day in Montpelier to tour the State House, visit the Historical Society Museum and have a rare viewing of the Vermont Constitution which is kept in the Archives at my office. This is a particular honor, since the Vermont Constitution is only removed from its special vault on very few occasions.

Please encourage the students in your communities to participate in this contest. All schools will be receiving the rules and registration forms for this contest in early November.

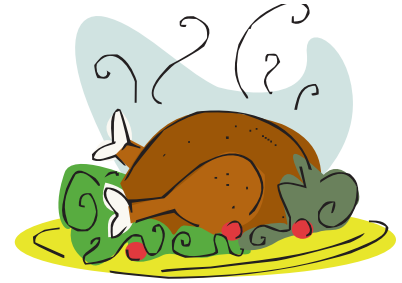
This contest is open to all students across Vermont and entries must be received by **April 2, 2004**.

**Visit our website at: <http://www.sec.state.vt.us/kids/votevt/nposteressay.htm>
to print out official contest rules and entry form.**

November 2003

November 11: Veterans Day. 1:371

November 27: Thanksgiving Day. 1:371



December 2003

December 1: Last day to pay property taxes in towns that voted to collect interest on overdue taxes. 32:5136(a)

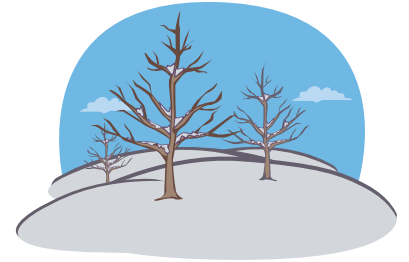
December 14: Last day for Listers to add omitted inventory to tax roles. 32:4086

December 23: (70 days before Town Meeting) First day to warn the first public hearing if a charter adoption, amendment or repeal is to be voted on at Town Meeting. 17:2641(a), 2645(a)

December 25: Christmas Day. 1:371

December 30: Last day for Listers to correct real or personal estate omission or obvious error in grand list, with approval of Selectboard. 32:4261

December 31: Town fiscal year ends, unless voted otherwise. 24:1683(c)



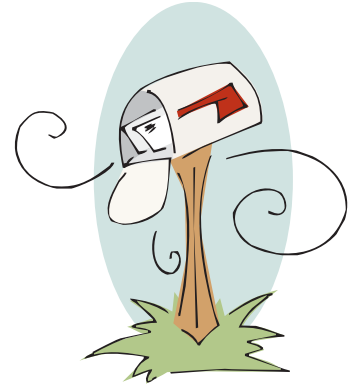
*We wish you and your families a safe
and happy holiday season!*

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: salberghini@sec.state.vt.us,
or post: 26 Terrace St. Drawer 09, Montpelier, VT 05609-1101 and be sure to include what your current *Opinions* mailing label says 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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