

VLCT NEWS



A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

October 2012

INCREASING EMERGENCY PREPAREDNESS ONE TOWN AT A TIME

AMERICAN RED CROSS LOCAL DISASTER SHELTER INITIATIVE GETS UNDERWAY

In response to Tropical Storm Irene, the Red Cross opened and staffed 13 large-scale regional shelters, but received requests from over 30 communities that sought to open their own, smaller shelters. Some of these requests came to us in the days preceding the storm, but others were received while Irene's winds and rain were washing out roads and cutting off access to towns. The Red Cross was able to respond to many but not all of these community requests.

Some fresh thinking was needed to allow the Red Cross to help communities reach that next level of emergency preparedness. The result is a plan to transform how the Vermont & the New Hampshire Upper Valley American Red Cross works with cities and towns. Local Red Cross officials created the Local Disaster Shelter Initiative, which empowers communities to open local Red Cross shelters quickly and independently.

(continued on next page)

PACIF Members

Your 2013 Renewal Application is due back to the PACIF Underwriting team by Friday, October 12, 2012. See the RMS Calendar on page 11 for details.

REQUIREMENTS OF THE SINGLE AUDIT

Towns that are starting to wind up their response to the damages inflicted by Tropical Storm Irene need to be aware of one critical detail – the Single Audit Act. **All non-federal entities that expend \$500,000 or more of federal awards in any fiscal year are required to obtain an annual audit of the entire entity in accordance with the Single Audit Act and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."**

One of the main objectives of a Single Audit is to determine if the entity has complied with direct and material compliance requirements of the federal programs awarded to it by the federal funding agency. In addition to conducting an audit of the specific

requirements of each program, a Single Audit is intended to determine if the town has a financial accounting and reporting system that would ensure that financial reports prepared by the town fairly present and properly report the activities of federal programs.

As a result, the scope of a Single Audit is more substantial than just an audit of federal programs. A Single Audit is conducted in accordance with generally accepted government auditing standards (GAGAS) and includes an audit of the entire operations of the town. In the various reports that must be submitted, auditors must present an opinion on the fairness of the financial statement presentation, a report on internal controls, and

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LEGAL AND REGULATORY NOTES



Brief updates on Vermont's changing legal and regulatory environments

U.S. District Court Affirms Constitutionality of Vermont's Uniform Water and Sewer Disconnect Statute

Last July, the U.S. District Court for the State of Vermont ruled in a case that received widespread media attention for the victory it purportedly garnered for tenants' rights, but which in reality gave tenants no more rights than they already had under State law. *Brown v. City of Barre, Vermont*, 2012 WL 2873664

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EMERGENCY PREPAREDNESS

(continued from previous page)

With the intent of combatting the problems created by storm conditions, road conditions and the availability of trained regional volunteers, this approach adds a local component to existing Red Cross sheltering capacity.

The Red Cross in Vermont and New Hampshire's Upper Valley remains committed to being the first line of disaster sheltering support to the people of our region. The Local Disaster Shelter Initiative, however, recognizes the realities and unpredictable nature of disasters. The goal of the initiative is for all participating towns – by receiving training and material resources provided by the Red Cross – to be able to open and sustain a disaster shelter for up to 72 hours when outside assistance is either unavailable or delayed.

All of Vermont's 251 cities and towns are eligible to participate. A community that receives the training and material resources (estimated at \$3,500) will be taking an invaluable step toward a level of preparedness that meets today's realities.

As part of the Local Disaster Shelter Initiative, the American Red Cross will:

1. Provide each participating community the cots, blankets, water, emergency radio, lighting, signage, volunteer vests, and training materials necessary to open a community shelter and be self-sufficient for up to 72 hours.

2. Train local volunteers to open, staff, and manage the shelter.
3. Review existing shelter agreements and facility surveys and establish new ones where appropriate.

Participating communities will:

1. Provide an accessible site to store the materials and identify a shelter site, if one does not already exist.
2. Identify the 10-20 volunteers necessary to open and staff their local shelter and help to schedule a date for Red Cross staff to provide a half day of training.
3. Commit to "drill" their shelters once annually and report in their town or city annual reports of the success of the training and drills.

With the support of several forward-thinking donors, sufficient funds were raised to allow the Red Cross to kick off the Local Shelter Disaster Initiative just 12 months after Irene struck. Now, with our first community recently trained, it is time to kick the implementation of this program into high gear.

The Vermont & the New Hampshire Upper Valley American Red Cross would like to hear from you. Please contact me at the Red Cross (larry.kupferman@redcross.org or 802-660-9130, ext. 113) to learn more, to start implementing this initiative in your town, and to ensure that Vermont is indeed stronger as a result of Irene.

*Larry Kupferman,
Community Shelter Coordinator
Vermont & the New Hampshire
Upper Valley American Red Cross*

VERMONT STATE INFRASTRUCTURE BANK LOAN FUNDS

ARE AVAILABLE THROUGH VEDA

Jointly operated by VEDA and VTrans, the Vermont State Infrastructure Bank has low-interest loan funds available for transportation-related projects that enhance economic opportunity and help create jobs. Municipalities, RDCs, and certain private sector companies may qualify for financing to construct or reconstruct roads and bridges, make safety improvements such as highway signing and pavement marking, make operational improvements such as traffic control and signal systems, and construct rail freight and intermodal facilities.



**LEARN MORE AT WWW.VEDA.ORG
OR BY CALLING 802-828-5627.**



BARK FOR YOUR PARK



Last spring, PetSafe, a company that develops and sells pet behavior and containment products, sponsored a contest in which three winners would receive cash awards to build a community dog park. The “Bark for your Park” rules were simple: once your town finds and approves land for the park, get people to vote online for it by enticing them with an entertaining video. The awards were \$100,000 and \$25,000 for the winner and runner-up, respectively, plus another \$25,000 for the town with the highest percentage of votes to population. With 31,105 votes, the Town of Derby (pop. 4,621), won that award, the “Bark from your Heart!”

The video was the brainchild of Derby

Zoning Administrator Bob Kelley, though he’s quick to share credit with his wife – not to mention their dog, Marshall, who starred in the video. (Watch it at www.youtube.com/v/jKEjkcjgjpUY.) The voiceover was supplied by an Australian accented friend of the family.

The award greatly helped fund the park’s construction, though the town supplemented the prize money with bake sales and raffles, plus area businesses donated money, services, and equipment. Along with the award, PetSafe also contributed agility equipment such as tunnels and jumps. The 1½-acre park will include small plastic pools for dog paddling and poop stations for those occasions when a fire hydrant is unavailable.

All of the land – which a year ago was an overgrown forest – has been cleared and the well has been drilled. Assuming all of the park’s 1,200 feet of fencing is erected on schedule, Derby will have the Northeast Kingdom’s first fenced-in dog park when it officially opens on October 6.

Unless someone volunteers to plow it in

the winter, the park will be open only during the spring, summer, autumn, and Mud Season. But that’s still reason enough for Derby area canines to celebrate. (Arf!)

*David Gunn
VLCT News Editor*



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THE VALUE OF PACIF

PACIF members often view PACIF as a sole source provider for their property, casualty, and workers' compensation risk management needs and most choose to renew in the program each year. Some members occasionally seek alternative proposals to fulfill a fiduciary responsibility, and others are actively courted by insurance agents. Historically, PACIF members who do take a quote from a commercial insurance company and who carefully weigh the relevant factors decide to stay with PACIF.

The most common reason for staying with VLCT PACIF is its comprehensive nature, encompassing coverage, training, and support. Moreover, having a single coverage document, website, and phone number for property and casualty and workers' compensation coverage saves time

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THE VALUE OF PACIF MEMBERSHIP CANNOT BE MEASURED IN DOLLARS ALONE, BUT DON'T JUST TAKE OUR WORD FOR IT! HERE IS WHAT SOME MEMBERS HAVE TOLD US.

From a new PACIF member

"In 2011, after being with a commercial insurer for more than 30 years, we went out to bid and chose PACIF because we could save money, increase coverage in some areas, and get extras such as PACIF Online University, loss control programs, and HR Sentry. Routine things like adding a vehicle have been easy and quick, and we are using the extras quite aggressively. The Online University has been a great tool for training our hydro plant staff in OSHA regulations: since they can study at their own pace whenever they have a bit of downtime, we avoid the additional costs and effort of training them off site. And because we have a police department, we also gained access to all of the Model Law Enforcement Policies, which was a huge benefit for us."

