

TOWN MEETING 2001 - A SNOWY ADVENTURE!

At least 30 towns postponed their annual Town Meetings earlier this month when a two-day nor'easter dumped one to two feet of snow on the state. Local officials in towns where the meeting went on reported mixed results on attendance – some were down because of the storm, while others were packed with citizens who had an unexpected “snow day” and chose to spend all or part of it at their Town Meeting.

The calls began coming into the VLCT Law Center early on the Monday before Town Meeting. Can we cancel the meeting? Can we postpone it? What do we do?

The Law Center advised that according to Vermont law, municipalities are required to hold their annual meetings on the first Tuesday in March. 17 VSA § 2640(a). However, the statutes allow municipalities to adjourn town meeting to another date. 17

VSA § 2640(a). Accordingly, the Law Center advised municipalities to gather at least three people at town meeting (a moderator to start the meeting, someone to make a motion to adjourn the meeting and someone to second the motion) in order to postpone Town Meeting. Any three people would do. Accordingly, a three-member town selectboard could meet to start and adjourn the meeting to a date certain.

The adjourned meeting would not have to be re-warned. Thus, municipalities that adjourned their meetings do not have to wait 30 days to reconvene the meeting. However, towns should of course provide some notice to the voters as to where and when the reconvened meeting would take place.

In addition, many towns had questions about the effect postponing town meeting
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WELCOME NEW AND RETURNING LOCAL OFFICIALS

The Vermont League of Cities and Towns extends its congratulations to all local officials who were elected to office on Town Meeting Day.

If you are returning to office, thank you for your continued willingness to serve Vermont local government and Vermont citizens. Your past experience will be invaluable to your town, village or city, and to your new colleagues. If you are new to local office, welcome to the ranks of Vermonters who are doing the important work of running our communities.

Inside this issue you will find several inserts outlining the League’s services for local officials. Please put us to work! Our **publications, workshops, and research and information services** can help orient you to your new responsi-

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Not yet covered with snow, this Mendon sign reminded voters to head to the polls on Town Meeting Day 2001. Photo by Vyto Starinkas/Rutland Herald

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VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

89 Main Street, Suite 4
Montpelier, VT 05602-2948
Tel.: (802) 229-9111 • Fax: (802) 229-2211
E-mail: info@vlct.org
Web: www.vlct.org

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Director, Legislative and Membership Services

David Sichel
Director, Group Services

Jon Groveman
Director, Municipal Law Center

B. Michael Gilbar
Director, Administrative Services

*Partial List

Katherine B. Roe, Editor, VLCT News

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LEIGH LAROCQUE RETIRES FROM VLCT BOARD

QUALIFIED REPLACEMENT SOUGHT

Long-time Barnet selectboard member Leigh Larocque chose not to run for re-election to his local office this March. As a result, he will also be stepping down from his position on the Board of Directors of the Vermont League of Cities and Towns.

Larocque has served on the VLCT Board since March of 1997, and has ably represented the interests of small towns and Caledonia County during his tenure. He most recently served as chair of the VLCT Transportation Policy Committee and served on the Nominating Committee. We look forward to Leigh's continuing contributions to local government as he is currently a member of the Vermont House of Representatives Appropriations Committee. Leigh was elected to the legislature in 1993 and has served there since, with the exception of one, two-year "vacation." Good luck Leigh and thanks for your fine efforts on behalf of VLCT and local governments!

Leigh's retirement leaves a vacancy on the VLCT Board of Directors. The Nominating Committee of the Board of Directors would appreciate your assistance in obtaining names of persons who qualify to be a Director. The term of the position expires at Town Fair this September.

The VLCT bylaws state that a member of the Board of Directors shall be "a qualified official of a member city or town" and that "a qualified official is a person currently holding the position of selectperson, mayor, municipal manager, clerk, treasurer or position established in a municipal charter with responsibilities comparable to one of the aforementioned."

A person elected to the Board of Directors must be able to attend the monthly Board meeting, usually held at the office of the Vermont League of Cities and Towns in Montpelier from noon to 4 p.m. As a board member you will be asked to help formulate League legislative policy for approval by the membership, provide direction for VLCT's long-range goals and objectives and assist staff on specific legislative positions, including possibly testifying before legislative committees. The position also demands approximately two days in September or October of each year to help with Town Fair

and the VLCT Annual Meeting. Board members may also serve on VLCT legislative policy committees. Lastly, many of the members of the Board are asked to act on occasion as "Ambassador" for the League by visiting neighboring towns and cities to explain our programs and policies, and to seek input from other local officials. VLCT provides reimbursement for travel expenses plus a small per diem for attendance at Board meetings.

If you or a qualified individual you know is interested in municipal issues of statewide significance, and would like to be involved in VLCT's work on these issues as a member of the VLCT Board of Directors, please call Trisha at the VLCT office and request a nomination form to be sent or faxed to you. The form is also available for downloading from the What's New section of the VLCT web site, www.vlct.org. Please return the completed form to the VLCT offices by Friday, April 13, 2001. We hope that the VLCT Nominating Committee will be able to recommend a candidate to the Board of Directors for action at its April 26, 2001 meeting.

VLCT STAFF NOTES

Two VLCT staff members have recently been promoted to new positions. **Nicolette White**, formerly our Administrative Assistant/Receptionist, has taken the Financial Assistant/Trusts position vacated at the beginning of the year by former staff member Linda Becker. **Trisha Clark**, who held the position of Production Clerk, has taken over for Niki at the front desk. It is Trisha's cheerful voice that you will hear now when you call VLCT; her prior experience and familiarity with the League means your call will be quickly routed to the appropriate staff member.

Congratulations to Niki and Trisha on their promotions!



TOWN MEETING -

(Continued from Page One)

would have on items that were warned to be voted by Australian ballot. This was a particularly difficult issue in towns that are part of union school districts where some towns in the district voted on the school budget by Australian ballot and other towns postponed their meeting. The Law Center's reaction to this conundrum is that there is no legal authority to cancel Australian ballot votes for school budgets, town budgets, officers or public questions. The Secretary of

State's Office had a different opinion on this legal question. On the Monday before Town Meeting it issued a press release stating that Australian ballot voting could be cancelled. All the issues relating to the legal authority to postpone or cancel Town Meeting are still being discussed within the legal community. VLCT will keep its members informed as these discussions proceed.

