

Opinions

Office of the Vermont Secretary of State



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October 2004



A Message from the Secretary

This past month the staff in our Elections Division have been working overtime. It takes many hours to prepare and proofread ballots, and it takes persistence to ensure the printers are doing what they need to to get the ballots delivered on time. What has made this year unique is the

unusually short time between the primary and general election. The date of the Primary Election, September 14th, was the latest it can be held, while the date of the General Election, November 2nd, is nearly the earliest date it can be held. This means that we had only three weeks to get the ballots printed and to the towns in time for early and absentee voting.

We are also busier than ever answering questions from clerks, candidates and election workers; responding to requests from reporters; helping voters understand the laws; and making sure the tabulators will be working properly on November 2nd. In addition to the usual election administration work our outreach efforts to voters with disabilities, our Honor a Vet with your Vote program and Vermont Votes for Kids keep our staff hopping.

I want to applaud the great work of the Elections Division staff, Kathy DeWolfe, Melanie Jacobs, David Crossman and Holly Davison as well as Janel Johnson, the Voter Outreach Coordinator and our interns, Eli Chalmers, Aleah Starr and Kate Sease. I also want to

applaud the great work of the town clerks around the state who are so diligent in ensuring that the elections run smoothly. The strength of Vermont's democracy is the result of your hard work! I thank you.

On Election Day we will again be working overtime to serve you. We will be available to take your elections calls and questions from 7:00am to 9:00pm You can call 800-439-8683 or 802-828-2363.

Happy counting!

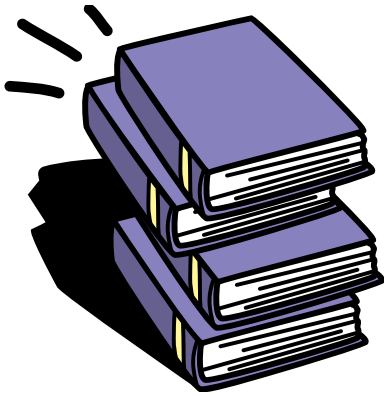
Deborah L. Markowitz, Secretary of State

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Historical Records Go To School

Why, the student wanted to know, could he serve in Afghanistan or Iraq, but not be served in Vermont? “Then what?” another student asked, wondering about women’s participation in politics following passage of the 19th amendment. What were people in our town like in 1800, asked a school class.



These students are part of on-going efforts to incorporate local history, and local records, into school curricula. Use of historical records in the classroom not only makes history come alive (history didn’t always happen somewhere else to someone else), but also encourages critical thinking beyond what textbooks can provide. How to locate, and interpret, historical records allows a student to participate in learning rather than merely memorizing pre-selected facts and interpretation. Using historical records can also open discussions on the nature of citizenship, or the nature of civic discourse, or on what it means to be a Vermonter or a member of your community.

The Vermont Historical Records Advisory Board (VHRAB) will be highlighting and promoting the use of historical records as teaching tools through Vermont Archives Week (November 7-13). VHRAB welcomes stories on the use of local records in your schools; please send the stories to me at gsanford@sec.state.vt.us or give me a call at 828-2369.

Several students recently contacted the Archives about the drinking age (in the interest of full disclosure, one of those students is my 13 year old daughter). One, a jazz student, became interested when he was unable to see several acts during the Burlington Jazz Festival because they were held in bars and he was under-aged. He felt this was a barrier to his education since he believes live performances are an essential part of learning. Other students became interested as the result of current events and their awareness that 18 to 20 year olds could serve in the military, and possibly be put in harm’s way, yet could not be served alcohol in Vermont. They looked at committee minutes from 1973 that discussed lowering Vermont’s voting age and age of majority; they read Governor Richard Snelling’s two veto messages of bills that would have raised the drinking age in the 1982 and 1983; and they examined the arguments for raising the drinking age in Governor Madeleine Kunin’s records, including statistics on alcohol-related automobile fatalities. Interpreting the statistics, they discovered that while, based on number of miles driven, 18 to 20 year olds were the mostly likely to be involved in such accidents, overall it was the 21 to 25 year old bracket that had the highest number of alcohol-related fatalities (and that the problem persisted across all age groups). In looking at Governor Snelling’s vetoes, they were exposed to his concern that you could not create two classes of citizens, based solely on age, and that education, enforcement and treatment were better ways to address the problem across all age groups. Underneath that lurked the questions of what is a citizen; what are the distinctions between rights, obligations and privileges; and whether removing any of those rights and privileges changed the nature of citizenship.

