

# VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

March 2005

## VLCT PACIF OFFERS NEW MEMBER BENEFIT

### HR SENTRY HUMAN RESOURCES SUPPORT

If you are a VLCT PACIF member and have a question about your municipality's human resource policies, practices or procedures, please visit HR Sentry, an on-line human resource library service now offered through VLCT PACIF.

HR Sentry ([www.hrsentry.com](http://www.hrsentry.com)) is provided to all PACIF members at no

additional cost. It is a Web-based system that provides its users with reliable human resources tools and information, organized into eleven different libraries. Users can locate sample human resource forms, policies and procedures, and links to related federal and state laws, regulations and resources

*(Continued on Page Eight)*

## TOWNS SUE OVER EDUCATION FUNDING

Late last month, the towns of Dorset, Killington, Ludlow, Manchester, West Windsor, Williston, Wilmington, and Winhall filed a lawsuit against the State of Vermont to prevent education tax dollars from being spent to support uses they believe are not appropriate under Vermont's education funding laws, Acts 60 and 68.

This lawsuit, and the issues it raises, are important to all towns because this case will determine whether moneys that have been raised by towns through the property tax and deposited in the Vermont Education Fund can be used for any purpose other than those authorized under Act 60. (Editor's Note: This lawsuit was filed in Rutland Superior Court, whose decision will be limited in scope to its jurisdiction. Should the case be appealed to the Vermont Supreme Court, the *VLCT News* will report on its outcome, and the resulting implications for the entire state.)

When first enacted in 1997, Act 60 limited the uses to which moneys in the

*(Continued on Page Thirteen)*

## BOOK REVIEW

### ALL THOSE IN FAVOR: REDISCOVERING THE SECRETS OF TOWN MEETING AND COMMUNITY

*RavenMark, Inc., 87 p., 2005, \$9.95. Special discount for municipal officials: \$6.00 per book, or \$5.00 per book if more than one is ordered; plus postage and handling (\$2.50 for the first book, \$ .50 for each additional book). Order from VIG, 617 Comstock Road, Suite 5, Berlin, VT 05602-9194.*

*All Those In Favor*, by Susan Clark and Frank Bryan, is a gem of a book. At 87 pages cover to cover, this is an entertaining read about a subject which is the basis of local government in Vermont and which extends back in time, as the authors tell us, to Ancient Greece.

Out just in time for Town Meeting 2005, *All Those In Favor* is a call to action, a call

to revitalize Town Meeting, the annual practice of hands on democracy in our towns all around this state.



“Vermonters of 1830 would be astonished traveling through today's Vermont to attend a town meeting. But once inside the school gym or town hall or fire station where the town meeting was held, once the moderator had called the meeting to order, once she had read the words: ‘the people of Craftsbury are warned to be at the Craftsbury Common School on Tuesday, the 4th of March 2004, at

9 in the forenoon to act on the following

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A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

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# LAYER CAKE AND MARBLE CAKE

The eve of Vermont local government's most important day, Town Meeting Day, seems an appropriate time to take a look back through our government's history. As Vermonters prepare to shoulder the responsibility of ensuring that their towns are run prudently and responsively, it is a good time to ruminate on the respective roles of our local, state and federal governments.

When the United States Constitution was written, the division of responsibility

## From the Executive Director

and authority envisioned by the founding fathers was very much like a simple layer cake. The top layer (that of the national government) would be responsible for waging war, regulating foreign affairs and commerce with foreign nations and among the several states, and establishing currency and a postal system. When arguing for the ratification of the Constitution by his own state of New York, Alexander Hamilton, one of the founding fathers, stated how Congress would not have the authority to make laws affecting the punishment of certain crimes, such as murder or theft.

To the states - the second layer - was left everything else, as the U.S. Constitution does not even mention local government. Finally, in state constitutions and laws and, in simple fact and practice, local govern-

ments constituted the bottom layer of the three-layer cake.

Each layer had its own responsibilities, powers and authority to raise revenues to provide the services people desired of government. Interestingly, it was the bottom layer that Mr. Hamilton believed was ripest for government abuses and, hence, the need for a strong central national government.

Due mainly to the states' inability to respond to the tremendous economic dislocation caused by the Great Depression, starting in the 1930s, the federal government began exerting its powers under the commerce clause of the Constitution. It did so directly by establishing Social Security, farm subsidies, and work programs for citizens. Indirectly, it began assuming state responsibilities, including banking reform and regulating the workplace.

The growing national government's role continued in the 1950s under Eisenhower with the establishment of the federal highway administration and the building of the Interstate system, historically an area of government services reserved to the states. States and localities were provided with "urban renewal" grants in aid from the federal government to fight the local blight that was marring the national landscape. The "Great Society" in the 1960s spawned dozens if not hundreds of federal grant-in-aid programs to assist state and local government address almost any and all local priorities. As the government provided more and more services and programs, the size

*(Continued on Page Fifteen)*

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# LEGAL AND REGULATORY NOTES



## GOVERNMENTAL TAKINGS; CHILD LABOR

### U.S. SUPREME COURT CONSIDERS GOVERNMENTAL TAKING FOR PRIVATE PURPOSE

The U.S. Supreme Court will hear arguments this month in the case of *Kelo v. City of New London*, where it will consider whether it is constitutionally permissible for a unit of local government to use its power of eminent domain to further economic development. In particular, the City of New London seeks to create a 90-acre development of commercial and industrial

properties in a portion of the City that has fallen on difficult times. The decision rests on whether the laws of the State of Connecticut enable the City to take, through its power of eminent domain, property that it has deemed necessary to piece together a large commercial park.