Lynn Paradis, Assistant Village Manager and Controller, Village of Swanton

On the usefulness of promoting safety

"I appreciate that PACIF's Workers' Comp Rewards program required

us to thoroughly examine our safety culture. It is difficult to quantify the value of safety until someone gets hurt. Skimping on training, equipment, safety gear, etc., wears down morale and leaves employees vulnerable to injuries. I have to believe that staff that is well trained and well equipped with the proper PPE [personal protective equipment] and the materials needed to perform their job, feel more secure not only that management is watching their backs but in their own ability to do their job and do it well. When an employee is injured on the job, it is not only the job that suffers, it is co-workers and the home life of the injured employee. Also, with well trained, prepared employees, the lost time is minimized. This has value for management and staff."

Katie Johnson, Business Manager Addison County Solid Waste Management District

On underwriting

"Pam, I just looked over your attachments. Thank you for the extra effort! The

table in particular nicely covered a couple of foggy points for me. ... I really appreciate the service that VLCT has given my Town."

Sandra R. Ferver, Clerk/Treasurer Town of Worcester

On the PACIF Equipment Grant Program

"Thank you for awarding the Town of Hinesburg PACIF's 50-50 matching grant for the purchase of a new trench box for our water/wastewater department. This is a much needed piece of safety equipment that will be put to wide use in Hinesburg. We have also restarted our Safety Committee with the help of Chris LaBerge. Thank you again for all the work you and your colleagues at VLCT do on our behalf."

Joe Colangelo, Town Administrator Town of Hinesburg

"Without the financial support of this program, we would not have been able to purchase these [roadwork] signs at this time. We truly appreciate VLCT/PACIF's support of our efforts to improve the safety of the work we do on our rural roads."

The Selectboard Town of Benson

Fall is the season of renewal for school, work and ... INSURANCE!

October is the ideal time to prepare for year-end insurance renewals because reviewing your coverages and considering how to position your municipality for the best possible outcome deserves time and careful attention.

VLCT's three Trusts offer municipality-focused products and services that provide the best value proposition for Vermont local governments. Invite your Member Relations representative or a member of VLCT's Loss Control or Underwriting team to your next meeting to explain ways you can optimize your spending and put the League's vast array of Risk Management resources to work for your municipality.





2013 HEALTH TRUST PAPERWORK PRE-PLANNING

It will soon be time for VLCT Health Trust members to renew their coverage for 2013. When all carriers have published their rates for small groups (49 or fewer employees), we will notify those members by mail, providing all the information they will need. Member Relations staff will work personally with each large group (50 or more employees) to develop quotes for their 2013 renewals.

Below are instructions that small groups will need whether they are current members or enrolling anew in the Health Trust. As you review 2013 rates and consider your options, please keep in mind two important points:

- Small group rates are the same to all Vermont employers, yet not all sources offer the many benefits and conveniences that the Health Trust provides for the same cost, and
- Any Health Trust group plan change or new group enrollment paperwork is **due by December 1st** in order to assure coverage beginning on January 1, 2013.

IF YOUR GROUP IS RENEWING ITS CURRENT PLAN AS IS WITH NO CHANGES:

- For groups enrolled in BCBS, once you have reviewed the new rates and decided not to change plans, please notify Kelley Avery via email at kavery@vlct.org that your group will remain in your current plan.
- For groups enrolled in MVP, please return your renewal paperwork directly to Heather Blackman at MVP Health Care, 66 Knight Lane, Suite 10, Williston, VT 05495, along with a copy of your most recently completed C-101 (Employer's Quarterly Wage and Contribution Report). In addition, please email Kelley Avery at kavery@vlct.org that your group will remain in your current plan.

IF YOUR GROUP IS SWITCHING PLANS BUT STAYING WITH YOUR CURRENT CARRIER:

- For groups enrolled in BCBS, mark the new plan on your renewal paperwork and submit it to Kelley Avery at VLCT for processing – via fax to 802-229-2211 or scan and email to kavery@vlct.org. Depending on which plan you switch to, **you might need to complete new enrollment forms for each subscriber in your group and designate a primary care physician for these subscribers and any dependents**, and compiling this additional paperwork tends to take extra time. Please

contact your Member Relations Representative or Kelley Avery at 800-659-7915 for assistance.

- For groups enrolled in MVP, indicate the new plan on your renewal paperwork and submit it to Kelley Avery at VLCT along with a copy of your most recently completed C-101 (Employer's Quarterly Wage and Contribution Report) – via fax to 802-229-2211 or scan and email to kavery@vlct.org. Depending on which plan you switch to, **you might need to complete new enrollment forms for each subscriber under your group and designate a primary care physician for these subscribers and any dependents**, and compiling this additional paperwork takes extra time. Please contact your Member Relations Representative or Kelley Avery at 800-649-7915 for assistance.

IF YOUR GROUP IS ENROLLING IN A BCBS DIRECT OR BCBS-AIVIS PLAN (FOR THE FIRST TIME OR SWITCHING FROM MVP):

- Despite the instructions in the enrollment kit, you *must* mail your completed enrollment paperwork in its entirety to Kelley Avery at VLCT's office address of 89 Main Street, Montpelier, VT 05602. You may also fax it to 802-229-2211 or scan and email it to kavery@vlct.org.
- With the enrollment paperwork, enclose a check made out to BCBS of Vermont for your first month's premium.
- After your 2013 enrollment is complete, you will conduct all subsequent payment, billing, and subscriber updates or changes directly with Blue Cross and Blue Shield of Vermont at its Montpelier post office box.

IF YOUR GROUP IS ENROLLING IN A BCBS-VACE PLAN (FOR THE FIRST TIME OR SWITCHING FROM MVP):

- Your group must also become a member of either the Vermont Chamber of Commerce or a local chamber that is a member of VACE. This is your responsibility, but you will find helpful links under the VACE enrollment kit on our Health Insurance webpage.
- Despite the instructions in the enrollment kit, you *must* mail your completed enrollment paperwork Kelley Avery at VLCT's office address of 89 Main Street, Montpelier, VT 05602. You may also fax to 802-229-2211 or scan and email to kavery@vlct.org.
- With the enrollment paperwork, enclose a check made out to VACE for your first month's premium.
- After your 2013 enrollment is complete, you will conduct all subsequent payment, billing, and subscriber updates or changes directly with VACE.

IF YOUR GROUP IS SWITCHING TO OR NEWLY ENROLLING IN AN MVP PLAN:

- Despite the instructions in the enrollment kit, you *must* mail your completed enrollment paperwork in its entirety to Kelley Avery at VLCT's office address of 89 Main Street, Montpelier, VT 05602. You may also fax to 802-229-2211 or scan and email to kavery@vlct.org.
- After your 2013 enrollment is complete, you will conduct all payment, billing, and subscriber updates or changes directly with MVP.

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LEGAL AND REGULATORY NOTES



PUBLIC RECORDS ACT EXEMPTION; JAM GOLF; POLICES SERVICES CONTRACT; VERNON POLICE CHIEF NOT ENTITLED TO OVERTIME COMPENSATION

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(D. Vt.), which can be read at <http://docs.justia.com/cases/federal/district-courts/vermont/vtdce/5:2010cv00081/18979/125/>, involved two named plaintiffs, Brenda Brown and Earl Brooks. Ms. Brown rented an apartment in Barre City from her landlords Jeffrey and Mary Beth Tevis for \$650, which included water. The Tevis's had a water account with the City, which included service to Ms. Brown and their other tenants. Mr. Tevis's account became delinquent in April 2009 and the City sent him a notice of delinquency on October 14, 2009. A repayment agreement was entered, but Mr. Tevis stopped making payments a few months later.

The other named plaintiff, Earl Brooks, rented an apartment at 37 Summer Street in Barre from Barrett Gregoire for \$650, including water, and the City sent his water bills to Mr. Gregoire. Mr. Gregoire's account became delinquent on January 1, 2010. On May 12, 2010, Mr. Brooks received a notice from the City informing him that his water service would be disconnected the following day unless the \$1,238.39 in arrears was paid. When Mr. Brooks contacted the City he was told that, in accordance with its ordinance, it could only deal with Mr. Gregoire, who subsequently entered into a payment plan and avoided disconnection of service.