"I don't think in my 23 years at the League that the question of canceling Town Meeting has ever come up," said VLCT Executive Director Steven Jeffrey, who himself made the decision early on Town

Meeting Day to close the VLCT office. "That so many meetings went on despite the weather is a testament to the determination of Vermonters to spend a day in early March governing their towns and schools."

While meetings adjourned for 30 days or more *should* be safe against bad weather, at press time, another storm was predicted for one week after Town Meeting. Towns that adjourned their meetings for a week may face another snowy day – hopefully not of the magnitude of the Town Meeting Day Storm of 2001!

- Katherine Roe and Jon Groveman, Esq.



Winter boots were the rule for Town Meeting 2001. Here, Pittsfield Assistant Town Clerk Mary Jane Betz shakes hers off before the meeting. Photo by Vyto Starinkas/Rutland Herald

WELCOME -

(Continued from Page One)

bilities. Most likely, your municipality is already a member of our **Group Services insurance programs**, and, once you've been in office a few months, you will probably have encountered a state law or two that you would like our **legislative staff** to take to the State House for "repairs."

Please circulate this issue and its inserts to officials and staff who may not have received them. (One copy of the *VLCT News* is mailed to the clerk, treasurer, mayor, manager, zoning administrator, administrative assistant and selectboard/city council/village trustees in each member municipality. The *News* is also located on the VLCT website, www.vlct.org; additional hard copy subscriptions are available to members for \$25 per year.)

Give us a call if we can be of assistance, or if you just want to introduce yourself. The League's toll-free number is 800/649-7915. We look forward to hearing from you.



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NOISE ORDINANCES & THE CONSTITUTION; WETLANDS; ADA

UNITED STATES DISTRICT COURT RULES ON BURLINGTON'S NOISE ORDINANCE

Introduction

In a recent decision the United States District Court for the District of Vermont ruled that part of the City of Burlington's Noise Ordinance is constitutional and part of the ordinance is unconstitutional. *Howard Opera House Associates v. Urban Outfitters*,

not provide sufficient notice to the public as to what practices are legally acceptable. See Legal Coroner article in the December, 2000 *VLCT News* on *In re Handy v. Town of Shelburne, Vt. Nos. 98-015 and 98-016 (November 17, 2000)*.

In *Howard Opera House Associates (HOHA)*, the defendant, Urban Outfitters, was accused by its neighbors, the Howard Opera House and the law firm O'Neill, Crawford and Green, of playing loud music

The City's noise ordinance bans, "any loud or unreasonable noise," defined as noise which "disturbs, injures or endangers the peace or health of another, or which endangers the health, safety and welfare of the community." *Id at 6*. The ordinance also prohibits sounds from radios, television sets, musical instruments, phonographs and the like which "disturb(s) the peace, quiet or comfort of the public," or which "is audible through walls between units within the same building, from another property or from the street." *Id at 6*. Urban Outfitters challenged these provisions of the noise ordinance in Federal Court on the grounds that the ordinance violated its First Amendment right to free speech and that the ordinance was so vague that it violated its constitutional right to due process.

What should municipalities learn from this decision? First, when drafting any ordinance make sure that the ordinance includes clear, enforceable standards. ... Secondly, when enacting an ordinance that affects an individual's freedom of speech, 1) ensure that the ordinance is addressing a legitimate governmental interest (such as prohibiting excessive noise), 2) do not attempt to regulate the content of speech, and 3) draft your ordinance as narrowly as possible to meet your regulatory goal.

Due Process - Void for Vagueness

The District Court ruled that Burlington's ordinance did not violate the due process provisions of the United States Constitution and it is not "void for vagueness." *Id at 10*. In rendering its decision the District Court

(Continued on next page)

Case No. 2:99-CV-140 (2001). The decision represents a good example of the legal issues municipalities should keep in mind when enacting noise ordinances.

Noise ordinances are frequently challenged on the grounds that they violate the United States Constitution. This is because, in regulating noise, municipalities are attempting to control individual expression or speech. While a municipality has the authority to control individual speech when it has a legitimate reason to do so, such ordinances must be drafted in a manner that does not infringe upon an individual's First Amendment right to freedom of speech.

Noise ordinances also raise constitutional issues because it is difficult to set a hard and fast standard by which to judge how much noise is too much. What is noisy to one person may be considered music to another. Thus, setting an objective noise standard can be difficult. As we have learned from recent Vermont Supreme Court decisions, ordinances that do not contain adequate standards violate the due process provisions of both the Vermont and United States Constitutions because such ordinances do

in violation of the City of Burlington's noise ordinance and of Urban Outfitter's lease. *Id at 1*. Urban Outfitters and O'Neill Crawford and Green are both tenants in a building owned by the Howard Opera House.



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LEGAL CORNER -

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recognized that due process requires that laws "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited," and "provide explicit standards for those who apply them." *Id at 10.*

The Court compared Burlington's ordinance with an ordinance adopted by the Town of Poughkeepsie, New York prohibiting "unnecessary noise," which the New York Court of Appeals struck down as "void for vagueness" in 1982. *Id at 11.* The New York Court found that the definition of "unnecessary noise" in the Poughkeepsie ordinance was so broad that any sound that annoyed another person could constitute a violation.

The District Court in *HOHA* ruled that unlike the Poughkeepsie ordinance, the unreasonable noise standard in Burlington's noise ordinance "gives sufficiently fair warning of prohibited conduct by using

words of common understanding." *Id at 14.* To support its decision the District Court cited a Vermont Supreme Court decision that provides "unreasonable noise" connotes an objective standard, as distinguished from the subjective "unnecessary noise." "Unreasonable does not mean unnecessary; reasonableness is gauged by the totality of the circumstances at the time." *Id at 12.*

Freedom of Speech

In order to comply with the First Amendment of the United States Constitution, municipal ordinances that affect an individual's freedom of speech must be content neutral, narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communication of the information. *Id at 14.* In *HOHA*, the District Court ruled that while Burlington's noise ordinance affects an individual's freedom of speech it is content neutral. *Id at 14.*

Content neutral means that a law does not regulate speech because the government disagreed with the message of the speaker. The Court recognized that the purpose of the Burlington's ordinance is to regulate unreasonable noise in the City regardless of the content of the message contained in the noise. Accordingly, the Court deemed Burlington's noise ordinance to be content neutral.