Over the years, the New London economy has faltered, while suburban development in outlying areas has occurred at a ferocious pace. One reason the suburbs have grown while cities have not is the availability of open land for development. In an effort to lift cities such as New London out of this difficulty in attracting developers, the Connecticut Legislature enacted an

eminent domain statute which would enable those "distressed municipalities" to assemble numerous small parcels into one large parcel for the purpose of economic development. In particular, the Legislature found that the "acquisition and development" of land needed for economic development "often cannot be accomplished through the ordinary operations of private enterprise at competitive rates of progress and economies of cost," and that aiding municipalities to acquire "unified land . . . areas" for economic development is a "public use and purpose for which public moneys may be expended."

*(Continued on next page)*

## TRIVIA

Last month's question was very popular. Thank you all for sending in your answers!

A crackerjack team from Royalton came in first with their answer. **Jackie Higgins**, Administrative Assistant, **Theresa Harrington**, Clerk/Treasurer, **Leanna Stickney**, Assistant Clerk, and **David Lewis**, Selectperson, knew that three Vermont towns have the same name as a county that they do not reside in: Chittenden in Rutland County, Essex in Chittenden County, and Washington in Orange County.

Here's another bit of trivia to consider:

**When was the first fish and game license issued in the State of Vermont and what was it for?**

Contact us with your answer: VLCT, 89 Main Street, Suite 4, Montpelier, VT 05602, tel. 800/649-7915, fax, 802/229-2211, e-mail, [kroe@vlct.org](mailto:kroe@vlct.org).

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## LEGAL/REG. NOTES -

(Continued from previous page)

Conn. Gen. Stat. §§ 8-186 – 8-200.

A number of other states, including New York, New Jersey, Massachusetts, Maryland, and Georgia, have adopted similar provisions to enable economically distressed urban areas to use their power of eminent domain to assemble numerous parcels of land into unified, developable parcels. The U.S. Congress, which is the legislative body for the District of Columbia, has enacted similar legislation for that jurisdiction. The City of New London seeks to use this power to take a number of properties that it was not able to purchase on the open market. Because of this, the land remains undevelopable as a patchwork of parcels.

The owners of these parcels are seeking to prevent the City from taking their property, arguing that the “public use” clause of the 5<sup>th</sup> Amendment prohibits private property from being taken for economic development, which they contend is not a “public use.”

Vermont municipalities are not likely to be directly impacted by the outcome of this case. Vermont law does not provide muni-

palities with the same sweeping powers of eminent domain. Moreover, there are fewer heavily urbanized areas in this state, and those areas are generally smaller and not as densely developed as those in more populous states. Even though our landscape and legal framework make this issue less germane, the outcome of this particular case will be useful for Vermont municipalities because it will address both the boundaries of governmental takings under the 5<sup>th</sup> Amendment, as well as the proclivities of the U.S. Supreme Court to involve itself in issues which are generally reserved for the states and their respective courts to decide. (“We will not cavalierly impede the States’ ability to serve as laboratories for testing solutions to novel legal problems.” *Smith v. Robbins*, 528 U.S. 259, 275(2001).)

- Brian Monaghan, Attorney, VLCT  
Municipal Assistance Center

## YOUTH RULES!

The U.S. Department of Labor (DOL) launched a public awareness campaign in 2002 regarding child labor called “Youth-Rules!” Following that campaign, the DOL issued new rules under the Fair Labor Standards Act regarding employment of

teens under age 18. The rules become effective February 14, 2005. The revisions are aimed at occupations and work activities deemed too hazardous for children. As you prepare to hire summer help this year, be mindful of some major revisions:

**Driving:** There is limited on-the-job driving that can be done by 17-year olds. Among other requirements, 17-year olds are limited to driving during daylight hours, must use a seat belt, and the driving must be only occasional and incidental to the employment. They may not transport more than three passengers. Driving is prohibited for 16-year olds, even if they hold valid driver’s licenses.

**Roofing:** Those under 18 are prohibited from performing roofing work. The prohibition encompasses all work on or about a roof including work performed in close proximity to a roof. (Such work is permissible only if it is part of an apprenticeship or student-learner program.)

**Hazardous machinery:** 17-year olds are allowed to load, but may not operate or unload, certain waste-material baling and compacting equipment.

Further information, including permissible work hours and types of jobs for 14- and 15-year olds, can be found on the DOL Web site at [www.youthrules.dol.gov](http://www.youthrules.dol.gov) or by calling its toll-free number at 866/4USWAGE. Available for download are an Employer’s Pocket Guide on Youth Employment as well as fact sheets and the child labor regulations section of the Federal Register.

- Jill Muhr, VLCT Human Resources  
Administrator

## 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

## RPC REPRESENTATIVE; SOCIAL SERVICE APPROPRIATIONS; DELINQUENT TAX COMMISSION

***The selectboard is dissatisfied with the town's regional planning commission representative. How can the representative be removed?***

A regional planning commission may be created at any time by the act of the voters or the legislative body of each of a number of contiguous municipalities and upon written approval of the Agency of Commerce and Community Development. 24 V.S.A. § 4341. The commission must contain at least one representative appointed from each member municipality. 24 V.S.A. § 4342. Notwithstanding any contrary provision of the regional planning commission bylaw, the town's representative to the regional planning commission serves at the pleasure of the selectboard. The selectboard can, by majority vote of the entire body, revoke a commission member's appointment at any time. 24 V.S.A. § 4343.