The plaintiffs (Brown and Brooks) brought several claims against both the State and the City in U.S. District Court for violation of their civil rights under the U.S. Constitution. The first alleged that the State and City violated their procedural due process rights by failing to provide adequate notice before turning off their water and not providing an administrative appeal after it was turned off. The second alleged that the City's ordinance violated their substantive due process rights by requiring payment of their landlords' delinquencies to avoid losing water service. In their final claim, the plaintiffs

alleged a violation of their rights to Equal Protection because both the City's ordinance and the State's Uniform Water and Sewer Disconnect Statute treat different classes of ratepayers (delinquent versus non-delinquent landlords and property owners versus tenants) differently. The City prevailed on its motions for summary judgment on the second and third claims: substantive due process (City's policy of treating delinquencies as a lien on the property to be paid by anyone prior to the restoration of service was not so "irrational" or "arbitrary" to constitute a "gross abuse of governmental authority") and Equal Protection (the City's policy decision to contract with only property owners for water service serves a legitimate government purpose). We'll focus on the first claim, the one it lost: violating

plaintiffs' procedural due process rights.

The Due Process Clause of the Fourteenth Amendment reads, "nor shall any State deprive any person of life, liberty, or *property*, without due process of law ..." [Emphasis added.] Procedural due process requires notice and an opportunity to be heard prior to the deprivation of a protected property interest. For the plaintiffs to prevail on their procedural due process claim therefore they first had to show they had a constitutionally protected property interest in water service. "Although the underlying substantive interest is created by 'an independent source such as state law,' federal constitutional law determines whether that interest rises to the level of a 'legitimate claim of

(continued on next page)

NEED A WRITTEN LEGAL OPINION?

LOOKING FOR EXPERTISE DRAFTING A NEW ORDINANCE?

NEED HELP UPDATING THAT PERSONNEL POLICY?

VLCT's attorneys can provide your municipality with legal assistance at highly competitive rates. Please call **Abby Friedman** for more information at **1-800-649-7915**.



SAMPLE PROJECTS:

- Water & Sewer Ordinances
- Zoning Bylaws
- Municipal Charter Amendments
- Highway Ordinances



LEGAL AND REG.

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entitlement' protected by the Due Process Clause." The plaintiffs claimed the source of their entitlement was contractual and/or emanated from State law. The Court rejected the plaintiffs' contractual argument, finding that they had no direct contractual relationship with the City, nor were they third-party beneficiaries of the contractual relationship that did exist between their landlords and the City. The Court did, however, agree that a statutory property interest existed in water service because State law reflects an intent to provide water service to all users regardless of their status as property owners or tenants. Additionally, it sets forth procedural safeguards to prevent erroneous deprivation of that interest.

Having determined that the plaintiffs established a protected property interest in water service, the Court next examined whether the State's Uniform Water and Sewer Disconnect Statute and, alternatively, the City's ordinance, practices, and policies afforded plaintiffs the minimum procedural protections required. This analysis involved weighing three factors: (1) the private interest affected; (2) the risk of erroneous deprivation of that interest posed by the particular process used; and (3) the State's and City's interests, respectively. The State and City had the same interests: to collect payment for the service they provided. The plaintiffs' private interest in water service was found to be substantial because their interest was water, and water is a "necessity of daily living that is essential to health, well-being, safety, and sanitation." The risk of erroneous deprivation of that interest under the State's Disconnect Statute, however, was not. The Court examined whether an important governmental benefit was being terminated without first providing sufficient notice to the recipient of that benefit and enough time to protect that interest. The statutory uniform disconnect notice met these standards because it informed users of the reason(s) for terminating service, when it would occur, how it could be avoided, any statutory exemptions, when and where to appeal. Further, the notice provided two weeks' notice prior to disconnection..

In contrast, the City of Barre's Water and Sewer Ordinance directed that "the water department ... in furnishing water ... shall deal only with [the] owner of the premises." It also stated the City may withhold water from

any person failing to comply with its provisions and that prior to disconnection of service the user must be given "not less than three (3) days[]" notice." The Court found that three days wasn't enough time for tenants to protect their interests. If notice was given on a Friday, then tenants would have only one business day to avoid termination of service. The City's disconnection notice informed users of the amount in arrears that must be paid to restore service but contained no information concerning a right to appeal, a repayment plan, or the right to seek a medical exception. The Court also found that the City failed to provide notice to the occupant even when the occupant was not the "ratepayer," did not provide notice of a right to a hearing to either the tenant or owner, and neglected to provide notice of the statutory exceptions to disconnection. On balance, these interests did not interfere with the City's interest in collecting for services rendered, so the Court ultimately ruled on this claim that "(A)t a minimum, the City must

therefore comply with Vermont's Disconnect Statute in order to satisfy the requirements of procedural due process."

Interestingly, the Court highlighted that the State's uniform notice, and not the usual accompanying opportunity for appeal, is all that must be provided to a tenant who is not also the ratepayer. Whereas the State's Uniform Water and Sewer Disconnect Notice is directed to the "customer" (see 24 V.S.A. § 5144), the statute governing the jurisdiction for appeals makes reference only to the "ratepayer." (The selectboard shall promptly and fairly hear any or all appeals by the ratepayer after notice to all interested parties ... 24 V.S.A. § 5147) The legislature's choice of words wasn't lost on the Court. "Assuming a tenant is not a 'ratepayer,' no appellate rights other than notice of the appeal are provided." What, after all, the Court reasoned, would a tenant do with a hearing? "A tenant is already aware that termination of water service is imminent and is aware of the

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UPCOMING MUNICIPAL ASSISTANCE CENTER WORKSHOPS

MANAGING THE MUNICIPAL BUDGET AND ASSETS HELD IN TRUST

Wednesday, October 10, 2012, Capitol Plaza Hotel and Conference Center, Montpelier

This workshop introduce you to managing the annual operating budget as well as management of funds held in trust by municipalities to support libraries, cemeteries, and other municipal purposes. Topics will include legal responsibilities of local officials, investment opportunities, and applicable standards of care. The workshop is designed for treasurers, selectboard members, trustees of public funds, cemetery commissioners, and other officers charged with managing municipal funds.

MUNICIPAL EMPLOYMENT LAW TRAINING II

Thursday, November 8, 2012, Holiday Inn, Rutland (Co-sponsored by MAC and PACIF)

This indispensable workshop covers the fundamentals of employment law and personnel administration in a municipal setting. It will focus on the major state and federal employment laws and cases affecting municipalities as employers, including emerging employment issues. Selectboard members, municipal managers and administrators, police and fire chiefs, and all other department heads and front line managers are encouraged to attend.

AUDITORS WORKSHOP

Wednesday, November 14, 2012, Capitol Plaza Hotel and Conference Center, Montpelier

Designed for both newly-elected and seasoned municipal auditors, this workshop includes a review of the statutory duties and responsibilities of auditors, a discussion of best practices, plus a review of VLCT's Municipal Internal Controls Checklist audit checklists to help you conduct the annual audit of your town's accounts.

SAVE THE DATE!

FALL PLANNING AND ZONING FORUM I

Wednesday, December 5, 2012, Capitol Plaza Hotel and Conference Center, Montpelier

For registration and other information, please visit www.vlct.org/events-calendar/upcomingevents, call 800-649-7915, or email info@vlct.org.



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LEGAL AND REG.

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medical exception pursuant to which water service may be restored. A hearing to remind the tenant of these facts would serve little purpose.” The legislature already provided tenants with several avenues of redress: withholding rent, seeking injunctive relief, recovering damages, costs and attorney’s fees, and terminating the rental agreement. Select-boards are not empowered to resolve landlord/tenant disputes. “Courts have held that provided an aggrieved party has the time and opportunity to pursue his or her claim in an available forum, due process is satisfied.”

The message for Vermont’s towns from this case is clear: Provide users of your water/sewer systems at least the same due process protections as the State’s Uniform Water and Sewer Disconnect Statute. If you have your own ordinances and policies in place, you must review them for compliance with State law. (See Title 24, Chapter 129 at <http://www.leg.state.vt.us/statutes/sections.cfm?Title=24&Chapter=129>) In situations where the customer and ratepayer are different, you should send notices to both and provide an opportunity to appeal to at least the ratepayer.