The student looking at women in politics was not content with the normal brief notice that women gained the right to vote in state and national elections in 1920 and that Edna Beard was the first women elected to the Vermont House (1920) and Senate (1922). He discovered that the male legislators were initially reluctant to be Ms. Beard's seatmate and that the first bill she introduced became a law raising the level of assistance to women with children whose husbands were incapacitated by catastrophic illness. He is now looking at what committees women served on, what leadership positions they held, and what bills they introduced in the 1921 to 1941 period.

I am just learning about other efforts involving the use of historical records in the classroom since they involve municipal, rather than state, records. In Woodstock, for example, students are using probate records to examine what town residents were like in 1800. These efforts, as I am learning, are taking place in everything from third grades through high school. There are several organizations, like the Vermont Alliance for the Social Studies (<http://www.vermontsocialstudies.org/>); the Flow of History (<http://www.flowofhistory.org/>); and Vermont Community Works (<http://www.vermontcommunityworks.org/>) that are encouraging teachers to use historical records through workshops and the posting of models and other resources.

Again, as VHRAB prepares for Vermont Archives Week we would love to hear from any of you who are working with your local schools to provide historical records for the classroom.

We Are Open Election Day!

7:00am to 9:00pm

800-439-8683 or 802-828-2363



Quote of the Month

People often say that, in a democracy, decisions are made by a majority of the people. Of course, that is not true. Decisions are made by a majority of those who make themselves heard and who vote - a very different thing.

~Walter H. Judd



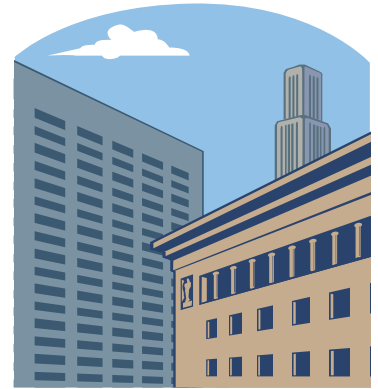
Opinions of Opinions

- 1. Property tax exemptions for volunteer fire department property must be voted at town meeting.** Property tax exemptions for volunteer fire departments must be voted at town meeting. The exemption can be voted for ten years and thereafter for five-year periods. 32 V.S.A. §3840. The Vermont Lister's Handbook provides a good discussion of property tax exemptions including a chart giving the source of funding for education property tax liability for locally voted exemptions. The handbook also includes a chapter on properties that are exempt under state or federal law, and another chapter on exemptions that must be voted by the town.
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- 2. Property purchased by exempt entity retains non-exempt status until April 1st of the next year.** When a church purchases property after April 1st, the date when the grand list is lodged there is no mechanism in the statutes to grant a tax exemption until the following year. When the listers prepare the next year's grand list, the property can be listed as exempt under 32 V.S.A. §3802(4) and 3832, but until then taxes are due from the owner.
 - 3. Towns cannot abate taxes of nonprofit based on change of ownership.** The board of abatement can only exercise those powers specifically delegated by statute, and cannot exceed those powers. 24 V.S.A. § 1535 provides the complete list of reasons for abatement of local property taxes, including when a taxpayer dies insolvent, or a person has left the state, or when a person is unable to pay. These are the only reasons that local property taxes can be abated. The change in status of the owners of property to nonprofit is not one of the permissible reasons to abate taxes.
 - 4. Taxes from prior years may be abated.** The board of abatement may abate, in whole or in part, taxes from prior years so long as one of the statutory reasons for granting abatement applies. If taxes from a prior year are abated, the board of abatement may choose to give the taxpayer a cash refund, or the board may provide a credit towards the current and future year's taxes. 24 V.S.A. § 1535.
 - 5. Successful tax appeal for current year does not mean abatement of prior years taxes.** An appeal by a taxpayer of his or her appraisal is a challenge of the current year's tax bill. A successful appeal which results in a lower appraisal for the current year's taxes does not entitle the taxpayer to a refund of taxes paid in prior years, even if those payments were based on an appraised amount which has now been reduced. While not entitled to a refund, there is nothing to stop the taxpayer from seeking abatement of the taxes paid in the prior years at the higher appraisal amount; however, the board of abatement is not required to grant an abatement.
 - 6. Board abatement cannot abate only interest and penalty.** 24 V.S.A. § 1535 contemplates that the board of abatement may only abate interest and penalty proportionately to the taxes abated. Abatement should not be used to remove interest and penalty from a late payer (even one who had a very good excuse for being late) unless tax is also being abated.