- Jim Barlow, Attorney, VLCT Municipal Assistance Center

***Our town has received a petition for an article to be placed on the warning for town meeting to appropriate money for a preschool in another town. Children from our town attend the preschool. If the preschool is not located in our town, should the article be included in the warning?***

The statutory authority for social service appropriations is found at 24 V.S.A. § 2691. That statute provides, in part, "At a meeting duly warned for that purpose, a town or incorporated village may appropriate such sums of money as it deems necessary for the support of social service programs and facilities *within that town for its residents* (emphasis added)."

In 1987, the City of Vergennes challenged voter-approved appropriations for three regional social service agencies. The City refused to turn over the funds, asserting, among other things, that the

agencies had not shown that the funds would be spent on town residents. The matter went to the Vermont Supreme Court.

Although the City did not raise the issue directly, the Supreme Court noted that 24 V.S.A. § 2691 appeared to be directed to programs and facilities based "within that town" rather than at agencies that extend services to City residents but are based elsewhere. The Court stated that the basis for determining where the service is should be the residents' demonstrated need, not the locale of the agency. To require an agency to be physically present in the City would be contrary to other provisions of the statute empowering the City to seek social services from outside its limits. Under the facts and circumstances of the case, the agencies should be considered to be social service programs "within that town," i.e., within the City of Vergennes. *Addison County Community Action v. City of Vergennes*, 152 Vt. 161 (1989).

Having determined that the regional agencies should be considered "within that town," the issue would seem to have been resolved: a regional social service agency is to be considered within the town if it provides services to residents there. However, a month later, the Court amended the decision to allow the City to require the agencies, as a condition of the receipt of the voter-approved money, to enter into a contract with the City to ensure that the money be devoted to services within the City.

Though not stated, this additional requirement was apparently in response to 24 V.S.A. § 2692, which provides that the legislative body of a municipality making an appropriation to a social service agency "may make a contract with public or private agencies or persons concerning the provision of those services."

What is the import of the amended holding? On its face, it would seem to require social service agencies not located within the municipality to have a contract

with the municipality before they can receive voter-approved appropriations. However, the language of 24 V.S.A. § 2692 is permissive, not mandatory. The statute does not require a contract with a social service agency; it only allows one.

In any case, we would advise that the petitioned article to support a preschool in another town should be included in the warning if town children attend the preschool. Voter-approved appropriations for social service agencies are widespread, commonplace, and authorized by statute. Very often, these agencies are regional in nature and not physically located in the town voting on the appropriation. As the Supreme Court stated, to require the agency to be physically present in the town would be contrary to other provisions of the statute empowering the town to seek social services from outside its limits. Ultimately, if the

*(Continued on next page)*



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## ASK THE LEAGUE -

(Continued from previous page)

article is included in the warning, the voters will decide if this preschool appropriation should be approved.

- Jim Barlow, Attorney, VLCT Municipal Assistance Center

### **Who is responsible for setting the commission owed on delinquent taxes?**

Until April 1, 2005, the collector of delinquent taxes may either charge no commission or charge an eight percent commission on all taxes collected after the expiration of the time fixed for payment of

taxes. 32 V.S.A. § 1674. Often referred to as the collector's fee or penalty, this commission is mandated by statute and confers no discretion on the collector in setting the percent on the amount of the tax.

This law, however, will change for the collection of taxes assessed on or after April 1, 2005. After this date, "the collector may charge and collect from the taxpayer a commission of eight percent on the amount of the tax, unless a municipality votes otherwise." 32 V.S.A. § 1674(2).

While this change does not confer any additional discretion upon the collector, it does with regard to the voters of a municipality. Under the new law, the voters of a municipality will be able to set, by majority vote of those present and voting at an

annual or special meeting, the percentage the collector may charge. This commission cannot exceed eight percent. 32 V.S.A. § 1674(3)(A). Additionally, voters will be able to adopt a grace period or graduated commission schedule for taxes paid within a defined time frame after the date established for payment. 32 V.S.A. § 1674(3)(B). Collectively, these powers will allow the voters of a municipality to decide what, if any, commission will be charged and how it will be assessed.

- Garrett Baxter, Associate, VLCT Municipal Assistance Center

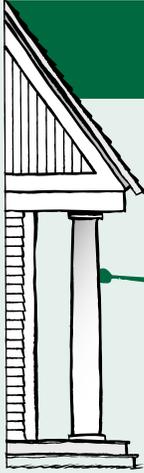
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## HR SUPPORT -

(Continued from Page One)

are prominently displayed. Also available for downloading are PowerPoint training programs and best practice standards.



In addition to this complete selection of human resources tools, HR Sentry allows you to conduct a confidential, comprehensive self-assessment of your municipality's regulatory compliance and simultaneously evaluate your adherence to best practice standards. If deficiencies are uncovered, or if your municipality seeks to improve, HR Sentry supplies multiple solutions for the desired correction or enhancement.

"We believe that this tool will help save our members time and improve their human resources management capabilities," said Patrick Williams, Deputy Director of VLCT Group Services. "We also feel comfortable with the level of expertise displayed by the HR Sentry staff. This Vermont-based company is dedicated to providing its subscribers with the latest and most complete human resources information."