The Court also recognized that Burlington "has a substantial interest in protecting its citizens from unwelcome

noise." *Id at 16.* Furthermore, the Court held that the parts of Burlington's ordinance that prohibit unreasonable noise, noise between units and noise from the street were narrowly tailored to meet the governmental interest in reducing excessive noise. *Id at 17.* However, the Court ruled that the provisions of Burlington's noise ordinance that prohibited the operation of any device for the production or reproduction of sound "in such a manner as to be audible through walls . . . or from the street," was not sufficiently tailored to meet Burlington's interest in regulating noise. In rendering its decision the Court stated, "that a ban on all sound, amplified or unamplified, that can be heard through walls or from the street burdens substantially more speech than is necessary to further the City's legitimate interest in eliminating excessive noise." *Id at 18.*

Conclusion

What should municipalities learn from this decision? First, when drafting any ordinance make sure that the ordinance includes clear, enforceable standards. With respect to noise ordinances in particular, municipalities should adopt a "reasonable noise" standard similar to the one adopted by Burlington. Secondly, when enacting an ordinance that affects an individual's freedom of speech, 1) ensure that the ordinance is addressing a legitimate governmental interest (such as prohibiting excessive noise), 2) do not attempt to regulate the content of speech and, 3) draft your ordinance as narrowly as possible to meet your regulatory goal. Finally, consult your town attorney or the VLCT Law Center prior to enacting an

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DON'T FORGET US...

Has your municipality recently enacted a new ordinance or approved a new policy? If so, please send a copy to VLCT, Attn: Municipal Law Center, 89 Main Street, Suite 4, Montpelier, VT 05602, fax, 802/229-2211, or e-mail, glawson@vlct.org.

FCC & CELL PHONE TOWERS

The United States Supreme Court recently denied a petition to review the authority of the Federal Communications Commission (FCC) to preclude local governments from reviewing the health and safety issues associated with the construction and operation of cell phone towers. The Vermont League of Cities and Towns signed on to an *amicus curiae* (friend of the court) brief in support of the petition, which was prepared by Senator Patrick Leahy's office.

The League strongly supported our Congressional Delegation's effort to provide authority to cities and towns to review the health and safety impacts of radio frequency emissions from cell towers through local zoning bylaws and ordinances. The Telecommunications Act of 1996 prohibits state and municipal authorities from reviewing the health impacts from radio frequency emissions associated with cell towers. The *amicus curiae* brief argued that this provision of the Telecommunications Act of 1996 violated the tenth amendment of the United States Constitution, which states that the "powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

By denying the petition the United States Supreme Court did not rule on the merits of the argument that the Telecommunications Act of 1996 is unconstitutional. Rather, it declined to review the matter at this time. VLCT is disappointed that the Court has declined to address this provision of the Telecommunications Act of 1996, which limits the ability of cities and towns to make decisions about the impact of cell towers at the local level.

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ASK THE LEAGUE

PUBLIC/PRIVATE ENTERPRISE; SELECT PERSON/PLANNING COMMISSIONER; REDEMPTION PERIOD

When is it permissible for a town to act as a commercial entity and provide services or sell materials?

The short answer is "almost never." The long answer involves two legal precepts.

First, municipalities are creatures of the state and have only those powers expressly granted by the state or such implied powers as may be incidentally related. Towns clearly have no express power to operate as a business in competition with private enterprise.

This was addressed in *Hinesburg Sand & Gravel v. Town of Hinesburg*, 135 Vt. 484 (1977). In that case, the town was operating a gravel pit and using 10-16 % of the gravel for its roads and selling the rest. The court held that this was not an incidental sale of gravel and that "no amount of good faith rationalization can gloss over the fact that the principle activity ... is a private business operation by the Town, in direct competition with [private enterprise]." *Id.* at 486. [Internal quote omitted]. Selling most of the gravel "in tax-free competition" was a mere pretext and was illegal.

The second important consideration is that of liability. When a municipality is performing a governmental function (e.g. maintaining highways, collecting taxes) it is covered by sovereign immunity and is protected from lawsuits for negligence. However, when it steps out of its governmental role and acts in a private or proprietary capacity it may be held liable in the same manner as a private corporation would when performing the same tasks. So, when a town enters into the business of plowing private driveways or buying goods tax-free or at state contract prices and then selling them in competition with private businesses, it may be sued for damages. (For a more detailed analysis of sovereign immunity and its exceptions see the VLCT *Handbook for Vermont Selectboards*, 1999, Chapter XVII.)

There will always be occasions where towns need to help each other out by sharing or lending a hand. But, anything that

smacks of competition with private business, especially where the town has the financial advantage of operating on a tax-free basis, will be highly suspect and may cost all parties dearly in the long run.

Can selectboard members also be members of the planning commission?

There is no clear answer to this in the statutes and legal opinions are mixed. The position of the VLCT Law Center staff is that it is not against the law but it is probably inadvisable, especially where the planning commission is appointed rather than elected. Consider the following:

- First of all, there will always be a hint of impropriety where people appoint themselves to an office.

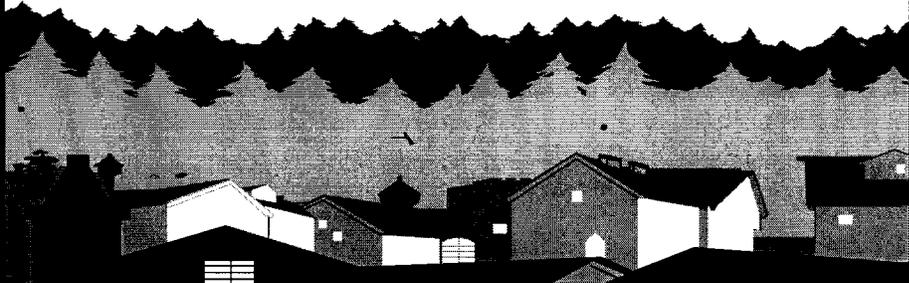
- Second, the selectboard has the authority to remove any planning commissioner "by unanimous vote." Therefore, it would be difficult, if not impossible, to remove an appointed commissioner, no matter how unsatisfactory he or she was in the opinion of the other selectboard members.
- In rural towns all selectboard members are non-voting, *ex officio* members of the commission, and in urban municipalities two elected or appointed officials shall be appointed by the legislative body as non-voting, *ex officio* members. That would likely be interpreted by a court to mean that, even if a selectboard member becomes an appointed member of the

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ASK THE LEAGUE -

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planning commission, he or she could not be a voting member member.