*Garrett Baxter, Staff Attorney II
VLCT Municipal Assistance Center*

Supreme Court Justices Wrestle with Public Records Act Exemption for Records Dealing with Detection and Investigation of Crime

In 2010, a reporter sought release of records related to an incident in which the Hartford Police Department responded to a report of a possible burglary in progress and used considerable force in restraining the suspect. The alleged burglar turned out to

be the homeowner, who was disoriented due to a medical condition. The reporter made a written request for records to the chief of police under the Public Records Act. The chief denied the request on the grounds that the records in question related to a criminal investigation and fell under 1 V.S.A. § 317(c)(5), which exempts from disclosure:

“records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; provided, however, that records relating to management and direction of a law enforcement agency; records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in 23 V.S.A. § 2302; and records reflecting the charge of a person shall be public; ...”

After the town manager affirmed the chief of police’s decision, the reporter filed suit, seeking production of the records and an award of costs incurred in bringing the action.

The trial court concluded that the records created by police were exempt from disclosure because they were created during the investigation into suspected criminal activity. However, because the investigation concluded without any resulting criminal charges, the trial court held that any records created after the department’s decision that there would be no criminal charges brought against the homeowner had to be disclosed, reasoning that the records revealing the outcome of a criminal investigation are not records “of the investigation,” but are its product.

The trial court directed the Town to disclose any post-decision documents, but exempted from disclosure records made during the investigation. The Town submitted an index of all records related to the event and the trial court held a second hearing to determine what records should have been disclosed. In its decision, it listed the documents that the Town was required to disclose, which included fire department documents, two witness statements, and the chief of police’s narrative report. The trial court concluded that the rest of the documents, including officers’ narrative reports and recordings of the events, were part of the investigation and therefore exempt. The reporter objected to this decision and filed an appeal with the Vermont Supreme Court.

In the decision, a plurality of the Supreme Court justices focused on whether the involuntary detention of the homeowner was for a period of time long enough to constitute a de facto arrest, which would require the Town to release records of the incident. *Galloway v. Town of Hartford*, 2012 VT 61. Under the Public Records Act, records dealing with the detection and investigation of crime are exempt from public inspection and copying, but this exemption does not apply to “records reflecting the initial arrest of a person ... [which] shall be public.” 1 V.S.A. § 317(c)(5).

The decision noted that there is no obvious line to distinguish the investigative detention of a criminal suspect from a de facto arrest. In determining whether an arrest has occurred, the custodian must consider a range of factors, including the amount of force used by police, the need for such force, the duration of the detention, the physical treatment of the suspect, and the extent to which the individual’s freedom was restrained.

In this case, the homeowner had been pepper-sprayed and struck repeatedly with a baton. His freedom of movement was entirely restrained for 15 minutes and he had been forced to sit handcuffed on the sidewalk. Only after 15 minutes did the police decide there was no basis for criminal charges against the homeowner and remove his handcuffs. According to the plurality, the facts of the case supported a finding of an arrest and disclosure of all of the records generated by the Hartford Police Department as a result of the incident.

Justice Dooley wrote a concurring opinion, agreeing with the outcome of the case

(continued on page 13)

NEW MAC SERVICE

VLCT’s Municipal Assistance Center is pleased to offer a new multifaceted consulting service: meeting and retreat facilitation, communication and customer service training, and alternative dispute resolution.

Our consultant, **Hank Lambert**, has over 35 years of experience serving Vermont municipal governments as town manager (Manchester), state official, transportation program director, and facilitator of numerous workshops around the state.

Please contact Abby Friedman for more information at 800-649-7915 or afriedman@vlct.org.



Hank Lambert

NEW NAME FOR A USEFUL WEBPAGE

Members of a VLCT Trust who make frequent use of the VLCT website's *Customer Service Forms* page might already have noticed that the page has recently been given the technically more accurate name of *Claim Reporting and Insurance Forms*. (Frankly, we hope that you use the page and didn't notice much of a difference, because that means the transition went smoothly.) The new name is meant to make it easier to find where to report a claim and to locate other important insurance forms. We recently also improved the Health Trust section of this page, so benefits managers can find particular forms mid-year without having to download an entire start-of-year enrollment packet. As time permits, we plan to make some small improvements to a few of the online forms under the VLCT PACIF heading. If you have suggestions for improving this or other pages in the Risk Management Services portion of the website, please contact Ione Minot at 800-649-7915, ext. 1913, or iminot@vlct.org.

PACIF RENEWAL APPLICATIONS DUE 10/12/12

All PACIF members should receive their 2013 renewal application before the end of September. As you update and complete this application, please keep in mind that doing so is your opportunity – and your responsibility – to review your municipality's needs, then add or delete exposures and adjust values on your property and vehicle schedules so that your 2013 contribution will be accurate.

Our Underwriting team must receive your completed renewal application **by Friday, October 12**, in order for the PACIF invoice that you receive on December 1 to be the correct amount for your 2013 coverage. If we receive your application after the 10/12/12 deadline, your 2013 contribution amount may need to be updated after the new year, in which case you will receive an invoice for the difference in January.

When returning your completed application to VLCT, please follow the instructions in the letter that accompanied the application. For additional information, feel free to contact Vicky Abare (vabare@vlct.org or 800-649-7915, ext. 1941) or Pam Fecteau (pfecteau@vlct.org or 800-649-7915, ext. 1934) in Underwriting.

NEW VLCT WELLNESS RETREAT IN STOWE

Municipal wellness coordinators, health enthusiasts, and managers: imagine a day-long retreat dedicated to gaining insights and developing a practical plan to help you energize your co-workers and foster healthy lifestyles at work and at home. This will be more than hands-on. It'll be bodies-in! On **Friday, November 16**, wear workout-ready clothes and take your thinking cap to Stowe for the VLCT Health Trust's 2012 Wellness Culture Retreat and Workshop. Attendees will hear an overview of wellness culture by Gillian Pieper (VEHI/VSBIT) and either try zumba, yoga, and body sculpting or walk (or snowshoe) on the Toll Road. The day will conclude with a guided session reviewing the results of your Wellness Culture Survey and brainstorming ways to foster a healthier municipality. We encourage members to send up to three people: a wellness coordinator, a manager or selectboard member, and one other employee. Free to Health Trust members; \$25.00 per person from non-Health Trust members. Register before November 2, 2012, online at www.vlct.org/events-news-blogs/event-calendar/. For more information, contact Heidi Joyce at hjoyce@vlct.org, or Jim Carrien at jcarrien@vlct.org.



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2012 RMS CALENDAR

VLCT Town Fair. Thursday, October 4, Robert E. Miller Expo Centre, Champlain Valley Fairgrounds, Essex Junction, Vermont, 05452. Risk Management-related activities include:

8:30 a.m., 9:30 a.m., and 10:30 a.m.

Field Day Driver Safety Discussions, presented by VLCT PACIF and Clark's Truck Center and held in conjunction with the "Ride and Drive." Chris LaBerge from VLCT and Randy Clark from Clark's Truck Center will discuss strategies for vehicle operators to avoid common injuries, CDL driver responsibilities, and safety features available on new vehicles.

8:30 a.m. to noon

Walk-in health screenings, flu shots, bone density screenings, and chair massages. Robert E. Miller Expo Centre, presented by the VLCT Health Trust.

Driving Simulator Training demonstrations. In the white trailer parked just outside the Robert E. Miller Expo Centre, presented by VLCT PACIF. Watch or "drive" while a trainer runs simulation software that creates the look and feel of a variety of challenging driving situations. PACIF members can host the simulator for a week during the year to enhance the training of their municipal drivers.

"Ride and Drive" new truck demonstrations. Outside the Robert E. Miller Expo Centre, presented by Clark's Truck Center. Attending one of the three Field Day Driver Safety Discussions (see above) is a prerequisite for test driving a new vehicle.

9:00 a.m. to 10:30 a.m.

Health Care Reform in Vermont ... Now What? Stevens Room of the Blue Ribbon Pavilion, presented by VLCT. In light of federal and state health insurance reform, VLCT's David Sichel, a member of the Green Mountain Care Advisory Board, and Michael Kilfoyle, from Hickok & Boardman Group Benefits, will first discuss likely changes including the handling of municipal benefits, how the Vermont Health Benefit Exchange will operate, and the effects on insurance rates. Then they will focus on strategies for how municipalities can cope with these changes, in areas such as employee communication, HR policies, and collective bargaining.

11:00 a.m. to noon

Trusts' Annual Meeting of the Membership, Expo North Room A. Attendees will elect new officers, review financial reports, and learn more about each of the three VLCT member-owned Trusts (Health Trust, PACIF, and Unemployment Insurance). Pre-registration is not required.

