

VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

July 2003

SARS AND OTHER BIO THREATS: TRAIN AND PREPARE

Train and prepare for public health emergencies such as SARS just as you would prepare for threats to homeland security, say National League of Cities (NLC) officials who studied Toronto's SARS experience.

The officials recently met with public health experts in Toronto and with American public health experts to learn how to prepare for SARS (Severe Acute Respiratory Syndrome) and other biological threats. As a result, NLC issued the following lessons that American municipalities can learn from the Toronto experience:

Epidemics and biological threats can have devastating effects and should be prepared for with the same

seriousness accorded threats to homeland security. Public health workers should be considered first responders along with police and firefighters. Just as 9-11 reinforced the importance of preparing police, firefighters, and emergency response workers, the SARS experience in Toronto demonstrated the important role of public health workers.

PREPARE

Train and prepare for biological threats. Training will help the key people understand what might be required to screen people, quarantine and transport infected

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HIGHWAY FUNDS

A LEGAL AND FINANCIAL PERSPECTIVE

One question frequently asked of VLCT legal staff is whether towns can use unexpended highway funds for other purposes. VLCT's belief is that the law mandates that surplus highway funds be rolled over into the next year's budget (whereas unexpended monies in the general fund cannot be spent until the voters reapprove such spending). 19 V.S.A. § 312.

HIGHWAY FUND BALANCE

Essentially, highway funds are a reserved fund that can only be expended for highway purposes, and must be rolled over into the following year's budget. Therefore, a good practice would be to keep these accounts separate, because from an accounting perspective, they must be separated at the end of the year anyway. This can be done in accordance with generally accepted accounting principles (GAAP) without maintaining separate bank accounts or even separate funds.

Keep in mind that our advice to keep the highway funds separate is not based on whether

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SELECTBOARD IN TRAINING?



U-32 Middle School students (l. to r.) Ellen Jaworski, Chelsey Allen, and Ben Zabiski present their project on Teen Centers to Project Citizen judges during the third annual competition held in May at the State House. A team from Marshfield's Twinfield Union School took top honors with a project that asks Newsweek Magazine to remove tobacco advertisements from its national student edition.

Project Citizen is a program designed to introduce civics to middle school students. It is administered nationally by the Center for Civic Education and the National Conference of State Legislators. In Vermont, it is sponsored by VLCT and administered by retired Montpelier High School teacher Bill Haines. For more information, contact Karen Horn, VLCT Director of Legislative and Membership Services, tel., 800/649-7915 or e-mail, khorn@vlct.org.

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SARS -

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people, and determine what resources at various levels of government and in the private sector would be needed in the event of a threat. Don't leave out law enforcement, the business community, employers, schools, and community and religious groups in training and preparation efforts.

Review and establish clear legal powers and lines of authority to respond to an infectious disease or biological threat. Know what legal steps might be required to respond quickly to a need for quarantines or restrictions on travel, balanced against the need to respect individual rights.

Create a protocol to separate frontline health workers from other emergency personnel to prevent infection of the full response system. In combating an infectious disease, there is a risk of exposing and infecting emergency response and medical personnel. In Toronto, more than 100 medical staff were quarantined because of exposure.

Develop a system for recording and tracking all unbudgeted costs associated with the emergency. In order to receive full and appropriate reimbursement from other levels of government and private sources, it is critical to track all expenditures at the time they are made to create a recognized audit trail.

COORDINATE

Get all levels of government in the loop quickly. Make sure the right officials in all levels of government are aware of an emerging problem. This will help to marshal the resources needed to monitor and contain a biological threat.

The VLCT Municipal Assistance Center is presently working with the Vermont Department of Health to develop a plan for responding to a SARS incident in Vermont. The plan will be included in the Town Health Officers workshop, to be held this fall. Watch the VLCT News, www.vlct.org, and your mailbox for a workshop announcement and registration forms.

Create a task force of key offices and stay up to date and in communication. This may require teleconferences, use of cell phones, or emergency communications channels. Make sure these lines of communications are established beforehand in response protocols. Be sure to include law enforcement.

Manage medical information about infected people. This will require a database for case management especially if mass quarantines are required, as was the case with SARS in Toronto, where 8,500 people were quarantined.

Engage municipal employees and unions as soon as possible, and set up a mechanism to update them. Frontline workers will need to have information about and confidence in the process. Getting information to the frontline medical workers is essential for their health and the health of their families and others with whom they had contact. Bring unions and other employee representatives into the information loop quickly.

COMMUNICATE

Coordinate messages to ensure they are consistent, correct, and frequent. Public safety and confidence depends on clear communications. Be sure to provide a steady, frequent flow of information from a medical authority that is correct, consistent, and clear, even if it becomes repetitious. An information vacuum is quickly filled with speculation and misinformation.

Target communications to key constituencies and audiences affected by the threat, including the business community, the travel and convention business, employers, schools, and community and religious groups as well as the general public. Try to put the health risk in context.

Prepare for an onslaught of questions that require both medical and practical answers. The demand for information may require use of automated telephone information systems as well as informed medical staff to answer calls. Be prepared for non-English speakers. Post updated information regularly on web sites.

Stay on guard. Biological threats, including SARS, often prove to be stubborn and elusive. Even thorough efforts to contain threats are not always foolproof.