Since HR Sentry became available to members in late January, many who have used the site have been very impressed with its ease of use, the breadth of information



## BLUE HEALTH SOLUTIONS AVAILABLE TO HEALTH TRUST MEMBERS

Blue Cross Blue Shield of Vermont (BCBSVT), provider of health insurance for VLCT Health Trust members, has expanded its Blue Health Solutions health management programs. The programs are open to all Health Trust members, no matter their health status. Their goal is to keep health care costs down by keeping members healthy. However, if a member suffers from a chronic illness or a serious health condition, Blue Health Solutions also offers programs to help him or her learn about and manage the illness. Blue Health Solutions offers:

**Disease Management:** Helps members with chronic illnesses, such as diabetes, asthma and, as of January 1, 2005, heart disease.

**Better Beginnings:** Helps members create a healthy and happy start for their new babies.

**Pharmacy Management:** Offers tiered programs that provide incentives for using generic and "preferred" drugs.

**Member Decision support:** A 24-hour nurse hotline, Web-based resources, self-help manual and wellness programs.

There are also programs designed to reward members for their healthy behaviors such as WalkingWorks, Blue Extras, and EatSmart Vermont. For more information on these and other BCBSVT programs, please visit the BCBSVT Web site at [www.bcbsvt.com](http://www.bcbsvt.com).

## FIREFIGHTING EQUIPMENT GRANTS AVAILABLE

The First Responder Institute, Inc. offers grants of up to \$2,500 to fire departments seeking to purchase life-saving equipment. The Institute is an extension of the Firefighter Combat Challenge, a firefighters' competition. Its grant program was funded by GlaxoSmithKline Consumer Health Care, as part of its "Tums Helps Put Out More Fires Than You Think" advertising campaign. For more information, including an on-line grant application, please visit [www.firstresponder.org](http://www.firstresponder.org).

available, and the time it saves them in dealing with their human resources needs. A few members have even indicated that they are saving money because they can stop subscribing to their human resources-related newsletters.

HR Sentry is simple to use and available to all VLCT PACIF members who have access to the Internet (high-speed or dial-up). By utilizing its on-line training tool, a new user will be up and running in under ten minutes. Each individual user will have his or her own user name and password.

Municipalities who are VLCT PACIF

members, but who do not have Internet access, will still benefit from the HR Sentry system, as it is being used by the staff at the VLCT Municipal Assistance Center (MAC). With access to all the features of the system as described above, the MAC staff will be able to better assist VLCT PACIF members without direct access to HR Sentry.

If you would like to take advantage of HR Sentry, please send an e-mail to Patrick Williams, Deputy Director of Group Services, at [pwilliams@vlct.org](mailto:pwilliams@vlct.org), or call him at 800/649-7915.



## READY, SET, GO!



The 2005 VLCT Catamount Trail Pedometer Challenge begins on February 28, 2005. Similar to last year's very successful Long Trail Pedometer Adventure, the eight-week step counting program encourages VLCT Health Trust members and their families to get out and walk.

So far, 1,200 Health Trust members, plus 600 of their family members, are signed up to participate in the Challenge. Ninety-four municipalities and regional planning or solid waste districts are participating.

This year, the program features eight weekly challenges, which are incorporated into the map. So, attach your pedometer, open Window No. 1 on your map, and start walking! It is a great way to work toward a healthier lifestyle and celebrate the arrival of spring.

For more information, contact your municipal wellness coordinator or Heidi Joyce, VLCT Senior Health Promotion Consultant, at [hjoyce@vlct.org](mailto:hjoyce@vlct.org).

## ON-LINE WORKPLACE SAFETY KIT AVAILABLE

A multi-layer, on-line workplace safety resource that will be helpful to public sector organizations was recently launched by the Nonprofit Risk Management Center. *Workplace Safety Is No Accident: An Employer's On-line Toolkit to Protect Employees and Volunteers* contains a wealth of information, guidance, checklists, links, fact sheets, and on-line resources to help build a safer workplace. By protecting employees' well-being, an organization can reduce the money paid out in health insurance benefits, workers' compensation benefits, and the cost of wages for temporary help.

This on-line resource was created with the support of a grant from the Public Entity Risk Institute (PERI). It can be accessed from PERI's Web site at [www.riskinstitute.org](http://www.riskinstitute.org).

*(Excerpted from the December 2004 issue of PERIScope.)*

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## ALL THOSE IN FAVOR -

(Continued from Page One)

articles,' these Vermonters of long ago would know precisely what to do. Town meeting would be perfectly familiar to them."

In this quote, and throughout their book, Clark and Bryan do an excellent job of placing town meeting in historical context as well as describing how communities in Vermont continue to use it today. While the context has changed, the structure and import of the meeting itself has changed little. And though today it measures up astonishingly well against every other form of participatory government in this or any other country, self-governance by town meeting is in trouble. The authors recognize the reality of this, but also suggest some remedies.

Based on Bryan's research over the years, it is clear that several factors are working against town meeting:

- people's reluctance to speak in public (although the data show that a wide range of people actually do speak up at town meeting);
- populations of more than 5,000 (although not always);
- diminishing authority to decide items of significance at the local level;
- "nothing interesting on the ballot" (often related to above bullet);
- bad weather; and
- lack of transportation - people who can't get there.