Vermont Safety and Health Council Expo. Friday, October 5, 8:00 a.m. to 4:15 p.m., Sugarbush Resort Conference Center, Warren, Vermont, 05674. \$65 for VSHC members and \$85 for non-members. To learn more and register, go to www.vshc.org/calendar/eventdisplay.php?id=299. For further assistance, email Maureen Johnson at maureenj@us.ibm.com.

2013 PACIF Renewal Application Deadline. Friday, October 12, to Vicky Abare at VLCT. See page 10 for details.

DriveSim Training System. October 15-19, 8:30 a.m. to 4:00 p.m., Rutland City Fire Department, Rutland, Vermont, 05702. Hands-on practice for firefighters, ambulance drivers, and municipal road maintenance drivers in a state-of-the-art system that provides the look and feel of driving municipal vehicles. To schedule trainings for while the DriveSim trailer is in Rutland **or to arrange to host it for a week**, contact Jim Carrien at jcarrien@vlct.org or 800-649-7915, ext. 1946.

VLCT 2012 Wellness Culture Retreat and Workshop. November 16, 8:30 a.m. to 4:00 p.m., Stowe Mountain Resort Conference Center, Stowe, Vermont, 05672. A day-long event for VLCT Health Trust and PACIF members to develop ideas for fostering wellness among their employees. Free to Health Trust Members; \$25.00 for non-Health Trust Members. Register before November 2, 2012, online at www.vlct.org/events-news-blogs/event-calendar/. For more information, contact Heidi Joyce, hjoyce@vlct.org, or Jim Carrien, jcarrien@vlct.org.

WELCOME BACK!

MEMBERS RETURNING TO THE HEALTH TRUST

**Central Vermont Solid Waste
Management District**

Town of Fayston

Morrisville Water and Light

Town of Williamstown



SINGLE AUDIT

(continued from page 1)

a report and opinion on compliance with laws and regulations that could have an effect on major programs. Additionally, the Single Audit report must include a Schedule of Expenditures of Federal Awards, a schedule of findings and questioned costs, and the town's corrective action plan. Single audits are conducted by independent Certified Public Accountants.

What constitutes a federal award? Under the Act, federal awards means federal financial assistance and federal cost-reimbursement contracts that non-federal entities receive, either directly from federal awarding agencies or indirectly from pass-through en-

ties such as the State of Vermont. Federal financial assistance can be in the form of direct grants, loans, loan guarantees, property and other types of assistance.

Federal financial assistance includes more than just the amount a municipality has spent on Federal Emergency Management Agency-related projects. The \$500,000 expenditure threshold includes all federal awards from all programs during a particular fiscal year. So, the threshold could be met by incurring expenditures under multiple grants – for example, a \$45,000 grant from the Department of Homeland Security for the purchase of a generator, a \$15,000 grant to explore the feasibility of installing new sidewalks in the downtown area, \$55,000 from the Department of Justice to fund a school resource officer, and \$395,000 for Irene-related expenditures. **If you had preliminary approval from FEMA for your Irene Project Worksheet in the fiscal year, 90% of the total should have been booked as an incurred expenditure for that same fiscal year and would be included in the total to determine if you meet the**

\$500,000 threshold. Since expenditures related to Irene recovery efforts more than likely extend over more than one fiscal year, the requirements to obtain a Single Audit will likely affect more than one fiscal year as well.

Copies of the town's Single Audit report must be filed with the federal government's Single Audit Clearinghouse (as well as the town's primary pass-through entity) within nine months after the end of the fiscal year. That means that for calendar year towns with significant recovery expenditures in calendar year 2011, **the deadline was September 30, 2012.**

*Bill Hall, Senior Financial Consultant
VLCT Municipal Assistance Center*

RESOURCES AVAILABLE FROM THE MUNICIPAL ASSISTANCE CENTER

VLCT understands that towns that have never had an audit before will likely not be prepared for the amount of time and money required to be independently audited. And those that have had a regular audit before, but not a Single Audit, will likely be unprepared for the additional amount of time and money a Single Audit requires. It is also likely that with the expected increase in the number and scope of audits required throughout the state that independent auditing firms that are qualified to conduct Single Audits will be very busy.

To that end we offer:

- Bill Hall, VLCT's Senior Financial Consultant, can answer questions and come to your town to provide individual assistance, such as preparing financial statements and other documents needed for a professional audit.
- A Model Request for Proposals for Auditing Services designed for small towns or those that are seeking this service for the first time (posted at www.vlct.org/events-news-blogs/current-news/model-rfp-for-auditing-services/).
- A list of municipalities that have used a professional auditing firm and the names of firms used. This information was collected as part of our 2012 Municipal Census Survey. The Census report will be published by the end of the year and posted on our website.

For more information on any of these services or documents, including how to contact Bill Hall, please contact Abby Friedman at 800-649-7915 or afriedman@vlct.org.



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TRIVIA

Philip Picotte, Louise Luring, Ann Myers, Margaret Anderson, Darlene Johnson, and Jan Hull of Rutland, Saxtons River, Essex, Addison, Hartford, and Wardsboro, respectively, knew that the erstwhile village of Batesville was situated somewhat north of Newport Village. Heaps of encomia to the lot of you!

And now, a belated mea culpa (that's Latin for *oops!*). Some months ago, I inadvertently omitted the name of Brunswick's Brendan Whittaker from the list of July Trivia correct answerers. I say "inadvertently omitted," but really I just plum forgot. See, he registered his answer by neither email nor fax, neither teletype nor semaphore, but rather in person when, admittedly, my powers of observation are not at their most acute. So, a hundred regrets, B.W. Better make that a hundred and ten.

We all know that Vermonters of old often did weird things to their clothes (you can look it up), but **why on earth would Vermont blacksmith Thomas Davenport cut up his wife's wedding dress into strips?**

The minute you know the answer, email it to dgunn@vlct.org. The answer will await you in the still fiscally solvent November issue.



LEGAL AND REG.

(continued from page 9)

but noting that the plurality's decision calls upon a records custodian to apply an eight-factor test to determine whether the detention of a criminal suspect amounts to a de facto arrest under 1 V.S.A. § 317(c)(5). This analysis, according to the Justice, "will likely have to be made by an agency lawyer, not the record-holder, and is likely to lead to more court appeals." Rather than the expeditious review the Public Records Act contemplates, a final decision "may take months, or even years to appear." According to Justice Dooley, "What is sorely needed in this area are simple and predictable rules that can be applied by the custodians of records and, where necessary, trial courts."

Justice Burgess wrote a dissent in which he noted that it could "hardly be clearer that the Legislature intended to withhold information on criminal investigations and investigative detentions not resulting in charges, while mandating disclosure of arrests accompanied by a formal criminal charge." In the opinion of Justice Burgess the issue was clear: since there was no arrest made in this case, there was no obligation under 1 V.S.A. § 317(c)(5) for the Hartford Police Department to disclose the requested records.

Echoing Justice Dooley's concern that the plurality's decision was unworkable, Justice Burgess noted, "Custodians of police records must now puzzle over 'de facto' arrest versus investigative detention not amounting to arrest – a moving target worthy of countless and diverse court decisions. ... No police department can reasonably be expected to respond correctly to [Public Records Act] requests when the answer is so situational and confounding to courts."

The *Galloway* decision stands in stark contrast to another Supreme Court decision published in March addressing the same Public Records Act exemption. In *Rutland Herald v. Vermont State Police and Office of the Attorney General*, 2012 VT 24, the Supreme Court held that records related to a criminal investigation of possession of child pornography by employees of the Criminal Justice Training Council at the Vermont Police Academy were exempt from public inspection and disclosure under 1 V.S.A. § 317(c)(5). In the *Rutland Herald* decision, the Court stated that the exemption of records dealing with the detection and investigation of crime "reflects the Legislature's intent to permanently and categorically exempt all criminal investigatory records from public disclosure."

So when does the investigation of crime – the records of which are "permanently and categorically" exempt from public disclosure under *Rutland Herald* – morph into a de facto arrest, in which case its records must be promptly produced for public inspection under *Galloway*? Custodians of police records, attorneys, and trial courts will be pondering this question for years – or at least until the Vermont Legislature clears up the language of 1 V.S.A. § 317(c)(5).