The National League of Cities is the largest national organization for American cities. NLC serves as a resource and advocate for 18,000 cities, towns and villages of all sizes, from New York City to Bee Cave, Texas, which collectively serve 225 million people. See www.nlc.org.



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NONCONFORMING USES; FEDERAL CIPA AND LIBRARIES

NONCONFORMING USES MAY BE EXTENDED

The Vermont Supreme Court recently held that nonconforming uses may be allowed to expand onto property not previously occupied by the nonconforming use nor previously owned by the owner or operator of the nonconforming use. *In re Appeal of Casella Waste Management, Inc.*, ___ Vt. ___ (2003).

Nonconforming uses are uses that were lawfully established and operated prior to the effective date of a zoning bylaw, that do not comply with current zoning bylaws, and that are allowed to continue subject to limitations on the right to change, expand, or recommence the use after abandonment. As a general rule,

forming use based on a plain reading of the Manchester zoning ordinance. *In re Appeal of Casella Waste Management, Inc.*, ___ Vt. ___ (2003).

The zoning bylaw in question provided that “[N]o nonconforming use shall be extended or expanded, except with the approval of the [ZBA], provided that the [ZBA] shall have found that such extension or expansion will have no adverse effect upon the public health, safety, convenience, and upon property values in the vicinity; and, in judging the application, the [ZBA] should consider the criteria that would apply to the use if it were in a zone in which the use is permitted.” *Id.*

In upholding the Environmental Court’s

Although the Vermont Planning and Development Act authorizes municipalities to regulate the extension and expansion of nonconforming uses, it does not mandate a specific method for doing so. As a result, Vermont courts “turn to the municipal regulation to determine how the municipality regulates nonconforming uses.” *In re Miseroochi*, 170 Vt. 320 (2000). The methods Vermont municipalities employ to regulate the extension and enlargement of nonconforming uses range from completely prohibiting any expansion of the use to allowing the nonconforming use to expand to adjacent properties with zoning board approval.

In re Appeal of Casella Waste is important in that it affirms local control of land use by emphasizing that the Court will look to municipal zoning bylaws to regulate nonconforming uses. It also recognizes that 24 V.S.A. § 4408 provides municipalities with flexibility in determining the extent to which nonconforming uses will be allowed to expand and continue. Whether a municipality is “permissive” or “prohibitive” in its approach to regulating nonconforming uses depends, among other things, on the goals of the Town Plan, on local

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legislative and judicial policy favors the gradual elimination of nonconforming uses. 24 V.S.A. § 4408; *Hinsdale v. Village of Essex Junction*, 153 Vt. 618 (1990).

In re Appeal of Casella Waste involves an appeal from the Environmental Court’s approval of the construction of an access road connecting a nonconforming solid waste transfer station to Route 7A in Manchester. A group of landowners appealed the Environmental Court’s decision arguing that the access road constitutes an unauthorized extension of a pre-existing nonconforming use to an adjacent property. In support of their argument, appellants argued that the Manchester zoning ordinance does not allow the extension of a nonconforming use onto land not previously occupied by the nonconforming use and that the purpose of the Vermont Planning and Development Act, Chapter 117 of Title 24, is to eliminate nonconforming uses.

Despite its recognition “that there is a strong public interest in regulating the extension and undue perpetuation of nonconforming uses,” the Court upheld the Environmental Court’s decision allowing the expansion of the noncon-

approval of the access road, the Vermont Supreme Court relied heavily on the fact that the bylaw in question was “permissive” because it did not completely prohibit the extension or enlargement of a nonconforming use and because it provided criteria for the ZBA to consider, criteria which did not specifically limit the expansion of a nonconforming use to its original location. *Id.*

COMING NEXT MONTH...

The thorny issue of **stormwater** is again in the spotlight for Vermont towns. Stay tuned for next month’s Legal Corner addressing the Vermont Water Resources Board’s decision in its recent “WIP” (Watershed Improvement Permit) decision. The decision in the consolidated *Morehouse Brook, Englesby Brook, Centennial Brook, and Bartlett Brook* case will clearly impact a number of Vermont’s municipalities, particularly those with greater levels of development. We will be addressing this issue in the August Legal Corner.

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LEGAL CORNER -

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economic needs, and on the pervasiveness of nonconforming uses in the community.

If it is the intent of a municipality to prohibit the expansion of nonconforming uses, bylaws should clearly reflect this. Examples of such "prohibitive" bylaws include provisions clearly stating "nonconforming uses shall not be enlarged or extended." Municipalities with "permissive" bylaws that allow nonconforming uses to expand generally require zoning board approval of the expansion. As this case makes clear, if it is the intent of a "permissive" bylaw to prohibit nonconforming uses from expanding onto property not previously occupied by the use, the bylaw must specifically say so.

- Julie Fothergill, Staff Attorney, VLCT
Municipal Assistance Center

WITH FEDERAL DOLLARS COME FEDERAL RESTRICTIONS FOR LIBRARIES

The United States Supreme Court has upheld a federal law that requires public libraries receiving federal assistance to install pornography-blocking software on public

computer terminals, or risk losing their access to federal funding. *United States v. American Library Association*, 539 U.S. ____ (2003).