The authors explain that "the authority of

our communities was not always taken away. Many times we gave it away. We gave it away because we felt the decline of localism and the rise of centralism (and the loss of democracy that went with it) was inevitable and we were helpless to stop it. *It is not and we can.*"

So let's get to it! Possibly the most important chapter is Chapter 11, entitled "*Ten Things You Can Do Now To Improve Your Town Meeting.*" Is there any intent in this being "Chapter 11," the condition of having sunk so far that you must reorganize with the help of outside arbiters in order to have any hope of succeeding in the future? Here are the things we can change, if not this year, then next:

- involve youth in Town Meeting;
- recognize businesses that provide time off for Town Meeting;
- serve food and "doughnuts around the edges" (or maybe bagels);
- create a "Democracy Matters" committee in your town; and
- consider a representative town meeting if your population is more than 5,000.

There are many more suggestions in this chapter. Some you have heard from your neighbors, some the authors got from your town, and some are altogether new. In fact you will recognize people from your town or the next town over making these suggestions, and that is half the joy of this book. It is about us, by us and for us as much as it is intended to assure the future of participatory democracy.

- Karen Horn, Director, VLCT Legislative and Membership Services

## VCDP AWARDS NOMINATIONS SOUGHT

The Vermont Community Development Program (VCDP) is excited to be celebrating April as Community Development Month. In an effort to highlight the significant community-based initiatives and leadership that help improve the quality of life in Vermont communities, the Department of Housing and Community Affairs (DHCA) will be recognizing all VCDP Implementation Grant and Access Modification projects completed in the 2004 Program year. Additionally, DHCA will honor the most creative and highly effective projects of the Implementation and Access Grants completed in 2004 by soliciting nominations from municipalities, regional organizations, project partners, and private citizens for awards in four categories: economic development, housing, public facility/public service, and access modification.

**A municipality may nominate itself.** A committee comprised of DHCA staff knowledgeable in the community development field will judge all nominations. Governor Douglas will announce the winners at an awards ceremony tentatively scheduled for April 19, 2005 in the State House.

For further information and to obtain a complete listing of VCDP projects eligible to be nominated and a nomination packet, please contact Cindy Blondin at 802/828-5219 or [cindy.blondin@state.vt.us](mailto:cindy.blondin@state.vt.us). **Nominations must be postmarked (or e-mailed) by March 22, 2005.**

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# Tech Check



## FINDING ANTIDOTES TO SPYWARE

*(Editor's Note: This article was written in June 2004. The solutions discussed are still effective, but it is worth noting that the anti-spyware software market is expanding and there may be new products available that are worth consideration.)*

I often joke that before I became involved in technology I thought a "server room" was the place restaurants trained waiters. Likewise, the term "spyware" to me conjures images of one of James Bond's gadgets.

In truth, spyware is software installed on your computer without your knowledge or permission that collects information about you and your computer system, and transfers that information back to the spyware company.

Spyware is usually packaged with legitimate software you might download from the Internet or from an e-mail message. Or, you might inadvertently install spyware by trying to close a window or pop-up ad on the Internet. Many spyware companies create window ads that trick users into downloading spyware by making the download button look like an "X" close button. Spyware is often attached to e-mail greeting cards. Even the most sophisticated computer users fall prey to spyware (sometimes more so because they use the Internet often and are less afraid of free downloads).

There are a number of reasons for spyware. Manufacturers of free software

programs will sell ad space as a way to make a profit. The "adware" that gets installed along with the program can track your computer use as a way to target the ads it pops up for your review, or it might survey your computer system to predict what other purchases you're likely to make.

Some spyware programs log your keystrokes. They can track use of e-mail, visited Web sites, accessed files, and system passwords. The information is then encrypted and sent back to the spyware company. There are also spyware programs that can hijack your computer and change the way you intend to use it. For instance, a spyware installation might change the way your Internet searches connect, so that when you type in a Web site address you are directed instead to an ad site or even to a pornography site.

It's hard to imagine a legitimate purpose for this sort of spyware, particularly when it's installed without your knowledge. That's why groups like the Federal Trade Commission (FTC) are reviewing issues related to spyware. But just like e-mail viruses and spam, spyware can be hard to track and almost impossible to regulate. For all practical purposes, protection against spyware will fall to computer users and system managers.

Here are some ideas to help control spyware on your computer and in your municipality. As always, it's important that

*(Continued on next page)*

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## COMPUTER REUSE AND RECYCLING RESOURCES

The Vermont Agency of Natural Resources recently updated its list of Vermont organizations and solid waste districts that accept old computer equipment for reuse or recycling. You may view the list at <http://www.anr.state.vt.us/dec/wastediv/R3/computers.htm>.



## TECH CHECK -

(Continued from previous page)

every municipal employee using a computer understands these issues and the rules for avoiding risk.

- Never download anything from popup windows or unknown Web sites.
- Do your research before installing free software of any kind, even if it seems harmless.
- Be suspicious of any program or software that contains flashing advertisements.
- Read licensing agreements for free software carefully (and all software, for that matter).
- Install firewall products on all computers to monitor when the system tries to access the Internet (spyware programs transmit information back this way).
- Use a spyware detection program, but be careful about downloading free spyware software (some of these are actually spyware in disguise).