Until then, the litigation resulting from requests to inspect police records arising from detention of citizens is likely to take months or years to resolve – hardly a result consistent with the Public Record Act's goal of "free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution." As Justice Dooley aptly stated,

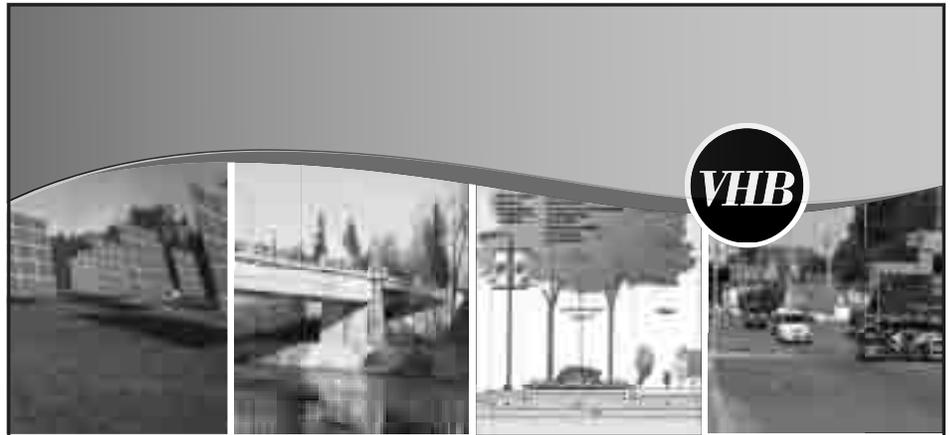
"What is sorely needed in this area are simple and predictable rules that can be applied by the custodians of records and, where necessary, trial courts." A copy of the *Galloway* decision is archived at <http://info.libraries.vermont.gov/supct/current/op2011-211.html>. A copy of the *Rutland Herald* decision is at <http://info.libraries.vermont.gov/supct/current/op2010-434.html>.

*Jim Barlow, Senior Staff Attorney
VLCT Municipal Assistance Center*

Vermont Supreme Court Reinforces JAM Golf

The Vermont Supreme Court reiterated its prior holding in *In re Appeal of JAM Golf, LLC*, that municipalities must adopt clear land use regulations. In that landmark case,

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LEGAL AND REG.

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the Court ruled that “Zoning ordinances must ‘specify sufficient conditions and safeguards’ to guide applicants and decisionmakers. We will not uphold a statute that ‘fail[s] to provide adequate guidance,’ thus leading to ‘unbridled discrimination’ by the court and the planning board charged with its interpretation.” Clear land use regulations not only help land use officials who apply regulations, but also property owners who need to understand the limits on the use of their property. *In re John Toor, Margaret Toor and Toor Living Trust NOV, 2012 VT 63* comes approximately four years after *JAM Golf* wherein Vermont municipalities were put on notice that “[z]oning ordinances must ‘specify ... sufficient conditions and safeguards’ to guide applicants and decisionmakers.” The *Toor* case demonstrates that land use regulations must plainly state the types of development a municipality wants to limit or control so that landowners know what they can or can’t do with their property.

This case comes from Grand Isle, a popular lakeside summer vacation spot, where approximately 240 of the housing units are

considered seasonal, recreational, or occasional use. John and Margaret Toor’s home fell into this category. In the summer of 2009, the Toors began renting their home. Their tenants used the property in substantially the same way as the Toors – for vacations, entertaining, and various celebrations. In September 2009, the Grand Isle administrative officer issued a notice of violation alleging rental of the property constituted a change of use from a single family dwelling without a zoning permit.

The property owners appealed the notice of violation to the Grand Isle Development Review Board, then to the Environmental Division of the Superior Court (E-Court), and finally to the Vermont Supreme Court. The appellate authority of both the DRB and the E-Court upheld the administrative officer’s determination, however each had its own interpretation of why the use was no longer a single family dwelling unit use. “[T]he [E-Court’s] view was that the violation occurred because of the income production, through numerous financial arrangements, and the short-term rental periods, which created impermanence.” The Supreme Court rejected this argument, finding the tenant used the house the same way as did the homeowners – as a single family

dwelling unit, a permitted use in the district – and that for the period of time that each tenant occupied the house it constituted a single household regardless of the length of tenancy. The tenants could allow guests to stay overnight, just as the homeowners did. As for the intermittent income producing nature of the rental property, the Court determined that the district allowed for commercial uses, and the permitted use (single family dwelling unit) didn’t “imply a prohibition” on renting the dwelling unit.

The Supreme Court held that Grand Isle’s regulations, as written, did not limit the landowners’ ability to rent their home. In doing so, the Court clarified that interpreting local land use regulations requires “narrow construction and the need for landowners to be able to ascertain the line between proper use of their property and illegal use.” If the town wanted to prevent this use and its potential associated impacts, the ambiguity of the regulation must be resolved by “legislative action to create workable solutions in areas of broad general standards” and not by the judiciary.

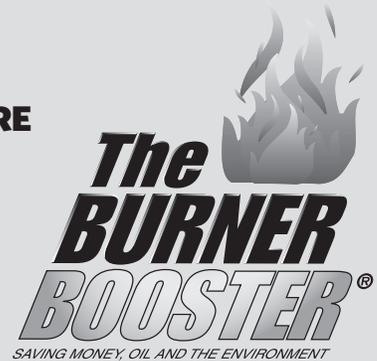
To read the Vermont Supreme Court’s decision, go to <http://info.libraries.vermont.gov/supct/current/op2011-085.html>

*Stephanie Smith, AICP, Senior Associate
VLCT Municipal Assistance Center*

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LEGAL AND REG.

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Polices Services Contract Not Subject to Predatory Pricing Provision of Vermont Consumer Fraud Act

In 2010, St. Albans Town requested proposals for the provision of law enforcement services. The Franklin County Sheriff's Office's submitted a first-year bid of \$642,652.97 and the St. Albans City Police Department submitted a first-year bid of \$486,850.99. After considering both proposals, the Town selectboard voted to award the contract to the City Police Department.

The Sheriff's Office then brought suit against the City Police Department, contending that the Department engaged in an unfair method of competition with the intent to harm competition under the Vermont Consumer Fraud Act's (VCFA's) predatory pricing provision. The statute provides, "No person, with the intent to harm competition, shall price goods or services in a manner that tends to create or maintain a monopoly or otherwise harms competition." 9 V.S.A. § 2461c(a). The Sheriff's Office claimed that the Department engaged in

predatory pricing by intentionally pricing its services to the Town in a way that would harm competition under 9 V.S.A. § 2461c.

The Vermont Supreme Court held that the Sheriff's Office lacked standing to assert a predatory pricing claim under the VCFA because it had no legally protected right to fair competition in the provision of police services. The Court noted that the provision of police services in Vermont is a governmental function provided only by a limited number of statutorily-authorized governmental entities for the benefit of the public. The provision of police services occurs outside the realm of commerce because it involves no interchange of goods or commodities on an open market.

The injuries that the Sheriff's Office claimed to suffer did not fall within the zone of interests to be protected by the VCFA's predatory pricing statute. As the Court stated, "It is the protection of competition, rather than the protection of competitors, that antitrust laws are designed to protect and the statutory scheme relating to law enforcement embraces no element of competition in an open marketplace. This is because the universe of entities that can provide

police services is narrowly limited to state actors, and the 'market' in which the services are contracted for is wholly restricted." A copy of the decision is archived at <http://info.libraries.vermont.gov/supct/current/op2011-266.html>.

*Jim Barlow, Senior Staff Attorney
VLCT Municipal Assistance Center*

Vernon Police Chief Not Entitled to Overtime Compensation under Fair Labor Standards Act

The Vermont Supreme Court has held that a municipal police chief is not entitled to overtime compensation under the Fair Labor Standards Act (FLSA), even if a significant portion of the chief's duties involve ordinary patrol work. *Turnley v. Town of Vernon*, 2012 VT 69. The FLSA provides that a nonexempt employee who works more than forty hours in a week must receive compensation "at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a)(1). However, workers employed in a "bona fide executive, administrative, or professional capacity" are exempt from the FLSA overtime mandate. 29 U.S.C. § 213(a)(1). The Code of Federal Regulations defines an "executive" as any employee:

- (1) Compensated on a salary basis at a rate of not less than \$455 per week ...
- (2) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;
- (3) Who customarily and regularly directs the work of two or more other employees; and
- (4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight. 29 C.F.R. § 541.100(a).