This decision affirms the Children's Internet Protection Act (CIPA), which requires public libraries receiving grants or other monies under the federal E-Rate program or Library Services and Technology Act (LSTA) to have a "policy of Internet safety for minors that includes the operation of a technology protection measure . . . that protects against access by all persons to 'visual depictions' that constitute 'obscenity' or 'child pornography,' and that protects against access by minors to 'visual depictions' that are 'harmful to minors.'" 20 U.S.C. § 9134 (f) (1) (A) (i).

This case is a departure from the Supreme Court's other recent decisions on Internet pornography. In 1997, the Court struck down the Communications Decency Act, which made it a crime to put adult-oriented material online where children could find it, stating that the law was "wholly unprecedented" in its breadth and unconstitutional under the First Amendment. *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997). Other, similar decisions have all struck down laws attempting to criminalize the dissemination of Internet pornography.

American Library Association is notable because it is an affirmation of a different type of law – a federal funding law, rather than a federal criminal statute. This allows Congress to use the carrot of federal funding to achieve its objective (preventing minors from accessing harmful Internet pornography), rather than the blunt stick of criminal liability for those who distribute it. This clever legislative technique also changes the way a court goes about reviewing such a law. When reviewing a statute that restricts speech and implicates the First Amendment, courts apply the "strict scrutiny" standard, which means that the law must be "narrowly tailored" to further a "compelling governmental interest." This standard is difficult to satisfy, and, more often than not, a court decision under this standard will favor an individual's right to communicate freely, without government intervention.

In the case of CIPA, the law places certain standards on public libraries in order to obtain federal funding. Such a law doesn't necessarily impinge on constitutionally protected speech, the Court stated. Rather, it is a reasonable condition that Congress has placed on federal funding. Because the law doesn't deny a fundamental right, such as free speech, the Court stated that Congress has the right to insist that public funds be spent "for the purposes for which they were authorized." *Id* at *14. A court reviewing a government regulation that does not inhibit a fundamental right, nor targets a suspect class of people, uses the "rational basis" standard of review. This means that the law in question must be "rationally related" to a "legitimate" governmental purpose, such as protecting children from exposure to Internet pornography. In the eyes of the Court, CIPA easily passed this test. Chief Justice Rehnquist stated, "A legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right [to free speech]." *Id* at *15.

Librarians should take note of this decision, if you have not already dealt with the compliance requirements of either E-Rate or LSTA. In order to comply with these two federal requirements, public libraries receiving federal funding, either to purchase Internet access under E-Rate, or LSTA grants, must install pornography filtering software on publicly accessed computer terminals with Internet access. Librarians are allowed to disable this software at the request of an adult user, but it must be installed to prevent minors from accessing pornographic material.

- Brian Monaghan, Staff Attorney, VLCT
Municipal Assistance Center

Municipal Assistance Center



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VLCT's Municipal Assistance Center specializes in the issues confronting Vermont municipalities today. Please give us a call if we can provide your municipality with any of the following services:

- ◆ *Counsel by municipal attorneys and VLCT staff.*
- ◆ *Review of proposed ordinances, policies, and contracts.*
- ◆ *Onsite workshops on topics such as financial management, land-use planning, and the proper functioning of municipal boards and commissions.*
- ◆ *Consulting services such as meeting facilitation, mediation, and personnel recruitment.*
- ◆ *Manuals and handbooks which provide a plain-English guide to state and federal laws.*
- ◆ *Regular surveys on salaries and benefits, municipal practices, rates and fees, etc.*
- ◆ *Model ordinances, bylaws, and policies.*

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ASK THE LEAGUE

FISCAL AUTHORITY AND ACCOUNTABILITY

Can a town fire department open a town bank account without approval of the treasurer?

No. If the fire department is a municipal fire department, i.e., it is a department of the town, then its finances must be handled by the town treasurer. This rule applies even if the fire department receives money through a coin drop or other fundraiser. While the fire department may have raised the money, it is still "town" money. Therefore, the selectboard remains the only entity with legal authority over those funds, and is the only body that may authorize expenditures of those monies. This rule applies to other departments of the town, including libraries and cemeteries. While the selectboard, or the trustees or commissioners, respectively, may have authority to spend the money, the town treasurer must control it.

In order to open a bank account, a social security number or a federal tax identification number is required. It is important for town treasurers to maintain strong controls on the use of the town's tax ID number. One way to do this is to contact local banks to inform them that the only person authorized to open an account on behalf of the town is the treasurer. It would also be wise to make other town officials and employees aware of this rule. In the event someone questions the town's expenditures on a certain matter, the treasurer should be able to account for that money.

*- Brian Monaghan, Staff Attorney, VLCT
Municipal Assistance Center*

Can the treasurer delegate the authority to sign checks to someone else in his/ her absence?

While an open question of law, it seems that the only time someone other than the treasurer may sign checks is when there is an assistant treasurer. If there is no assistant treasurer, the authority to sign checks cannot be delegated to other town officials, such as a selectboard member.