- The commission prepares and submits to the selectboard for its approval or other action such things as proposed bylaws, town plan, and capital budget. Is this proper or improper if there is overlap of membership in the two bodies?

So our advice is to look before you leap at the opportunity to appoint selectboard members to the planning commission.

Our town sold a property at tax sale. We are still in the redemption period and now the owner of the property has died. The late owner's daughter lives in the house and there has been no move to settle the estate and there is no executor yet. Can the daughter redeem the property by paying the back taxes, costs and interest?

No. The property can be redeemed only by the owner or his or her "representatives or assigns." Until there is some formal action to settle the deceased's estate, there is no one with authority to redeem the property. 32 V.S.A. § 5260.

While there is no legal mandate for the municipality to explain the probate system to the daughter and point out that she risks losing the property at the end of the redemption period, a court would likely find that there is a duty to make sure she has the

basic facts. We base this on two recent lower court decisions where tax sales were negated by the court because the owner of the property was not informed of certain rights.

In *Fysh v. Town of Bristol*, Addison Co. Sup. Ct., Aug. 1995, the court held that the town had an obligation to advise the property owner of their right to ask for tax abatement before selling the property at tax sale. More recently, in *Town of Windsor v. Blanchard*, Windsor Sup. Ct., Apr. 2000, that court said that merely sending the taxpayer a copy of the Vermont Statute on abatement of taxes was not adequate. Where the government threatens a person with loss of property, it owes them due process. In the case of a tax sale, that means actually making sure that they understand the basics of the abatement process.

The test which the law applies for due process is to balance the rights and burdens of the taxpayer against those of the government. In the case of a tax sale, the interests of and potential harm to the taxpayer are enormous, but the burden to the town (a brief explanation of abatement) is minimal. So, the town owes at least that much due process to the taxpayer.

Thus, in the analogous situation that you present, it is likely that a court would find that the town owes it to the daughter to give a brief but adequate explanation of the tax sale and redemption process and the need to address the estate settlement issues in order to have the authority to redeem the property.

- Libby Turner, Esq.

APRIL IS DOG LICENSE MONTH

April 1 is the deadline for dogs to be licensed for 2001 in the State of Vermont. Each year municipal clerks find that there is confusion over "kennel permits" and "special licenses." State Veterinarian Todd Johnson offers definitions of these two terms that should help clarify their respective purposes:

KENNEL PERMITS (TITLE 20 SECTION 3681)

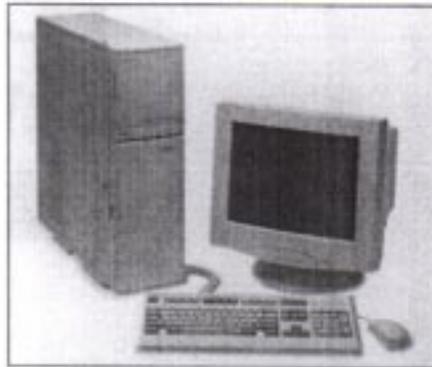
A kennel permit is a permit issued by the town for any resident keeping domestic pets or wolf-hybrids for sale or for breeding purposes other than for his or her own use. The kennel permit has no relationship to any zoning ordinances pertaining to boarding kennels or kennel facilities for other purposes.

SPECIAL LICENSES (TITLE 20 SECTION 3583)

A special license can be thought of as a reduced fee license for breeders who agree to maintain their breeding animals within "proper enclosures" defined as a locked fence or structure of sufficient height and sufficient depth into the ground to prevent the entry of young children and to prevent the animal from escaping. The special license is **not** intended to provide a reduced license fee to any individual possessing more than three breeding animals. If the holder of a special license also maintains spayed and neutered animals they must be licensed individually at the \$4.00 rate and are not to be included on the special license.

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IRS EMPLOYER'S GUIDES UPDATED

Municipal treasurers and others responsible for payroll should review three recent publications from the U.S. Internal Revenue Service (IRS). The publications are: #15, Circular E, Employer's Tax Guide (rev. 1/01); #15-A, Employer's Supplemental Tax Guide (rev. 1/01); and #15-B, Employer's Tax Guide to Fringe Benefits (rev. 11/00). These publications can be ordered by calling the IRS at 800/829-3676 or by visiting its web site at www.irs.gov.



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RISK MANAGEMENT NOTES

A monthly column by the VLCT Property and Casualty Intermunicipal Fund (PACIF)



PACIF & HEALTH TRUST OFFER STATEWIDE EAP PROGRAM

The Vermont League of Cities and Towns Health Trust and the Property and Casualty Intermunicipal Fund (PACIF) are jointly sponsoring a statewide Employee Assistance Program (EAP). This program is being provided at **no additional cost** to members of the Health Trust or PACIF. The Trusts' are teaming up with **Invest EAP**, which is a partnership of the State of Vermont, Division of Vocational Rehabilitation and the Vermont Association of Business, Industry and Rehabilitation (VABIR), to provide this service to our members.

The Vermont League of Cities and Towns Health Trust and PACIF are committed to providing a healthy and supportive work environment for all municipal employees. The employee assistance program is a confidential counseling resource and referral service intended to help employees address any personal problem that has the potential to affect their ability to work. Personal problems may include family, marital, emotional, medical, financial or legal problems. All an employee has to do is to call up one of the local EAP counselors and they will help him or her confidentially.

We feel there are many benefits to having an EAP available at your workplace. Some of these benefits are:

- Helping employees deal with issues in their lives that may interfere with their work performance.
- Creating a more positive work environment by supporting a healthy and productive workforce.

- Making available useful resource and referral information to help employees and their family members resolve problems.
- Providing easy access to support and guidance when assistance is needed.

In short, EAP can help keep your employees at work, efficiently serving the

people in your community. We feel that the EAP is an integral part of the health and wellness programs and, as we mentioned earlier, it is being provided at no additional cost.

We plan to begin employee orientation sessions in April. Heidi Joyce, VLCT Health and Safety Coordinator, will be contacting municipalities to set up an orientation. If you have any questions please feel free to contact Heidi by e-mail at hjoyce@vlct.org or call 800/649-7915.