- 7. Selectboard can appoint BCA members to create balance for elections.** Upon request of an underrepresented major party, the selectboard can appoint additional members to the board of civil authority to bring the major party membership up to three. 17 V.S.A. §2143. However, these appointees can only participate in activities relating to elections. The appointees are not Justices of the Peace and have no authority to act with respect to functions of the board of civil authority that are not related to elections, such as tax appeals, tax abatement, or performing marriages/civil unions.
- 8. Selectboard can appoint an acting zoning administrator to act when the administrator has a conflict of interest.** When a zoning administrator has a conflict of interest, or needs a permit for his own property, the planning commission, with the approval of the selectboard can appoint an acting zoning administrator for the limited purpose of handling the matters in which the zoning administrator feels he/she has a conflict. 24 V.S.A. §4442.

- 9. Municipalities should adopt policy governing use of public buildings.** It is a best practice for each legislative body, selectboard, school board, or other public body that owns buildings, to adopt a policy outlining its requirements for use of town or school property by other groups. It is constitutionally permissible for a board to prohibit any and all use by outside groups. However, it is not good policy, and may cause discrimination claims, to allow use of the buildings by certain categories or types of groups and not other groups, unless there is a real difference in the type of use being requested. For example, it is reasonable and acceptable to limit use of certain rooms or spaces to groups of less than 30, or to meetings ending not later than 9 p.m. However, it may be discriminatory to allow the boy scouts to meet in a room, but to turn down a political caucus or a religious organization.



- 10. Villages generally use town grand list.** Most villages in Vermont set the tax rate for the village using the grand list assessments prepared by the town listers. If a resident grieves his taxes, and the listers or BCA make an adjustment lowering the property assessment, the grand list will be adjusted and the village must also lower the assessed amount.

- 11. Taxpayer must permit inspection committee to visit property as part of an appeal.** An inspection committee is required to inspect the taxpayer's property as part of the tax appeal process. The committee must then report back to the full board of civil authority that is hearing the property tax appeals, but if the taxpayer refuses access to the property, his or her appeal is deemed withdrawn. 32 V.S.A. §4404. All three members of the inspection committee must inspect the property but it is not mandatory that they inspect it at the same time, although this is the best practice. If the inspection committee does not see some part of the property that the appellant wanted it to see, it can return to the property a second time within the 30 days.



The inspection committee then gives its report to the full board within 30 days from the hearing. The board of civil authority must hear and consider the report, but it also considers all of the evidence presented at the hearing, so that the final decision may differ from the inspection committee report. If, after notice, an appellant refuses to allow the inspection committee to inspect whatever parts of the property (both outside and inside) it wants to inspect, the appeal shall be deemed withdrawn.

12. Tax appeals can result in increase or decrease in the appraisal. When considering appeals of property tax appraisals the Board of Civil Authority 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 amount is higher than the listers' assessment. The same is true for further appeals to the State Board of Appraisers or the Superior Court.

13. A municipal ordinance cannot be adopted or established by vote of the electorate. With the exception of ethics rules and zoning and subdivision bylaws, only the Selectboard can adopt or amend an ordinance. Once an ordinance has been adopted the legal voters of the town can bring a petition signed by 5% of the voters within 44 days of the adoption of the ordinance to require the selectboard to warn a meeting to allow voters to vote to disapprove an ordinance. However, a petition cannot be used to force a town to vote to adopt or amend an ordinance. 24 V.S.A. §1972 and 1973.

14. Registered voters in Vermont shall not lose residency for voting purposes solely by living outside of the United States. Vermont law provides that Vermont voters who live outside the United States retain their residency for voting purposes. Until the voter returns to reside in the United States, the voter can remain on the checklist and vote by absentee ballot in the town in which the voter last resided, regardless of his or her reason for living outside of the United States.



15. A person who moves back to the United States must register to vote where he lives. Although a person retains their residency for voting purposes while living abroad, once they return to the United States they may only vote in the jurisdiction where they live. For example, when a member of the armed forces who has been in Germany for 20 years retires and moves back to the United States, that person must register to vote in the place in where he or she resides. If you send a letter as part of your purging process and the person returns your form giving another town or state as his or her residence, you can remove that person from your checklist.

16. Petitions for financial support of social service agencies can include more than one agency. Social service agencies can join together in circulating a petition signed by 5% of the legal voters to ask to have an article or several articles placed on the warning for town meeting. However, when using a joint petition, we strongly suggest that each agency present its request in a separate Article in the petition so that the votes for each agency will be taken separately on the ballot or during the floor town meeting.