"An assistant treasurer, during the temporary absence or disability of the treasurer, shall

perform the duties of the treasurer." 24 V.S.A. § 1573. Therefore, when the treasurer is away on vacation, sick, or absent from office for some other reason, the assistant treasurer may sign checks. If there is no assistant treasurer, there is no clear legal provision that would allow any other officer to sign checks when the treasurer is unable to. One way to prepare for unexpected,

temporary vacancies would be to make sure there is an assistant treasurer to sign payroll checks and any other necessary expenditures. Otherwise, there is no clear process for signing checks in the temporary absence of the treasurer.

*- Brian Monaghan, Staff Attorney, VLCT
Municipal Assistance Center*

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HIGHWAY FUND -

(Continued from Page One)

the town has voted the highway funds as a separate article. Instead, it is based on our belief that because the law requires the funds to be treated in different ways, a good accounting practice would be to account for and report the transactions in such a way that the fund balance for highway funds is clear and properly disclosed.

HIGHWAY FUND TAXES

Page 12, paragraph 3 of VLCT's *Handbook for Municipal Treasurers* was taken directly from state law: "The treasurer shall keep a record showing the amount of taxes voted for the support of highways, schools, special departments, if any, and for general town purposes . . ." 24 V.S.A. § 1574. This is what the law states that treasurers shall do, and VLCT feels strongly that treasurers should

follow this state mandate.

As noted above, VLCT believes Vermont state law as it applies to accounting should be and can be followed by using generally accepted accounting principles (GAAP). These principles are outlined by the Governmental Accounting Standards Board (GASB); compliance with both GAAP and GASB can be achieved by adhering to some of the following accounting guidelines:

1. If you set separate tax rates for the General Fund and the Highway Fund, it would be a good practice, both accounting-wise and politically, to account for the highway revenues and expenditures in a separate fund. This is not to be confused with a separate checking or other bank account. Use GAAP fund accounting procedures to account and report transactions in your accounting records, using a single General Fund checkbook for all fund transactions and making the proper interfund accounting entries to balance the funds. This applies to the options below as well.
2. If you set a single tax rate that includes funding for both General and Highway Funds, you can do one of two things:
 - a. Maintain accounting for separate funds, making sure that the tax revenue that corresponds to the highway budget is transferred via an accounting entry from the General Fund into the Highway Fund. Also be sure that the highway block grant is reported in the Highway Fund.
 - b. Report the highway transactions in the General Fund, but in such a way that you are able to account for the highway budget and expenditures separately, so that you can report how much was budgeted and expended, as well as how

much tax and block grant revenue was received to cover those expenditures, the balance of which should be shown as a reserved-for-highway fund balance in your financial statements.

OVEREXPENDING THE HIGHWAY BUDGET

Another common question asks, "Is there some remedy when a town overspends the highway budget?" There is no "remedy" for overspending the highway budget, but there may be political repercussions. The town has a statutory duty to maintain town highways: the town must keep all class 1, 2, and 3 highways "in good and sufficient repair during all seasons of the year." 19 V.S.A. § 310 (a).

The point is that the town has a statutory duty to keep the roads in passable condition; therefore, the town must spend any money necessary to do so. If the highway budget is overspent, the town must make that money up, whether it comes from taxes, grants, or donations. It could also be recovered through some type of debt vehicle like a loan.

Of course, the selectboard could be voted out of office if the voters don't think it has done a good job maintaining the roads within a reasonable budget. Some would certainly call that a remedy.

TREASURER HAS SOME LATITUDE

Surpluses or deficits are rolled into your fund balance at yearend and legal compliance depends on your ability to properly disclose the fund balance for highway purposes. At the end of the day, the decision on how many accounts to keep is yours as town treasurer, because the law does not require multiple accounts. You just need to be sure that your records and reporting clearly show a fund balance that is reserved for highway purposes.

- Brian Monaghan, Staff Attorney, VLCT Municipal Assistance Center, and Michael Gilbar, Director, VLCT Administrative Services

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WELCOME NEW MAC INTERN

Having the Vermont Law School a short ride down the interstate from Montpelier has greatly benefited VLCT over the years. This summer is no exception. **Daniel Phillips**, a candidate for a JD and MS in Environmental Law from VLS in 2004, is the VLCT Municipal Assistance Center's summer intern.

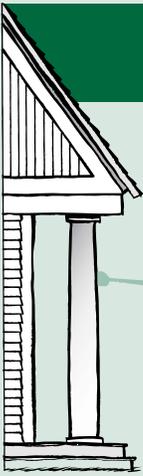
Dan has jumped right in, fielding your calls about a wide range of municipal issues. He will also be writing articles for the *VLCT News* and doing research. When he is not helping out at VLCT or studying, Dan plays ice hockey and ultimate frisbee. Welcome aboard, Dan!

TRIVIAL PURSUIT

Congratulations to **Cathy Kashanski**, Vermont Water Quality Division, who knew that the Town of Granby, a former railroad town, had a dramatic drop in population from the years 1890 to 2000. Here is this month's query:

In 1848, the first stretch of railroad went into operation in Vermont. Between which municipalities did the line extend and what was the name of the railroad?

Contact us with your answer: fax, 802/229-2211, e-mail, kroec@vlct.org.