- Patrick Williams

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GROUP LIFE AND DISABILITY PROGRAM UPDATE

As you may recall, a memo was mailed to each VLCT Health Trust member back in November 2000. The memo announced information about the Health Trust Board of Directors' decision to switch insurance carriers for its Group Life and Disability Program. The VLCT Group Life Program formerly used Medical Life Insurance /Combined Services; the new carrier is The Standard Insurance Company. (See also *VLCT News* articles in the September 2000 and January 2001 issues.)

We have been very busy trying to reach all

of the members participating in the Medical Life program in an effort to offer them a comparison quote. The quote will compare rates and features between the Medical Life Insurance program and The Standard Insurance Company program. The decision to switch insurance carriers will be left to the municipality after reviewing the quote comparison information.

The Standard Insurance Program was selected for various reasons, with one being the agreement to underwrite a special group rate for groups of 10 and under. Approxi-

mately 30 members are currently waiting for their quote; at this writing, the Standard Insurance Company and our broker are diligently working out the specific underwriting questions requiring further research. We expect the rate information to be released within the next two weeks. As soon as our broker receives it, we will be contacting those of you waiting for the quote.

We will be happy to put together a quote sheet for any other members in the Health Trust that may be considering a low-cost benefit such as group life and disability for their employees. If you are interested please give VLCT a call. Suzanne Schittina, Trust Marketing Representative, will be happy to assist you.

- *Suzanne Schittina*

VLCT PACIF WELCOMES NEW MEMBERS

Three municipalities and three fire departments have recently joined the VLCT Property & Casualty Intermunicipal Fund. Welcome to:

- SEARSBURG, our 229th member
- RUTLAND TOWN/MENDON FIRE DISTRICT #2, our 230th member
- WEST RUTLAND, our 231st member
- ASCUTNEY VOLUNTEER FIRE ASSOCIATION, our 232nd member
- WEST WEATHERSFIELD VOLUNTEER FIRE DEPARTMENT, our 233rd member
- BRIDPORT, our 234th member

JOYCE OBTAINS CEES DESIGNATION

VLCT Health & Safety Coordinator Heidi Joyce recently obtained the designation of Certified Ergonomic Evaluation Specialist (CEES). This designation is obtained after an intensive five-day certification course that covers topics such as: establishing and implementing an ergonomics program; identifying risk factors; analyzing and quantifying severity; manual material handling; and standards and regulations, to name just a few. Following this classroom work, the candidate must complete a minimum of 25 ergonomic evaluations and submit them for review by a Certified Professional Ergonomist.

This designation will go a long way in helping VLCT PACIF member towns address their workplace ergonomic issues. Heidi is already busy using her newly

acquired skills to assess the daily work activities at the City of Rutland Public Works and Police Departments as well as at the City of Burlington Electric Light Department. This activity is part of Project Health and Safety and it is a very detailed and results oriented look at not only how employees work but also how their activities outside of work affect their lives. Our goal is to translate Heidi's skills into reduced workplace injuries and thus lower workers' compensation claim frequency and severity. If you would like to learn more about Project Health and Safety, please contact Heidi at 800/649-7915.

Please join me in congratulating Heidi on her latest achievement and thanking her for her continued commitment to serving the health and safety needs of Vermont municipalities.

- *Patrick Williams*

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LEGAL CORNER -

(Continued from Page Five)

ordinance that may infringe upon an individual's constitutional rights. Lawyers can assist in identifying the constitutional issues discussed in this article and recommend language that will reduce the likelihood that an ordinance will be successfully challenged in court.

UNITED STATES SUPREME COURT DECISIONS LIMIT FEDERAL WETLANDS JURISDICTION, STATE (NOT MUNICIPAL) ADA LIABILITY

In two recent decisions the United States Supreme Court continued its trend toward recognizing state's rights and limiting federal jurisdiction. Both of these decisions are complex. Because the decisions are noteworthy for municipalities, the Law Center has provided brief summaries of the decisions below. If you are interested in more information regarding these decisions, contact Jon Groveman in the VLCT Law Center at 800/649-7915.

Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers Et Al.

This case involves a challenge by a consortium of municipalities in Illinois to the jurisdiction of the Army Corps of Engineers to regulate activity in certain wetland areas. *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers Et Al.*, 531 U.S. ____ (2001). Section 404(a) of the Clean Water Act (CWA) provides the Army Corps of Engineers with jurisdiction over the discharge of dredged or fill material into navigable waters. In a previous decision the United States Supreme Court held that the term navigable waters includes wetlands that abut a navigable waterway. *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985). In *Riverside Bayview Homes*, the Court also ruled that the term navigable in the CWA was of limited effect in light of the broad purpose of the CWA, which is to protect water quality and aquatic ecosystems. *Id.*

The municipalities in *Solid Waste Agency of Northern Cook County* proposed to fill a wetland that was neither navigable nor directly adjacent to a navigable water. *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers ET AL.*, 531 U.S. ____ (2001). The federal government argued that it had jurisdiction over the

wetland under the so-called migratory bird regulation adopted in 1986. This regulation extends federal jurisdiction over wetlands that are or would be used as habitat by certain migratory birds, even if such wetlands are not adjacent to navigable waters.

The municipalities argued that because the wetland was neither navigable nor adjacent to a navigable water they were not required to obtain a permit to fill the wetland from the federal government under the CWA. *Id.* The United States Supreme Court ruled in favor of the municipalities, holding that its previous decision in *Riverside Bayview Homes* did not address the question of whether wetlands that are not adjacent to navigable waters are subject to federal regulation. *Id.* The Court stated that to extend federal jurisdiction over such wetlands would lend no effect to the term navigable in the CWA, and such a result would be inconsistent with the language of the statute. *Id.*

This decision is noteworthy for municipalities for two main reasons. First, it limits the jurisdiction of the federal government with regard to wetland regulation. Municipalities proposing to fill wetlands that are not adjacent to navigable waters will no longer be subject to regulation by the Army Corps of Engineers under the so-called migratory bird rule. Notwithstanding this ruling, to avoid legal difficulties, VLCT advises municipalities to consult with the Army Corps of Engineers to determine if a wetland that may be affected by a proposed municipal project is considered adjacent to a navigable water and, therefore, subject to federal regulation. Similarly, municipalities should consult with the Vermont Agency of Natural Resources to determine if state jurisdiction over a wetland exists prior to conducting work in the wetland. (See related article on Page).