## TREES FOR LOCAL COMMUNITIES GRANTS

The Urban and Community Forestry Program of the Vermont Department of Forests, Parks and Recreation is pleased to announce the availability of competitive grant money. Up to \$65,000 will be available in 2005 through the Trees for Local Communities (TLC) Cost-Share Grant Program. This is a 50/50 (state/local) match program.

**Purpose.** TLC Grants provide funds to communities for the purpose of developing and implementing local urban and community forestry programs.

**Who's Eligible.** Grants may be awarded to municipalities, community tree boards, local volunteer organizations, educational institutions, civic groups and approved nonprofit organizations.

**Timetable.** Applications must be postmarked by **March 21, 2005**. Applicants will be notified of funding approval by April 21, 2005. Money will be available for projects in the Spring of 2005. Projects must be completed by June 30, 2006.

Applications are available at [www.vtcommunityforestry.org/grants.htm](http://www.vtcommunityforestry.org/grants.htm) or call 802/241-3677.

- Watch your computer's performance. Spyware can change settings, create slow performance, and generally make the system unstable. These changes can be cumulative, so one day you might not notice anything and a week later you could have a sluggish computer.

A number of software tools identify and remove spyware - some are packaged as part of a virus protection tool. One of the dilemmas in finding and removing spyware is that each of the software options addresses a different part of the problem. No single software package finds it all. Some of the options you might consider include Symantec, MacAfee, SpyCop, or SpySweeper. There's also SpyBot, which is a free Internet tool that does a decent job if you're just starting out or have only a couple of computers to scan.

At its least threatening, spyware can be a nuisance that launches pop-up ads at a rocket pace. There are some 15,000 well-known spyware programs and the number is growing every day. It's not unheard of for a mid-level computer user (in terms of frequency of use and sophistication) to

collect 10 to 20 new spyware programs each week.

On the other end of the spectrum, spyware presents a significant danger to computer users and municipal networks. Spyware could be the way a hacker finds passwords to the municipality's network drives, used to view and transmit private personnel or police data, or a method to hijack the city's system.

While there is some hope that agencies like the FTC will find ways to help fight against computer intrusions, the best available defense is knowledge and risk avoidance. By combining technology tools such as spyware protection and firewall products with good computer user education, municipalities can avoid a good share of the dangers.

- Ann Gergen, Technology Services Director,  
League of Minnesota Cities

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*Minnesota Cities*, June/July 2004.)

## A Familiar, Friendly Face Serving Your Mortgage Needs

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the signs of a healthier vermont.



## EDUCATION FUNDING -

(Continued from Page One)



**When Vermont's children receive the coverage, care, and comfort they deserve, these are signs of a healthier Vermont.**

Vermont's ambulances now come equipped with new tools that help provide comfort and treatment to children—teddy bears. Blue Cross and Blue Shield of Vermont and The Vermont Health Plan learned that emergency crews use such toys to open the lines of communication between EMTs and children, who respond positively to the familiar comfort of a teddy bear. Teddy bears for children, the most innovative health plans, and the largest provider networks in the state—these are signs of a healthier Vermont. To learn more about The Vermont Health Plan, our teddy bear initiative and other programs, visit [www.bcbsvt.com](http://www.bcbsvt.com).



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Education Fund could be put, which included:

- 1) payments to school districts and supervisory unions for the support of education;
- 2) short-term borrowing costs to meet Education Fund cash flow requirements; and
- 3) payments required by the income sensitivity provisions of the Education Funding Law. 16 V.S.A. § 4025(b).

That same statute also provides that if moneys are withdrawn from the Education Fund for any purpose other than those authorized by the education funding law, the entire state education property tax would be repealed. Last year, the Legislature's appropriations act (Act 122) appropriated \$499,999 directly from the Education Fund for adult education and literacy services; these funds will not be paid to school districts and supervisory unions.

The plaintiff towns in this case argue that the Legislature's act of appropriating money to a source other than school districts and supervisory unions should cause the state education property tax to be repealed in its entirety. They base their argument on the fact that the law itself states that this would be the case if education fund moneys were used for any reason other than what was incorporated in the law at its inception. While it is unlikely that a court would declare the entire education funding law invalid because of this appropriation, the lawsuit shines a light on the Legislature's decision to spend education tax dollars on something that is technically not permitted by law.

This is a practice that began last year with the withdrawal that prompted this suit, and is continuing this year with proposals in the Governor's FY06 budget to withdraw over one million dollars of education fund monies for uses other than those outlined in Act 60. (For more information, see the *VLCT Weekly Legislative Reports* 2, 3, and 4.)

This complicated issue will continue to play out in the judicial, legislative and political arenas. VLCT will continue to monitor it and keep you informed.

*- Brian Monaghan, Attorney, VLCT  
Municipal Assistance Center, and Katherine  
Roe, VLCT Communications Coordinator*



# ATV REPORT ISSUED

*(Editor's Note: The Governor's All Terrain Vehicles (ATV) Collaborative recently issued its final report. The VLCT News asked the League's municipal representative on the Collaborative, Highgate Administrator Larry Kempton, to comment on the report's findings, and on his experiences representing VLCT on a state-wide commission.)*

A wide range of perspectives was represented on Governor Douglas' All Terrain Vehicles Collaborative when it was created in early 2004. Beside myself, the Collaborative included ATV enthusiasts (Vermont ATV Sportsman's Association, or VASA), snowmobile riders (Vermont Association of Snow Travelers, or VAST), landowners, conservation organizations, federal and state agency land managers, and public safety and law enforcement officials.