FUNDING AVAILABLE FOR AEDS

The Vermont Department of Health EMS Office and the Vermont Fire Service Training Council are pleased to announce the availability of funding to help rural communities purchase automated external defibrillators (AEDs), and be trained in their use. The program is supported by a grant to the EMS office from the federal Health Resources and Services Administration. In addition to the federal funds, the Vermont Legislature allocated \$20,000 to the Vermont Fire Service Training Council for similar purposes; the combined funds will be distributed through the State's EMS Districts.

Each EMS District has or is in the process of forming a committee to prioritize distribution of the funds. The four priorities for AED placement are:

1. Rural EMS First Responder Services.
2. Rural ambulance services that use their own personnel as EMS first responders.
3. Non-EMS fire, police, clinics, hospitals, etc. who do not do 9-1-1 medical response, but may encounter a cardiac arrest in the course of other duties.
4. Municipal buildings, schools, places of public assembly, etc. that may have large numbers of people gathering.

It is expected that Priority 1 and 2 organizations will use most of this year's funding. However, the Health Department notes that Priority 3 and 4 organizations should express interest, as it appears Vermont will receive another AED grant in 2004. The Health Department is also exploring group purchasing opportunities, which it hopes to also make available to groups that do not qualify for its funding.

To contact your EMS District Chairperson, please go to the Vermont Department of Health EMS website at: <http://www.healthvermonters.info/hp/ems/distcontacts.shtml>.



ATTENTION PACIF MEMBERS

The annual meeting of the VLCT PACIF membership will take place at Town Fair in Barre on Thursday, October 2, 2003. As we have done for the past few years, we will combine our annual meeting with the Unemployment Trust's annual meeting. Please watch for the mailing that will be sent out to you in August. Thank you!

ATTENTION UNEMPLOYMENT MEMBERS

The annual meeting of the VLCT Unemployment Insurance Trust membership will take place at Town Fair in Barre on Thursday, October 2, 2003. As we have done for the past few years, we will combine our annual meeting with the VLCT PACIF annual meeting. Please watch for the mailing that will be sent out to you in August. Thank you!

EMPLOYEE ASSISTANCE PROGRAM

Money a problem? Not enough to go around ... living paycheck to paycheck ... credit card debt piling up ... wondering about financing a house, college or retirement? EAP can help! Call 800/287-2173 for assistance.

(Co-sponsored by the VLCT Health and PACIF Trusts for their member municipalities. Employees and their household members are eligible to use the EAP for free.)

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HOT ENOUGH FOR YA?

WATCH OUT FOR SYMPTOMS OF HEAT STRESS

As temperatures climb this summer, watch out for these symptoms of heat distress:

- Dizziness
- Headache
- Weakness
- Rapid heartbeat
- Nausea
- Cramps
- Chest pain
- Labored breathing
- Diarrhea

If a person is also running a temperature, shows signs of confusion, or becomes unconscious, he or she may be suffering from heatstroke - a life-threatening emergency. Call for medical assistance immediately.

While waiting for emergency help to arrive, get the victim out of the sun. Lay the person down, loosen or remove clothing, and try to bring the victim's temperature down. Monitor temperature if possible and try to have someone who knows CPR standing by.

If the person remains conscious, isn't confused, and is not running a temperature:

- Get the victim out of the sun.
- Lay the person down, elevating the feet slightly, and loosen clothing.
- Apply cool compresses and give the person cool (not iced) water to drink.
- Watch for signs of heatstroke.
- Suggest they contact their physician.

SECOND ANNUAL VLCT GROUP SERVICES PHOTO CONTEST

VLCT Group Services is once again conducting a photo contest with "Show Us Your Best" as its theme. The contest asks Vermont municipal employees/photographers to think about what makes their municipality the "best" and capture it on film. This may include public safety, highways, recreation, planning, or community service, etc. Show us your municipality at its best with a winning photograph!

The contest deadline is October 1, 2003. First prize is \$100, second is \$75 and third is \$50. Photographers must work for a municipality that is a member of VLCT PACIF, the VLCT Health Trust or the VLCT Unemployment Trust. For more contest rules please refer to the flyer in the June 2003 *VLCT News* or contact Niki White, Member Relations Administrative Assistant, at 800/649-7915 or email, nwhite@vlct.org.



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STATE'S PLANNING GRANT PROGRAM IS UNDERWAY

The Vermont Department of Housing and Community Affairs recently mailed its FY04 Municipal Planning Grant Program applications to all Vermont towns. The application deadline is **September 30, 2003**.

The grant funds target town planning efforts, implementation of plans and ordinances, building the capacity of local boards and educating citizens about land use issues, as well as other planning projects. This year approximately \$800,000 will be available statewide through a competitive application process. Municipalities may apply for up to \$15,000 for single applications or up to \$25,000 for multi-town projects. Please call 802/828-5249 to receive a copy of the application or for assistance. Applications can also be downloaded from www.dhca.state.vt.us/planning.