An executive employee's 'primary duty' must be the performance of exempt work. *Id.* § 541.700(a). In the law enforcement context, the definition of primary duty is qualified by the so-called "first responder" rule. *Id.* §541.3(b)(1). Under this rule, the executive exemption does not apply to: police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators ... and similar employees,

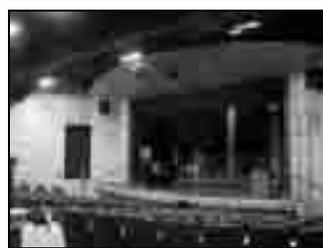
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LEGAL AND REG.

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regardless of rank or pay level, who perform work such as ... preventing or detecting crimes; conducting investigations or inspections for violations of the law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work. 29 C.F.R. § 541.3(b)(1).

Officers whose primary duty is to investigate crimes, catch suspects, and perform

other field police work are still entitled to overtime pay under the FLSA even though in the course of performing those tasks they may direct the work of other police officers. *Id.* § 541.3(b)(2). These first responders are not exempt executives “because their primary duty is not management of the enterprise in which the employee is employed.” 29 C.F.R. § 541.3(b)(2).

In 2006, Kevin Turnley became Vernon’s police chief under a verbal agreement with the Vernon selectboard and a written job description outlining the chief’s duties. Turnley’s compensation was calculated from an hourly rate but he received a weekly salary and was not docked for vacation or sick leave. In 2009 Turnley sued Vernon seeking compensation for allegedly unpaid overtime hours. Turnley asserted that he was a

first responder under the FLSA and entitled to overtime because his department was so chronically understaffed he was forced to take on a significant amount of extra patrol work that would normally be left to a regular police officer. The Town responded that the chief was a non-covered executive employee as defined by the FLSA and not entitled to overtime compensation.

The Supreme Court found that Turnley’s job description and other evidence placed the chief squarely within the FLSA’s executive exemption. The Court noted that while the FLSA first responder rule clarifies that a law enforcement officer, primarily charged with field operations, is not a manager simply because the officer directs the field operations of other officers, it does not turn a chief of police, whose primary duty is management, into a non-manager simply because he is required to perform patrol work.

Turnley also argued that because he did not have final say in the hiring and firing regular of department officers, he did not have the requisite authority of an executive under the FLSA. Twenty four V.S.A. § 1931(b) provides that “[t]he direction and control of the entire police force ... shall be vested in the chief of police.” However, under 24 V.S.A. § 1931(a), a town’s legislative body, or the town manager, “may establish a police department and appoint police officers and a chief of police who shall be a police officer.” The Court noted, “read together, § 1931(a) and (b) envision a police department created by town government, the operations of which are directed by a chief, but which is concurrently and ultimately subject to the authority of town government. By itself, § 1931(b) ... means simply that the chief of police is in charge of the other people who work at the police department.”

According to the Court, while the Vernon selectboard had final say on hiring and firing decisions in the department, the chief’s recommendations influenced the selectboard’s decisions. Under the FLSA, the chief’s “recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees” in the department were given the “particular weight” of an exempt executive employee. A copy of the decision is archived at <http://info.libraries.vermont.gov/supct/current/op2011-351.html>.

*Jim Barlow, Senior Staff Attorney
VLCT Municipal Assistance Center*

Team EJP is getting the lead out.

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Municipal water departments beware: your brass products may become obsolete by January 4, 2014. That’s because the new Reduction of Lead in Drinking Water Act limits lead content in any brass product that touches the wetted surface of drinking water systems to just .025%, a fraction of that previously allowed.

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Classifieds

Please visit the VLCT website www.vlct.org/marketplace/classifiedads/ to view more classified ads. You may also submit your ad via an email link on this page of the site.

VLCT NEWS ADVERTISING POLICY

The *VLCT News* welcomes classified advertisements from municipal entities, public agencies, businesses and individuals. This service is free for VLCT members (regular, contributing and associate); the non-member rate is \$41 per ad.

Classified ads are generally limited to 150 words and run for one issue. These ads are also placed on the VLCT website for up to one month.

The *VLCT News* is published eleven times per year (the August and September issues are combined) and reaches readers during the first week of the month.

The deadline for submitting advertisements is the first Friday of the month prior to the issue date. Space is sometimes available for late additions; please feel free to check with the editor for availability.

For more information on placing classified ads in the *VLCT News*, contact classifieds@vlct.org. For details on display advertising, email vlctnews@vlct.org. Information on ad requirements may also be downloaded at www.vlct.org/events-news-blogs/newsletter-archive/advertising-information/.

HELP WANTED

Executive Director. The Green Mountain Water Environment Association (GMWEA) seeks an energetic, highly organized, and experienced individual with high ethical standards and integrity to fill the position of Executive Director. This is a part-time position (250-300 hours per year) that will work with the GMWEA board of directors to implement a shared organizational vision with the board and provide GMWEA membership with the highest level of service and educational opportunities. The executive

director serves as the point of contact for GMWEA and is the face of the organization. A complete job description is at www.vlct.org/marketplace/classifiedads/executive-director/. Additional information concerning GMWEA is at www.gmwea.org/. Requirements: Bachelor's degree in environmental science, engineering, or other water quality related field; two years experience in water quality, engineering, or a related field; or any equivalent combination of education and experience. Qualified applicants should email a cover letter, resume, requested hourly salary, and three references to admin@gmwea.org or send by surface mail to GMWEA, 89 Main Street, Suite 4, Montpelier, VT 05602. Position open until filled. (9-11)

Public Works Director. The Town of Killington is seeking a Public Works Director (PWD) to be responsible for the repair and maintenance of Town roads, facilities, and equipment. The complete job description is at www.vlct.org/marketplace/classifiedads/public-works-director/. Requirements: experience in personnel management, highway and bridge construction, maintenance, facilities management, mechanics, purchasing, budgeting and record keeping, as well as a CDL. This is a full-time position that necessitates a willingness to work nights and weekends as needed. Generous benefits package with health insurance and paid vacation. The Town is seeking to fill the position by November. Please submit inquiries or letter of interest and resume to sethwebb@town.killington.vt.us. (9-11)

Assistant Director of Economic Development. The primary responsibility of this position is the oversight of the City of Burlington's Economic Development policies and program development including directing and overseeing the administration and budget of all economic development programs. The Assistant Director also encourages and supports the development of the City's economy through technical assistance, grant applications, legislative initiatives, and financial and technical assistance to Burlington area businesses. Requirements: Bachelor's degree in Community Development, Business Administration,

Planning, Public Administration, or a related field (equivalent training and experience may be substituted for educational requirements); Five years of responsible experience in economic development, small business management, including program management with demonstrated proficiency; Two years' experience advising small businesses preferred with the ability to critically evaluate small businesses and to provide them with support, information and advice. To apply, submit City of Burlington application (available at www.burlingtonvt.gov/HR/), cover letter, and resume to Human Resources Department, 179 South Winooski Avenue, Burlington, VT 05401. The City of Burlington does not discriminate on the basis of race, color, national origin, sex, sexual orientation, religion, age or disability in employment or the provision of services. women, minorities, and persons with disabilities are encouraged to apply. Vermont relay, call 7-1-1. EOE. (9-10)

REQUESTS FOR PROPOSALS

Snow Removal Services. The Central Vermont Solid Waste Management District (CVSWMD) seeks snow removal services for a municipal office building at 137 Barre Street in Montpelier, Vermont. The RFP can be reviewed at www.cvswwd.org/jobs--internships.html. Deadline to submit proposal: Monday, October 15, 2012. For more information, contact Leesa Stewart, General Manager, CVSWMD, 137 Barre Street, Montpelier, VT 05602. (9-22)

FOR SALE

Dump truck. The Town of Underhill is offering for sale a 2001 International 2574 dump truck, Cummins N-14, 435 HP, A/C, cruise control, Eaton 8LL transmission, Hendrickson walking beam suspension, 46K rear axles with 4:10 gear ratio, 2006 MG 13-foot body with front sand-er, side dump, tank/ sprayer for chloride, plow and wing. 214,000 miles. \$30,000. Please call the Town Administrator at 802-899-4434 ext. 100 for more information. (9-12)



WHAT MAKES PACIF COMPREHENSIVE?