I also worked closely with former VLCT Legislative Associate Todd Odit, whose advocacy areas of transportation and public safety included ATV issues. Charged with representing the interests of Vermont municipalities, Todd and I focused on those ATV concerns that directly affected Vermont municipalities: access to municipal lands and rights of way; law enforcement; and licensing. We were gratified when the Collaborative concurred unanimously with our positions in these areas.

Current Vermont law allows ATVs on public highways that are not being maintained during snow season (typically, Class 4 roads) and on highways opened to ATV travel by the local governing body and so posted by the municipality. **The Collaborative proposed that the Legislature leave the discretion to open or restrict access to town roads and legal trails to the appropriate municipality.** It reasoned that each municipality should be able to develop its own process for evaluating and deciding what, if any, municipal rights of way will be open to ATV use.

Along with the authority to control access to all municipal rights of way would come the responsibility to monitor and enforce systems to address problems caused by ATV use. **The Collaborative recommended that VASA be charged with enforcement of ATV laws and rules along its trail network, which could include sections of certain town highways, with selectboard approval. Towns would need to provide enforcement for any ATV traffic on town highways not part of a VASA trail.**

A great deal of our discussion centered on appropriate public safety and law enforcement. Current law provides for the following enforcement officers for ATV laws and rules: sheriffs, deputy sheriffs, constables, police officers, states attorneys, motor vehicle inspectors, state game wardens and state police. **The Collaborative proposed that there be a coordinating ATV law enforcement agency, which the Vermont Department of Fish and Wildlife volunteered to fulfill.** By far the largest portion of the Collaborative's proposed budget was to properly fund law enforcement efforts.

**The Collaborative's recommendations also included a mandatory rider safety and ethics course, a mandatory helmet law, appropriate machine sizes, and age restrictions.**

Currently, ATVs are registered only every two years. ATVs operating on the owner's property, on other privately-owned land with the owner's written consent, in a ski area for maintenance work, or for official federal, state or municipal use are not required to be registered. It is estimated that 88% of the ATVs in Vermont are unregistered.

**The Collaborative recommended that all ATVs be registered every year.** This would aid in identification of ATVs for law enforcement purposes as well as help fund the infrastructure needed to establish a statewide ATV trail network. Those ATVs

used solely for farm or forestry purposes would pay only a minimal fee.

The most contentious area of discussion was the use of ATVs on public land. The Collaborative's entire report was approved by consensus, except the section on public land ATV use, where two minority viewpoints were presented.

Vermont is 85% privately owned, meaning that any extensive ATV trail network will have to be built predominately over private land. **It was the position of a majority of the Collaborative that public land (municipal, state and federal) could be appropriately used as trail linkages, connecting corridors or trail head facilities, only after established review procedures are followed and public input is obtained.** Interestingly, the two minority viewpoints expressed opposite opinions on access to public lands by ATVs. The Vermont Natural Resources Council stated that opening public lands to ATV is currently not appropriate. VASA's opinion is that public lands must be made available within acceptable criteria.

Our report and recommendations were presented to Governor Douglas on December 22, 2004. After the Governor reviews the document, he will offer his proposal to the Legislature, hopefully sometime this session. The entire "ATV Collaborative Report and Recommendations" can be viewed at <http://www.aot.state.vt.us/dmv/>.

*- Larry Kempton, Administrator,  
Town of Highgate*

## SERVING YOUR TOWN, YOUR MUNICIPAL ASSOCIATION, AND YOUR STATE

At about this time last year, I was contacted by the VLCT staff to see if I would be interested in representing VLCT on Governor Douglas' All Terrain Vehicles (ATV) Collaborative. As Town Administrator in Highgate, ATV violations and accidents have been a persistent challenge to our municipal government and local law enforcement agencies. In fact, Highgate had become notorious based on reports of renegade ATV operators and several ATV accidents, including a fatality in 2002.

With the blessing of the Highgate selectboard, I agreed to take part in this effort to look into the many issues surrounding ATV use in Vermont and to, hopefully, recommend solutions to the Governor.

The Collaborative first met on March 4, 2004. My commitment lasted through December 22, 2004, when we presented our eighteen-page "Report and Recommendations" to the Governor. I attended sixteen meetings of the entire Collaborative and special committees, plus four public hearings held around the state.

This was not my first stint on a statewide commission whose purpose was to gather all the "stakeholders" together and generate some positive suggestions for action in a particular area. I have represented VLCT on the Vermont Rural Fire Protection Task Force since 1999. In 2001, I served as VLCT's representative on a legislative summer

*(Continued on Page Sixteen)*



## LAYER CAKE -

(Continued from Page Two)

of the cake got larger, and with the federal government's growing role, the clearly delineated layers of cake ceased to be. It began to morph into a marble cake with swirls of the federal layer reaching far down into the layers formerly comprised solely of state and local authority and revenue-raising.

Now we have federal mandates on states, cities and towns that require action in accordance with federal law at state or local taxpayer expense (access to local programs for people with disabilities, for example). We have "fundates" that require states and/or local governments to perform certain functions in return for limited amounts of federal dollars (the 21-year old drinking age is one example). We have pre-emptions by the federal government precluding towns from enforcing local zoning on certain facilities or states from taxing sales that happen on the Internet. We have federal and state governments that start programs as "fundates" and slowly turn off the spigot of funds such as the federal "No Child Left Behind" law. Now, we hear of President Bush's budget proposal that will limit federal discretionary funding increases to 2.1%, far below the rate of inflation, and will eliminate funding for over 150 domestic federal spending programs. That comes on the heels of Congress failing to renew a transportation bill last year, a bill on which our state and local governments have become dependent.