17. Landowner will not be not liable for injuries of those who go onto the land for recreation. Unless the landowner is charging for access to his or her land, an owner of property will not ordinarily be liable for property damage or personal injury sustained by a person who enters or goes upon the owner's land for a recreational use. An owner can be liable if the damage or injury is the result of the willful or wanton misconduct of the owner. 12 V.S.A. § 5793



18. Town manager may be removed for cause. The law provides that a town manager "shall hold office at the will of such selectmen, who, by majority vote, may remove him at any time for cause." 24 V.S.A. § 1233. However, once a manager's contract has expired the board is free to hire anyone it chooses to serve as the manager for the town.

19. Boards and commissions may set up subcommittees. No law prevents boards and commissions from setting up subcommittees. This means that unless the board or commission was specifically prohibited from setting up subcommittees by the appointing authority that it may do so. Note that subcommittees must comply with the requirements of the open meeting law. 1 V.S.A. § 310.



20. Petition cannot require meeting on a particular date. A petitioned article for a special town meeting may not dictate the date that the meeting is to be warned for. The law gives the selectboard the discretion to warn the meeting at a date it chooses (as limited by the law). The law provides that the selectboard has 15 days from receiving the petition to set the warning. The meeting must be warned for not less than 30 nor more than 40 days before the meeting date. 17 V.S.A. § 2641.

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.

Order the Disability Etiquette Brochure!



Please send me _____ Disability Etiquette brochures to share with my community.

Name: _____

Town/Organization: _____

Address: _____

City, State, Zip: _____

Phone: _____

Please fill out the above form and return it to our office via fax 802-828-2496 or mail to Sarah Alberghini, Secretary of State's Office, 26 Terrace St., Montpelier, VT 05676

Tip of the Month from the VMCTA



This month's tip is from Susan Covalla, Mt. Holly Town Clerk

She has taken her large surveys to Reprographics and had them reduced onto 11 x 17" paper. She ordered mylar pockets and a special binder to put them in. This makes copying the surveys MUCH easier!

Thanks Susan!

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

Attention Clerks:

We are pleased to make available a 9 minute training video for your poll workers designed to help them better serve voters with disabilities.

For a copy of *Serving All Vermont Voters* please call 1-800-439-VOTE.





On the Road to the Election

By Janel Johnson, Voter Outreach Coordinator



Vermont Votes For Kids

Mock Elections

Vermont Votes For Kids, the civics education program being used by schools all over Vermont this fall, is in full swing! The K-12 civics curriculum provides students the opportunity to research candidates and help them understand how elections work. The culmination of this experience is a mock election where students cast their ballots at school or at their town polling place on election day. Town clerks will be contacted by teachers who request that the mock election be held at the town polling place. Please be ready for these requests and call me if you have any questions or concerns regarding the mock election process at your polling place or at your local school.

Democracy In Action Newspaper Pages

The six week Newspaper in Education series has begun! Daily newspapers across the state are running this series to supplement the Vermont Votes For Kids program. Students can read about the history of voting rights, how the electoral college works, the political polling process, how to evaluate campaign advertising, plus much more! Your local schools can order the series by contacting the newspaper directly. Look for this series in your local paper once a week until the election. To view the Democracy in Action series please visit www.vermontvotesforkids.com.

Honor A Vet With Your Vote



The orders are starting to come in fast for Honor A Vet buttons! If you need any more buttons, signs or sign up forms please let me know. Most Town Clerks have these materials available in their office and some are sponsoring button drives in their community at town gatherings and events. Thanks for your efforts in recognizing the important contributions of our nation's veterans.

Janel Johnson
Jjohnson@sec.state.vt.us
(802)828-1296

October 2004

October 3:

- *(Not less than 30 days before the election)* Last day for posting the warning and notice for the general election. 17:2521(a)
- 3 The most recent checklist of the town should also be posted at this time, wherever the warning and notice is posted. In towns that divide their checklist, that portion of the checklist that applies to the district should be posted. 17:2141, 2501

October 4: *(30 days before election)* Town Clerk will receive prepared general election ballots by this date. Clerk should store the ballots, except those used for sample and absentee ballots, in a secure location until the day of the election. Clerk must return receipts for ballots to the Secretary of State as soon as possible. 17:2479, 2103(13)

October 11: Columbus Day. 1:371

October 23: *(At least 10 days before the election)* Voting machines must be tested using official ballots that are clearly marked “test ballots.” 17:2493(b)

October 25:

- State Withholding Tax Return is due *(actual date by which return must be postmarked is shown on the printed form)* if reporting less than \$2500 per quarter. More than \$2500 requires monthly report; more than \$9000 requires semi-weekly report. 32:5842
- Town Clerk’s office must be open from 10:00 a.m. or earlier until at least 12:00 noon for the purpose of receiving applications for addition to the checklist. 17:2144(a)
- Last day (up to 12:00 noon) for people who are not eligible to register to vote by this date, but who will be by election day, to file a written notice of intent to apply with the Town Clerk. 17:2144(b)(c)
- Last day for Town Clerk to receive a request for an application for addition to the checklist simultaneously with a request for an early or absentee ballot. 17:2532(b), (c)
- *(During the eight days immediately preceding election day and on election day)* Town Clerk must give each pair of Justices the exact number of absentee ballots, envelopes, and list of absentee voters who are ill or physically disabled to be visited. 17:2538(b), (c)