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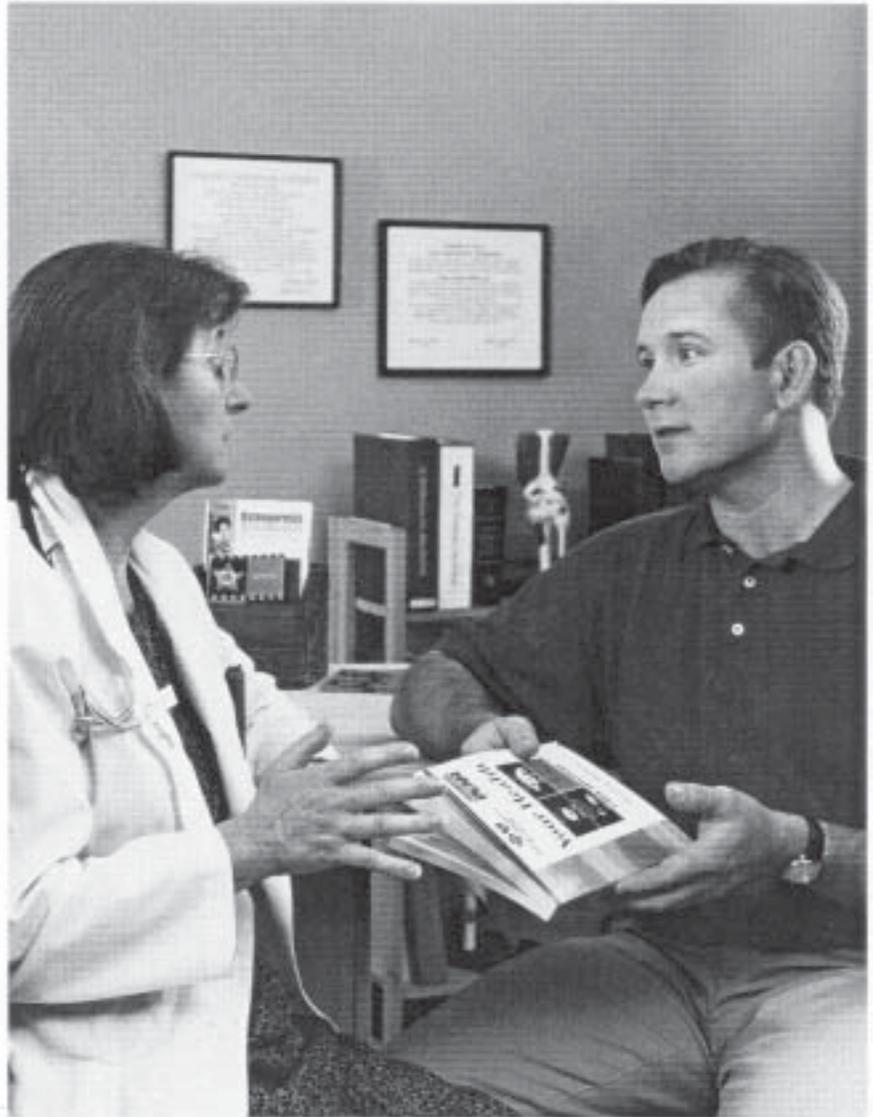
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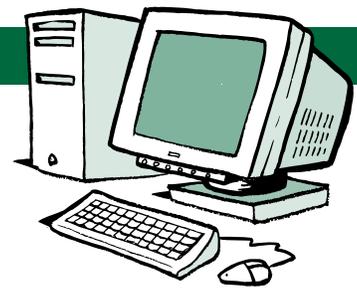


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Tech Check

COMMUNITY DATA BANK AND STATE DATA CENTER WEBSITES

FIND VERMONT DATA RESOURCES ONLINE



One of the goals of the Center for Rural Studies (CRS) at the University of Vermont is the creation and provision of data resources for Vermonters to use in community and economic development and local decision-making. Now, we all know that Vermont's civic structure is somewhat unique in the nation. Regardless of the fact that we do not enjoy Home Rule in this state, decisions made at the municipal level of government are crucial to our quality of life. Local-level data is very important for planning and policy in Vermont.

By acting as the U.S. Census Bureau's Vermont State Data Center, CRS seeks to represent Vermont's interests in the collection and analysis of Census data. One key issue that

we bring to the table is the collection of accurate and statistically valid data at the town level in Vermont. We continue to remind the Census Bureau of the importance of Vermont's municipal governments in contrast with the strong county government units more commonly found in other states. Here at home, CRS uses its State Data Center status to be a data resource for Vermonters. The new *Vermont State Data Center* website at <http://crs.uvm.edu/> census lists various ways to access Census data for Vermont, as well as updates on new data releases and Census training opportunities in Vermont.

The creation of this website is part of a recent trend during which data agencies have

begun disseminating data and information via the Internet rather than traditional hard copy publications. Today, the Census Bureau, CRS, and other agencies are phasing out paper data products and focusing on online resources.



Over time, as we have explored different data resources to fulfill the many data requests we receive here at CRS, our staff has built up a hefty list of useful online resources to access for various type of data. Upon realizing that we had a useful little database on our hands, CRS created the *Vermont Community Data Bank* at <http://crs.uvm.edu/databank> to share the

(Continued on next page)

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TOP VERMONT COMMUNITY DATA BANK PICKS

Municipal officials might find the following six categories of data contained in the Data Bank the most useful:

- Population
- Income
- Employment
- Housing
- Transportation
- School Performance Indicators



TECH CHECK -

(Continued from previous page)

information with the public. This website will allow you to choose the type of data you are interested in and the geographic level that you would like it for, and then return the online resources that we know of where you can find that data. For instance, if you are interested in economic data at the town level, the *Data Bank* will return a list of ten online resources for you, including *Vermont Indicators Online* at <http://crs.uvm.edu/indicators> and the Vermont Department of Employment and Training's *Employment and Wages* report (<http://www.vtmi.info/indnaics.htm>).