The decision is also noteworthy for municipalities because one rationale for the Court's decision not to extend federal jurisdiction over these wetlands was that regulation of land use is a function traditionally performed by "local governments." *Id.* Recognizing the importance of local control over land use regulation the Court stated, "[p]ermitting respondents to claim federal jurisdiction over ponds and mudflats falling within the "Migratory Bird Rule" would result in a significant impingement of the State's traditional and primary power over land and water use." *Id.*

Board of Trustees of the University of Alabama Et Al. v. Garrett Et Al.

This case involves a challenge to the constitutionality of the provision of the Americans with Disabilities Act of 1990 (ADA) that authorizes state employees to sue states for violating the ADA. *Board of Trustees of the University of Alabama Et Al. v. Garrett Et Al.*, 531 U.S. ____ (2001). The United States Supreme Court ruled that lawsuits brought in federal court by state employees to recover money damages by reason of a State's failure to comply with the ADA are barred by the Eleventh Amendment. The Eleventh Amendment generally prohibits suits by citizens against their own state or another state in federal court.

This decision is noteworthy for municipalities because the United States Supreme Court specifically ruled that while states were immune from citizen suits under the ADA in federal court, this immunity does *not* extend to municipalities. Specifically, the Court stated, "the Eleventh Amendment does not extend its immunity to units of local government." *Id.* The Court further stated, "only the States are the beneficiaries of the Eleventh Amendment." *Id.* Accordingly, municipalities may still be sued and held liable in federal court for failing to comply with the ADA.

- Jon Groveman, Esq.



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HEALTHY HOMES FUNDS AVAILABLE

VLCT/VDH PARTNERSHIP

With funding from the Department of Housing and Urban Development (HUD), the Vermont Department of Health will host regional trainings around the state this spring for the Local Lead Hazard Awareness and Healthy Homes Program. The Department of Health, with support from the Vermont League of Cities and Towns, will invite town clerks, administrators, health officers, zoning officers and selectboard members to attend.

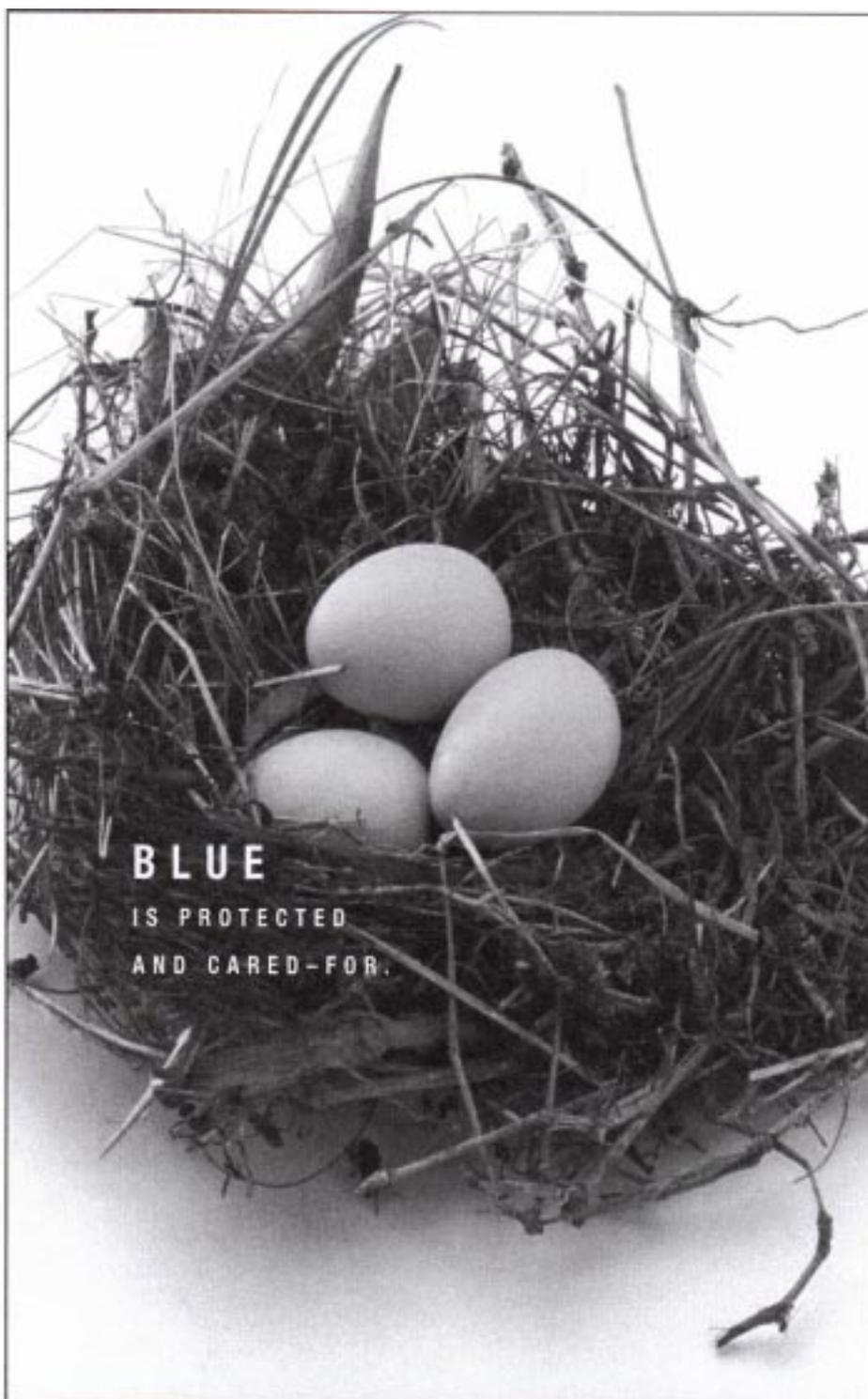
Participating communities will be encouraged to apply to VDH for money to fund their own Healthy Homes activities. Guidance and technical support will be available throughout the year, with Dawn Anderson as the contact person for this project. The desired outcome of the program will be to get Healthy Homes information to property owners and Vermont communities, where it will serve to keep homes and families safer and healthier.

Invitations for these day-long trainings will be in the mail soon. They will be held at three locations across the state. Save the date for the site nearest you.

- Stratton Mountain Resort, Thurs., April 26
- Vermont Technical College, Tues., May 22
- Johnson State College, Thurs., June 14

Each session will run from 9:00 a.m. until 3:00 p.m. and lunch will be provided. The session will include a question and answer session, highlighted common problems and solutions, discussion of how you can serve your community, and instructions for completing and submitting the application for funds.