October 26: Last day for Town Clerk to post sample ballots *(for the general election)* and official voter information cards in the same places they have previously posted copies of the warning, notice and checklist. 17:2522(a)

October 28: *(At least five days before general election)* Last day for Town Clerk to forward to Board of Civil Authority a list of voters added. 17:2144b(d)

October 30: *(Not later than three days before the general election)* Board of Civil Authority must have designated pairs of Justices of the Peace, assuring political balance in each pair, to deliver absentee ballots to ill or disabled voters. 17:2538(a)

October 31: Last day to file Form 941 *(Quarterly Withholding Return)* with the IRS.



November 2004

November 1:

- Voters, or their family members, authorized persons, or health care providers, may request early or absentee ballots until 5:00 p.m. or the closing of the Town Clerk's office. 17:2531(a), 2532(a)
- Board of Civil Authority must designate pairs of Justices assuring political balance in each pair to deliver ballots to ill and disabled voters in towns using Australian Ballot. 17:2538(a)
- Board of Civil Authority must appoint a Presiding Officer if the Town Clerk or other regular Presiding Officer is unable to preside at the election or if more than one polling place is used. 17:2452
- Prior to the day of the election, Board of Civil Authority must appoint Assistant Election Officers. 17:2454
- Town Clerk or other Presiding Officer must notify Election Officers of their hours and duties. 17:2455

November 2:

- **GENERAL ELECTION DAY 17:2103(15)**
- *(Before polls open)* Town Clerk must give Election Officials a list of those voters who have already cast early or absentee ballots. 17:2548(a)
- *(Before polls open)* The Presiding Officer must post copies of the warning and notice, sample ballots, and voter information cards. Signs should be placed on or near the ballot boxes explaining procedures for depositing ballot. 17:2523(a), (b)
- Polls must be open no earlier than 5:00 a.m. and no later than 10:00 a.m. *(opening hour set by Board of Civil Authority)*. Polls remain open until 7:00 p.m. 17:2561(a)
- *(Upon opening of polls)* A copy of the list of early or absentee voters must be made available upon request at the Town Clerk's office and on election day at polling place(s). 17:2534
- *(During polling hours)* Presiding Officer must ensure that there is no campaigning of any kind and no campaign literature displayed, placed or distributed inside the polling place. On walks and driveways leading to a polling place, no candidate or other person may physically interfere with the progress of a voter to and from the polling place. 17:2508
- For those who became eligible to vote after the second Monday prior to Election Day and had notified the Town Clerk of intent to apply for addition to the checklist, the Town Clerk or Board of Civil Authority may act on applications until polls are closed. 17:2144b(c)
- As soon as possible after the polls close, Town Clerk or other Presiding Officer must examine entrance and exit checklists and prepare a statement of discrepancies. 17:2583(a)
- Presiding Officer directs Election Officials in counting ballots. 17:2581, 2582
- Presiding Officer must seal all ballots, entrance checklist(s) and tally sheets. 17:2590(a), 2689, 2583(a)

November 3: *(No later than 24 hours after polls close)* Presiding Officer and one other Election Official shall transfer the totals from the summary sheets to the return and both sign the return. 17:2588

November 4: *(Within 48 hours of closing of polls)* Town Clerk should have delivered one certified copy of each general election return to the Secretary of State, county clerk, representative district clerk and senatorial district clerk. 17:2588

November 11: Veterans Day. 1:371

November 12: *(Within 10 days after election)* Last day for a losing candidate to request a recount. 17:2602(b)

November 17: Last day a legal voter may contest the results of the general election *(within 15 days after the election)*. 17:2603(c)

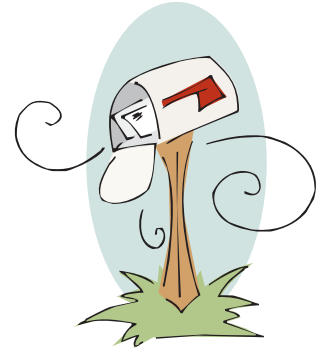
November 25: Thanksgiving Day. 1:371

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!

RETURN SERVICE REQUESTED

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www.sec.state.vt.us

Office of the Vermont Secretary of State
October 2004

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