PACIF COVERAGES

- Workers' compensation
- Property
 - » Guaranteed replacement cost for buildings
 - » No-fault sewer backup
 - » Bonding and faithful performance for all officials and employees
 - » Unintentional errors and omissions in property scheduling
 - » Flood
 - » Earthquake
- Automobile/vehicle
- Liability with Sovereign Immunity defense
 - » General liability with \$10 million per occurrence liability limit
 - » Public Officials Liability (POL)
 - » Employment Practices Liability (EPL) with no dollar limit for defense costs
 - » Modified Actual Cash Value coverage standard for mobile equipment and fire-fighting trucks (Agreed value coverage is a new option for firefighting trucks)
 - » Dam liability
 - » Pollution liability including road salt application
 - » \$7,500 for replacement of a police dog killed in the line of duty

PACIF SERVICES PROVIDED FOR NO ADDITIONAL CHARGE

- Substance testing for CDL drivers
- Online human resources management tools for busy administrators
- A wide range of Loss Control programs that provide evaluation, training, and resources
 - » Workers' Comp Injury Review Process (IRP) to reduce future claims
 - » Workers' Comp Return To Work (RTW) program to minimize existing claims
 - » Safety trainings specifically for municipal employees, such as work zone flagger certification
 - » Publications such as Work Zone Safety pocket guide and Fleet Safety Program Development guide
 - » PACIF Scholarships for preapproved third-party trainings related to public entity risk management
 - » PACIF Equipment Grants (50/50 matching funds) for preapproved purchases that are likely to help current members reduce their potential for risk
 - » PACIF Online University classes for employees and versatile tracking tool for administrators
 - » 40 model law enforcement policies kept up to date and posted online for member municipalities
 - » Unlimited law enforcement consultation from the Public Agency Training Council
- Vermont-based staff members dedicated to identifying risks and helping to reduce claims
- In-house Vermont-based Underwriting and Claims teams
- Local support from VLCT's Member Relations team
- Discounts on VLCT Municipal Assistance Center workshops and consulting services
- Access to Employee Assistance Program (EAP) for all employees and their household members
- Easy online access to Tenant User Liability Insurance Policy (TULIP) (paid by tenants)

PAPERWORK PRE-PLANNING

(continued from page 5)

Thank you all for your patience during the busy open enrollment season! If you have any questions, feel free to contact Kelley Avery or your Member Relations Representative – Tanya Chambers or Pam VanDeursen – at 800-649-7915 ... the sooner the better!

VALUE OF PACIF

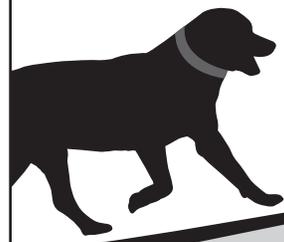
(continued from page 4)

and effort. Another common reason for choosing PACIF is excellent customer service, which is integral to VLCT's mission: Serving and strengthening Vermont local governments. The Member Relations and Loss Control teams spend much of their time at municipal facilities training, consulting, and advising members, while our Underwriting and Claims teams work primarily in-house. We understand our members' situations, and we have set up systems to identify claim trends and review members' coverage so we can design and implement loss control programs that truly make a difference.



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VERMONT AND THE FEDERAL PUBLIC SAFETY RADIO NARROWBANDING DIRECTIVE

If they have not already done so, Vermont town and non-profit fire, rescue, and police departments will likely soon be looking at expensive purchases to comply with a new federal requirement.

On January 1, 2013, all radio systems operating on frequencies between 150 and 512 megahertz must use narrowband emissions. Such emissions refer to a Federal Communications Commission (FCC) requirement that all existing licensees in the private land mobile VHF and UHF bands, including all public safety and other governmental licensees, operate on radio channel bandwidths of 12.5 kilohertz or less by January 1, 2013. According to the FCC, "The purpose of mandatory narrowbanding is to promote more efficient use of the VHF and UHF land mobile bands. Today, these bands are highly congested, and there often is not enough spectrum available for licensees to expand their existing systems or implement new systems. As licensees convert to equipment that operates on narrower channel bandwidths, new channels will become available for licensing by parties

that need them. It also is hoped that the narrowband conversion will spur the development and use of new technologies that will further promote efficient spectrum use, be less susceptible to interference, and provide licensees with enhanced capabilities."

This narrowbanding obligation has already affected a number of Vermont's municipal first responder agencies, with some estimates of individual municipalities spending upwards of \$20,000 (part of which the state provided as grant monies) to purchase radios and other communications equipment that meet the new narrowband width requirements. While most Vermont emergency personnel are aware of these requirements, some have not made the switch. Emergency services and first responders, including both volunteer and professional fire departments, that have not switched to narrowband emissions by January 1, 2013, will face loss of license, pecuniary fines, and/or further reprimands.

Compliance with the mandate requires:

- a list of all municipal departments that utilize two-way radio systems and the frequency

band on which the systems operate;

- modification of all FCC licenses to show the new narrowband emission designation; and
- conversion of all radio equipment to narrowband emission.

With the deadline looming, VLCT strongly urges all municipal officials whose departments use two-way radio systems to convert to narrowband emission if they have not done so already.

You can learn more about the narrowbanding mandate at <http://vermontcommunications.vermont.gov/narrowbanding>, the website of the Vermont Communications Board, a group of local, state, and federal representatives and private community professionals working to develop an interoperable radio communications system for Vermont first responders. Or contact Terry LaValley, the group's co-chair, at 802-241-5215 or terry.lavalley@state.vt.us. For more information about narrowbanding in general, contact the author at jwilliams@vlct.org or 800-649-7915.

*Jonathan L. Williams
Associate, Advocacy and Information
Public Policy and Advocacy*

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- ▲ Spot Repairs with Cured-in-Place Liners of Mainlines
- ▲ Mainline-Lateral Interface Relining
- ▲ Testing & Sealing with Chemical Grout of Mainlines and Laterals
- ▲ Manhole Sealing with Chemical Grout or Cementitious Products
- ▲ Manhole Lining with Cementitious and/or Epoxy Liners
- ▲ Manhole Corbel Sealing & Rebuilding
- ▲ Manhole Frame & Cover Sealing, Resetting and Replacing

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For more information about the following workshops or events, please call Lisa Goodell, Conference Coordinator, at 800-649-7915, or email lgoodell@vlct.org. You may also visit www.vlct.org/events-news-blogs/event-calendar/ and select a workshop for more information or to register online. Please check back frequently for program updates. Final agendas and online registration are available six weeks prior to the event date. For non-VLCT events listed below, please contact the individuals directly. (The online registration option is available for VLCT workshops and events only.)

MANAGING THE MUNICIPAL BUDGET AND ASSETS HELD IN TRUST
Wednesday, October 10, 2012
Capitol Plaza, Montpelier
(Sponsored by the VLCT Municipal Assistance Center)

This workshop will introduce attendees to managing the annual operating budget as well as managing funds held in trust by municipalities to support libraries, cemeteries,

and for other municipal purposes. Topics will include legal responsibilities of local officials, investment opportunities, and applicable standards of care. The workshop is designed for treasurers, selectboard members, trustees of public funds, cemetery commissioners, and other officers charged with managing municipal funds.

MOBILE DRIVESIM TRAINING SYSTEM
October 14-19, 2012
Rutland City Fire Department, Rutland
(Sponsored by VLCT PACIF)

Hands-on practice for firefighters, ambulance drivers, and road maintenance drivers in a state-of-the-art system that provides the look and feel of municipal vehicles. The driver completes an initial scenario with combinations of road type, weather, lighting, and traffic conditions. Then the trainer reviews the driver's responses and tailors additional practice for improving the driver's coordination and decision-making skills. This training is free for VLCT PACIF members.

Thursday, November 8, 2012
Holiday Inn, Rutland
MUNICIPAL EMPLOYMENT LAW TRAINING II
(Co-sponsored by the VLCT

Municipal Assistance Center and PACIF)

Both municipal managers and their staff will find this workshop indispensable as it covers the fundamentals of employment law and personnel administration in a municipal setting. It will focus on the major state and federal employment laws and cases affecting municipalities as employers, including emerging employment issues.

AUDITORS WORKSHOP
Wednesday, November 14, 2012
Capitol Plaza, Montpelier
(Sponsored by the VLCT Municipal Assistance Center)

This workshop is designed for newly-elected as well as seasoned municipal auditors. It will include a review of the statutory duties and responsibilities of auditors, a discussion of best practices, and a review of VLCT's Municipal Internal Controls Checklist audit checklists to help you conduct the annual audit of your town's accounts.

Visit www.vlct.org/events-news-blogs/event-calendar/ for the most up to date list of events.