We urge you to visit the *Vermont Community Data Bank* at <http://crs.uvm.edu/databank> and let us know what you think. We are especially interested in any information on good online data resources that are not currently in the *Data Bank*. New resources brought to our attention, especially those with town-level data statewide, may be added to the database. Feel free to use the *Vermont Community Data Bank* when you go looking for data, and help CRS make it larger and more useful. For more information on the Center for Rural Studies and our data resources, please visit our homepage at <http://crs.uvm.edu> or call me, Chip Sawyer, Outreach Coordinator, at 802/656-0892. Happy data hunting!

- Chip Sawyer, Outreach Coordinator, Center for Rural Studies, UVM

INDEPENDENT CONTRACTOR STATUS

The question often arises as to whether someone providing work for a municipality is an independent contractor or an employee. Many areas governed by state and federal law come into play such as wage and hour requirements (including overtime pay), unemployment tax liability, workers' compensation, employee benefits, record keeping requirements and tax withholding. Towns must exercise extreme caution in making the correct distinction between contractor and employee since penalties and sanctions for misclassification can be harsh.

Unfortunately, there is no exact formula or precise listing of rules to which a municipality may refer. A key element is the degree of control you, as the employer, have over how the person gets the job done. While municipalities of course retain the right to expect quality results, day-to-day oversight in how the person achieves those results is not possible without compromising the independent contractor status.

The courts have looked at the totality of circumstances in an employment relationship. The following set of factors can be applied as a guide to making a determination:

- Is there a contract for the performance of specified work?
- Does the worker operate his/her own distinct business?
- Does the worker furnish his/her own facilities and equipment?
- Is the job a special assignment (as opposed to being an integral part of the employer's business)?
- Is the worker paid by the job or project (rather than by the hour)?
- Does the work require special skill?
- Is the work performed without oversight and supervision from the employer?
- Is the employment temporary?
- Does the worker have the opportunity to experience a profit or loss?
- Does the worker depend upon initiative, judgment or foresight in the open market in order to be successful?
- Does the worker also work for other organizations (as opposed to being reliant on only one employer for his/her livelihood?)

The greater the number of above questions that can be answered affirmatively, the more
(Continued on next page)



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Chris Roy (l.) and John Downs (r.), of Downs, Rachlin, and Martin, present VLCT Municipal Assistance Center Manager Dominic Cloud with a grant award from the law firm's Community Fund. The Community Fund was started in 1999 and awards small grants for innovative grassroots initiatives in the arts and education. This year's funding priority was projects designed to stimulate job growth. The \$1,000 grant will be used to support VLCT's upcoming workshop on Local Economic Development Strategies, scheduled for this fall. This workshop will focus on what municipalities can do to attract businesses to their community. For more information on the upcoming workshop, contact Dominic Cloud at 800/649-7915 or dcloud@vlct.org.



INDEPENDENT -

(Continued from previous page)

likely the worker is to be considered an independent contractor.

The Vermont Department of Labor and Industry advises that both state and federal wage and hour laws presume that a worker is an employee unless it can be demonstrated otherwise. The Department suggests the following actions be taken for the town's protection when hiring an independent contractor:

- Make it clear that the municipality is focused on the result and not on exercising control over how and during what hours it is achieved;
- Ensure that the service performed is not part of the usual course of municipal business;
- Obtain evidence that the person operates as

an independent business (for example, the person provides business cards, bills on business stationery, advertises as an independent tradesperson, and/or provides services to several different employers);

- Create a written contract that relinquishes the right to control and specifies that the worker will not be treated as an employee for federal tax purposes;
- Cover in the contract any provisions regarding satisfaction with job results and termination of the relationship;
- Once you have established the existence of a bona fide independent contractor relationship, be sure to file an informational return (1099-MISC) for each independent contractor to whom you pay more than \$600 during the calendar year.

- Jill Muhr, VLCT Human Resources Administrator

STATE/LOCAL COORDINATION

HELPS CITIZENS AVOID FINES AND PRESERVES WETLANDS

The Vermont State Wetlands Office has been dealing with a large number of wetland violations this spring. This is a situation we would like to avoid because once construction has begun in a protected wetland or its 50-foot buffer zone, the cost to the landowner in fines, remediation, and lost time is great – not to mention the damage done to the wetland.

Because of this uptick in the number of violations, the State is redoubling its efforts to enlist the assistance of municipal officials in getting the word out about wetlands regulations and protections. *Let's let landowners know, before they dig the first hole, that their project might affect wetlands.*

Why protect wetlands? They provide essential functions that contribute to water quality, wildlife, fisheries, recreation, education, endangered species, and open space. Replacing functions lost when wetlands are destroyed, like water quality treatment, erosion control, and flood abatement, can be very expensive. Other



functions, such as wildlife and fish habitat, recreational opportunities, and open space can be permanently lost when wetlands are destroyed.