For more information about the Local Lead Hazard Awareness/Healthy Homes program, contact Dawn Anderson, Lead Hazard Awareness Project at the Department of Health, tel. 802/651-1571 or Danders@vdh.state.vt.us.



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WETLANDS PROTECTION

ANR OUTLINES TOOLS AND RESOURCES FOR LOCAL OFFICIALS

A three-tier approach to wetlands protection by the federal, state and local governments exists in Vermont. However, federal and state regulations do not protect all wetlands: federal regulations are limited by project size, and the Vermont Wetland Rules are limited to wetlands mapped on the Vermont Significant Inventory Maps. Therefore, local government represents the first and last line of defense for protecting wetlands through zoning regulations, project review, and state notification. Local officials also know the people and resources in their municipality better than state or federal employees. This makes them more effective at spotting projects that may impact wetlands, and at providing landowners with information about wetland regulations.

TITLE 24 V.S.A., CHAPTER 117

In 1986, the Vermont Legislature recognized the ecological, aesthetic, and economic significance of wetlands, and passed an act that allowed for state and local protection of wetlands in Vermont. Title 24 V.S.A., Chapter 117 gives municipalities in Vermont regulatory tools to effectively protect wetlands through a municipal plan, zoning and subdivision regulations, shoreland protection bylaws, health ordinances and flood hazard regulations. *This legislation also gives municipalities a legal obligation to notify the state about developments in wetlands.* The legislation reads as follows (24 V.S.A., § 4409 (c)(2)(A)):

- (c) No zoning permit for the development of land of the following types or located within the following designated areas may be granted by any municipality prior to the expiration of a period of 30 days following the submission of a report to the state agency designated in each case, describing the proposed use, the location requested and an evaluation of the effect of such proposed use on the plan of the municipality and on the regional plan, if any:
- (2) Department of Environmental Conservation. Any of the following uses or activities affecting ground or surface water resources:
 - (A) Any area designated as a floodplain or wetland.

Therefore, when a project will affect a designated wetland, towns should contact the Wetlands Section directly to review the project. Designated wetlands are wetlands identified on the Vermont Significant Wetland Inventory maps or wetlands designated as Class I or II wetlands by the Water Resources Board. Please call the State Wetlands Section if you are not sure whether a project will impact a designated wetland.

TECHNICAL ASSISTANCE

The Vermont Significant Wetland Inventory maps can be used as a first tool in determining if wetlands are present. These maps were distributed to every town in 1990. Revised color maps were distributed in 1999. Municipalities may order new maps if needed by calling 802/241-3770. The boundaries of the wetlands shown on the map are not always accurate; small wetlands may not be shown at all. Fieldwork is usually necessary to determine if unmapped wetlands are present and to determine the actual boundaries of the mapped wetlands.

A District Wetlands Ecologist from the Vermont Wetlands Section is available to



meet with any local official or landowner to determine if a wetland is present on a piece of property at no charge. Usually a site visit can be scheduled within two to three weeks of a request, depending on the current workload at the time of the request. On private lands, site visits can only be made with permission from the landowner. We strongly encourage landowners and town officials to set up site visits with Wetlands Office staff early in the planning stages of projects that may affect wetlands or 50-foot buffer zones.

If you are interested in learning more about wetlands; how to detect wetlands from project plans or in the field; and state, federal, and local wetland regulations, contact the Vermont Wetland Section. A regional training program for local officials can be arranged.

- Shannon Morrison, Vermont Wetlands Section, Vermont Agency of Natural Resources

WHY PROTECT VERMONT WETLANDS?

Vermont's wetlands provide essential functions that contribute to water quality, wildlife, fisheries, recreation, education, endangered species, and open space. These functions not only provide ecological and aesthetic values, but also substantial economic value. Replacing functions lost when wetlands are destroyed, like water quality treatment, erosion control, and flood control, can be very expensive. Other functions, such as wildlife and fish habitat, recreation opportunities, and open space can be permanently lost when wetlands are destroyed. This can also have significant financial repercussions as we lose visitors that come to the state for hunting, fishing, and sight seeing.

WETLAND PROTECTION CHECKLIST FOR LOCAL OFFICIALS

- If you have zoning regulations, are wetlands protected?
- Is there a place to include any wetland information on applications for development?
- Are there wetlands mapped on the Vermont Significant Inventory maps anywhere close to the proposed project?

If you suspect wetlands will be affected by a proposed project, contact: Vermont Wetlands Section, Agency of Natural Resources, Building 10 North, 103 South Main Street, Waterbury, VT 05671-0408, tel., 802/241-3770.

If you are unsure about a project or using a Vermont Significant Inventory review, you can fax a location map (with road names, town and applicant information) to the Wetlands Section at 802/241-3287. A District Wetlands Ecologist will determine if the project needs further review.



Tech Check



COMPUTER RESOURCES ON THE WEB

Looking for answers to your PC questions? Want to know if that wild e-mail story or virus warning forwarded to everyone in your office is legitimate or a time-wasting hoax? Here are a few websites you may find useful.

For general information about computer hardware, software, reviews, pricing, tips, tutorials, troubleshooting help, free e-mail newsletters, etc., check out the following sites:

- www.cnet.com
- www.zdnet.com
- www.help.com (CNET Help)

For more technical articles, check out:

- www.techrepublic.com

Want to know what "DSL" means? The following site contains definitions for thousands of IT-related terms:

- whatis.techtarget.com

For troubleshooting problems with Microsoft products, use the following site to search Microsoft's Knowledge Base:

- support.microsoft.com

For Windows tweaks and troubleshooting:

- www.annoyances.org

For updated device drivers, check out this site from TechRepublic:

- www.driverguide.com

To check out computer virus threats and hoaxes, here are a couple of leading websites. (Check out all "virus threats" you receive via e-mail *before* you forward them to anyone: they are nearly always hoaxes.) Remember, also, to keep your anti-virus software up-to-date: new threats crop up weekly. Go to your anti-virus software manufacturer's website to find out details; some of them provide the updates for free, and can even add you to an e-mail subscription list so you'll be notified as soon as updates are available.