Not only that, but the federal government has enacted, since 1988, thirty-six federal statutes for which the penalty is death. Even Mr. Hamilton, an avowed supporter of a strong central government, would be surprised at the degree to which the federal layer has swirled down throughout the cake.

It certainly seemed like a good idea to get the federal government involved in domestic policy, at least when it started. Today we have a mish-mash of policy-making and tax raising that leave citizens with high expectations and no one to account for the actions or inactions of our governments. Just listen to your school boards, state legislators, teachers' unions, and federal officials talk about the lack of good outcomes from our school systems, even as the systems' costs escalate. Everyone points the finger at someone else. Federal and state officials say it is not their problem, as they don't approve local budgets, hire teachers, or agree to union contracts. School board members

## Classifieds

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### HELP WANTED

**Town Manager.** The Town of Fair Haven, Vt. is seeking applicants for the position of Town Manager. Fair Haven is a small community located in western Vermont on the New York State border. It is the eastern gateway to Vermont on Route 4 and also intersects with Route 22A to the north and south. Duties include

acting as purchasing agent, supervising daily activities, accounting for all departments and town construction, preparing the annual general fund and water and sewer budgets, acting as commissioner for the police and volunteer fire departments, making recommendations to the selectboard, directing town personnel practices, collecting taxes and writing grants. Qualifications: graduate of accredited college with public or business administration and Master's degree in public administration desirable; working knowledge of civil engineering, personnel administration and local government administration, accounting and budgeting. Send cover letter of application and resume **by March 11, 2005** to: Selectboard chair - Town Manager Search, 3 North Park Place, Fair Haven, VT 05743. (2-3)

point to a growing list of mandates delivered from on high with no regard as to how they will be paid for or how they fit into an effective plan for learning.

In many areas, the entrance of first the state and then the federal government into the responsibilities of local government has been appropriate - particularly in the area of addressing equal rights where the lower levels of the cake could not or would not act. However, the power of the purse strings has turned out to be a mixed blessing for states and local governments. Perhaps the federal government's current fiscal woes will bring some clarity back to the roles and responsibilities of the three levels of government. We can hope that when the knife falls on the federal funds, it also falls on the federal mandates, "fundates," and pre-emptions, leaving state and local governments the clear ability to fend for themselves. As Town Meeting demonstrates, we in local government are fully capable of accepting the challenge. We have been balancing budgets and delivering essential governmental services for centuries, and would like to continue to do so for a long time to come.

- Steven Jeffrey, Executive Director, Vermont League of Cities and Towns



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## Calendar

For more information about the following workshops or events, please contact Jessica Hill, VLCT Conference Coordinator, tel., 800/649-7915; e-mail, [jhill@vlct.org](mailto:jhill@vlct.org). Or, visit [www.vlct.org](http://www.vlct.org), select the Calendar, and select a workshop.

### Planning and Zoning Series #3: Conflicts of Interest & Rules of Procedure.

Thursday, March 10, 2005, Vermont Interactive Television sites throughout the state. Sponsored by the VLCT Municipal Assistance Center and your local regional planning commissions. This evening workshop will focus on how local development review bodies can adopt rules of procedure and conflict of interest policies.

### Town Health Officers Workshop.

Thursday, March 16, 2005, Suzanna's Restaurant, Berlin. Sponsored by the VLCT Municipal Assistance Center. This annual workshop will focus on general topics such as the authority of the health officer and the process for issuing health orders, as well as timely topics, such as septic regulations.

**Selectboard Fundamentals.** Saturday, April 2, 2005, Dover Town Hall, Dover. Sponsored by the VLCT Municipal Assistance Center. This new workshop will take place on Saturday. The day-long session will cover the statutory and practical elements of meetings, the role of the chair, interaction with other independent officers, and essential skills for dealing with the public and functioning well as a board.

### SERVE -

*(Continued from Page Fourteen)*

study committee to review and recommend improvements to the state's Class 2 Highway Reconstruction Grant and the Structures Grant programs.

In 2002, I was appointed by Governor Dean to represent VLCT on the Chapter 117 Committee. Its report to the Legislature became the basis for H.175, the local permit reform bill passed by the Legislature and

signed into law by Governor Douglas in 2004.

Serving on these types of policy review committees takes a big commitment of time and energy. As a Town Administrator, I needed the approval and support of my local selectboard, which I gratefully received. Time away from my office can be substantial, but not overwhelming. Most study committees meet only monthly.

It has been important to remember that I was representing the Vermont League of Cities and Towns and the varied interests of its entire 246-town membership. To do this effectively, communication with the VLCT staff must be ongoing and direct.

The benefits have been substantial. There is a terrific feeling of accomplishment to have been a part of an effort that is bigger than yourself, that will hopefully benefit not only your community, but the broader interests of all towns and the state in general. Associating with experts of various backgrounds from across the state is an incredibly enriching experience. Friendships developed through these types of collaborative efforts are deep and lasting.

I would recommend the experience!

*- Larry Kempton, Administrator,  
Town of Highgate*