In 1986, the Vermont Legislature recognized the ecological, aesthetic, and economic significance of wetlands, and passed legislation designed to protect the State's most valuable wetlands. 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

(Continued on next page)

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WETLANDS -

(Continued from previous page)

and flood hazard regulations. *This legislation also assigns municipalities a legal obligation to notify the State about developments in wetlands.*

Towns should therefore contact the Wetlands Office directly to review any project that may involve significant wetlands. Municipal officials are often the first contact a landowner has with the regulatory process and can alert an applicant to project constraints early in the process. A District Wetlands Ecologist from the Vermont Wetlands Office 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. The Wetlands Office can also supply town administrators with a town wetland map to assist planners and local landowners with local wetland issues. By contacting the Wetlands Office early on in the permitting process, local landowners can often save the time and expense of mitigating wetland violations as well as help maintain Vermont's ecological, recreational and economic resources.

Please contact the appropriate Wetlands Ecologist, listed below, if a proposed project may impact wetlands.

ADDISON, BENNINGTON, AND RUTLAND COUNTIES

Alan Quackenbush (241-3761)

CALEDONIA, LAMOILLE, AND WASHINGTON COUNTIES

Shannon Morrison (241-3762)

CHITTENDEN COUNTY

April Moulart (241-1418)

ESSEX COUNTY

Carl Pagel (241-3760)

FRANKLIN, GRAND ISLE, AND ORLEANS COUNTIES

Mic Metz (241-3754)

ORANGE, WINDHAM, AND WINDSOR COUNTIES

Erin Haney (241-3773)

- Vermont State Wetlands Office

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Grader. 1985 Caterpillar Model 130 Grader. 4-cylinder, 12' blade with ripper. As is condition. Minimum bid of \$40,000.

Sealed bids to be sent to Danby Town Clerk's Office, P.O. Box 231, Danby, VT 05739 before August 7, 2003. Selectboard reserves the right to reject any and all bids. If questions, please call 802/293-5136.

HELP WANTED

Administrative Assistant. The Town of Proctor, Vermont is seeking an Administrative Assistant to work under the selectboard. This is a comprehensive position to provide

assistance to the selectboard. Specific duties include assisting in programs to develop personnel, labor relations, employee benefits and compensation. Provide general assistance to the selectboard in the development and implementation of town, highway, water and wastewater budgets, policies and programs. Attend planning and zoning board meetings. Attend selectboard meetings and take minutes. Assist in review and implementation of all town ordinances. Candidates should have working knowledge of public administration and municipal government, ability to coordinate activities of others. College degree required. Send resume in confidence to Town of Proctor, Attn.: Richard Horner, Selectboard Chair, 45 Main Street, Proctor, VT 05765 by August 18, 2003.

Calendar

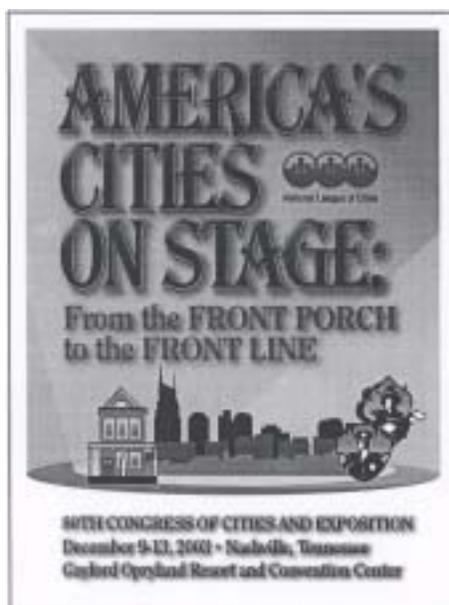
Stevens Advanced Driver Training. Monday, August 11 – Friday, August 15, 2003 (pick one day), Hartness Airport, Springfield. Sponsored by VLCT PACIF for its municipal members, this free, daylong program emphasizes “hands-on” training for better driving. For more information, or to register, please contact Maureen Turbitt, Administrative Assistant, Risk Management, at 800/649-7915 or mturbitt@vlct.org. Please note that the registration deadline is Wednesday, July 23, 2003.

Town Officers' Educational Conferences. Thursday, October 9, 2003, Johnson State College, Johnson; Tuesday, October 14, 2003, Lake Morey Inn, Fairlee; Wednesday, November 5, 2003, Rutland. Sponsored by the UVM Extension Service and a half dozen local government associations, this popular series of educational workshops is held each fall at a variety of sites around the state. Please watch your mail next month for workshop information and registration materials.

Financial Information Specialist. The Town of Berlin, Vermont selectboard is accepting applications from qualified individuals to fill the position of Financial Information Specialist. Candidates must be able to review general ledger accounts for accuracy and prepare journal entries and financial statements. The person selected for the position must attend monthly selectboard meetings, participate in the budget process, and perform related duties as assigned. The successful candidate should possess an accounting degree or five years of experience, knowledge of computers and spreadsheets, experience with NEMREC and municipal accounting, and be familiar with payroll and payroll tax filings. Persons interested in the part-time, contractual position should send their resume to the attention of the Town Administrator, Municipal Office Building, 108 Shed Road, Berlin, Vermont 05602. Applications will be accepted until the position is filled. For further information contact Ray Tanguay, Town Administrator, at 802/223-4405.

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