- Symantec AntiVirus Research Center, www.symantec.com/avcenter/vinfo/vinfodb.html
- Computer Associates Virus Information Center, www.ca.com/virusinfo

The following site will help you determine if those wild stories and warnings frequently circulated via e-mail are, in fact, "urban legends."

- www.urbanlegends.com

Here is a handy site for general—not just technical—reference (search encyclopedias, dictionaries, thesauri and books of quotations):

- xrefer.com

Finally, here are a couple of good general search sites you may not be familiar with:

- www.dogpile.com
- www.google.com

Searching the web for resources that you know are out there, *somewhere*, can be very time-consuming and frustrating. If you are like me, you barely have enough time in the workday to accomplish your regular tasks, and certainly none to waste on lengthy web searches. Hopefully, the above list of resources will help you.

Calendar

Town Officer Educational Conferences.

Monday, April 2, 2001, Castleton State College, Castleton; Wednesday, April 4, 2001, Lyndon State College, Lyndon; Tuesday, April 10, 2001, Grand Summit Lodge, Mt Snow; Thursday, April 12, Lake Morey Inn, Fairlee; Monday, April 16, 2001, St Michael's College, Colchester. For more information, call the UVM Extension Service at 802/223-2389.

Vermont GIS EXPO 2001. Thursday, April 5, 2001, Capitol Plaza Hotel, Montpelier. Presented by the Vermont Center for Geographic Information, this EXPO offers a large number of exhibits and training sessions on the use of computer hardware and software to manage geographic information. For more information, call Leslie Pelch at 802/656-8319.

State-Local Bridge Conference. Thursday, April 26, 2001, Vermont Technical College, Randolph. Presented by the Vermont Agency of Transportation, topics include: Agency programs and procedures; saving

time and money on bridge projects; reading and acting on bridge inspection reports; and environmental and historic issues. For more information, call the Vermont Local Roads Program at 800/462-6555.

Decentralized Wastewater Systems: An Option for Vermont Villages and Growth Centers. Friday, May 4, 2001, Vermont Technical College, Randolph Center. The U.S. Department of Agriculture Rural Development Program is sponsoring this workshop for municipal officials, planners, engineers, wastewater practitioners, environmentalists and legislators. Call the USDA Rural Development's Montpelier office at 802/828-6030 for more information.

Construction Contracting for Public Entities in Vermont. Thursday, May 17, 2001, Holiday Inn Express, S. Burlington. Presented by Lorman Education Services, this seminar is designed for municipal managers and public works architects, construction managers and engineers. For information, call Lorman at 715/833-3940.



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The Vermont Department of Environmental Conservation is making \$45,000 available to reduce backyard burn barrels and other types of open burning of solid waste in Vermont communities.

Towns, regional planning commissions and solid waste districts are eligible to apply for the funds. Preference will be given to projects that result in the adoption of ordinances to prohibit backyard burning of solid waste or the use of burn barrels, and/or provide education, publicity and enforcement activities to reduce illegal burning. The grant award may be up to 100 percent of all project costs, although matching funds and in-kind services are encouraged and will be given preference.

The deadline for applications is Friday, April 27, 2001 by 4:30 p.m. For more information, contact Jeff Fehrs, Grants Administrator, Department of Environmental Conservation Waste Management Division, tel. 802/241-4221.



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HELP WANTED

Finance Director. The Town of Rockingham/Bellows Falls Village Corporation is now accepting applications for the position of Finance Director. This supervisory position reports directly to the Municipal Manager and has responsibility for the general financial management of Town and Village operations; tax collection; management of the Finance Department and supervision of accounting staff; benefits administration and coordination of the municipal computer system. Post-secondary education in accounting or a related field, with experience in progressively responsible positions is required. Applicants must be proficient in spreadsheet and word processing applications, data analysis, and possess strong communication, supervision and organizational skills. Experience with computerized fund accounting in a municipal environment is required. An excellent salary and benefits package is available for the applicant with demonstrated experience and skills. Applications will be accepted until Friday, April 6, 2001, or until the position is filled. To apply, send resume and letter of interest to: Finance Director Position, c/o VLCT, 89 Main Street, Suite 4, Montpelier, VT 05602. EOE.

Finance Officer. The Vermont League of Cities & Towns, a statewide municipal association, has an immediate need for a Finance Officer. Reporting to the Director of Administrative Services, this position provides support for the financial management of the League and its Insurance Trusts. Candidates should have a strong financial background with both knowledge and experience in the insurance industry. The position oversees all aspects of the accounting system and works closely with the department head responsible for insurance programs. We require a bachelor's degree in accounting with 3-5 years financial experience, preferably in an insurance company environment. CPA preferred but not necessary. Knowledge of Great Plains Dynamics accounting software helpful. Interested candidates should send cover letter, resume and names/telephone numbers of three references to: Human Resources,

VLCT, 89 Main Street, Suite 4, Montpelier, VT 05602. EOE.

Fire/Rescue Chief. Full-time position. Plaistow, NH, a community of 8,000 bordering Haverhill, MA. Department consists of two other full-time employees, 36 call/volunteer fire fighters, \$277,000 budget, eight major pieces of equipment. Requires significant supervisory experience within a department that depends upon both call/volunteer and full-time fire fighters. Within six months of hire, candidate must be willing to move within an area no greater than 15 minutes from Plaistow fire station and must obtain necessary NH certifications. Excellent benefits. Salary dependent upon qualifications and experience. Retiring Chief paid \$49,000/year. Apply immediately as resume review will begin in early April. Screened candidates will go through assessment center. Please respond with resume to Town Manager John Scruton, 145 Main Street, Plaistow, NH 03865.

Heavy/Light Equipment Operator. Public Works Department. Town of St. Albans, VT accepting applications for the position of Heavy/Light Equipment Operator. The operator is responsible for skilled operation of the heaviest types of construction equipment while performing a variety of public works related activities. The operator works under the direct supervision of the Director of Public Works. Qualification includes high school graduation or equivalent combination of education and experience, with one additional year of paid experience in operating light and heavy equipment. A current CDL Class B is required. Interested persons may obtain a job description by contacting the Town Administrator's Office at 802/527-8346. Applications with at least three letters of reference may be forwarded to: Town of St. Albans, Attn: Town Administrator, P.O. Box 37, St. Albans Bay, VT 05481 or may be submitted to the Town Clerk's office during business hours. Applications will be accepted until the position is filled. Two (2) positions available. Salary is commensurate with education and/or experience.



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