

VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

October 2014

TOWN WEBSITES AND THE OPEN MEETING LAW AMENDMENTS

With all the issues with which the 2014 legislature dealt, it is very interesting to see the kerfuffle that the changes to the Open Meeting Law have caused. Most of the ire of local officials has been focused on one new mandate: that “[m]eeting minutes shall be posted no later than

five days from the date of the meeting to a website, if one exists, that the public body maintains or has designated as the official website of the body.” Despite the fact that meeting minutes of all public bodies have had to “be available for inspection by any person ... upon request after five days from the date of any meeting” for at least the last forty years, adding the requirement of posting to a website has engendered much angst in local officials in several towns. As they felt incapable of complying with the new posting

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Left: Sarah Jarvis, VLCT Municipal Assistance Center Attorney II, speaks to attendees at the Open Meeting Law Workshop in Montpelier on September 10, 2014.



VLCT Municipal Assistance Center 2014 Open Meeting Law Resources and Training*

Training

- **Open Meeting Law On-site Workshop.** MAC attorneys can come to your town to review how the law has changed and answer questions. The discounted fee for PACIF members is \$415.00. Contact Abby Friedman (800-649-7915; afriedman@vlct.org) to schedule a workshop.
- Open Meeting Law and Public Records Act Workshop (09-10-14) materials.

Other Resources

- **Vermont Digital Economy Project Municipal Websites Page**

Publications

- **Vermont Open Meeting Law.** This booklet summarizes the law as amended as well as offers guidance for entering executive session. It can be **downloaded for free** or purchased from the online bookstore. Due to the length of the amended law, this booklet replaces our former Open Meeting Law poster.
- **VLCT's 2014 Open Meeting Law Frequently Asked Questions**
- **VLCT Model Rules of Procedure for Municipal Boards, Committees, and Commissions** (available as [pdf] or [Word]).

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*To access these documents electronically, go to www.vlct.org and click on the link on the homepage or click on **Vermont Open Meeting Law** under the **League Resources** tab.



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TOWN WEBSITES AND OML

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requirement in a timely fashion, some towns took advantage of the last section of the above quote from the new law and took down their websites until they could comply with the law.

This new mandate – and its companion requirement that agendas for meetings of all public bodies also be posted to the website – has really brought to the fore the evolving role of the municipal website. It is becoming the new delivery system for the dissemination of town government information to the public and the platform on which town transactions are taking place. Websites were conceived twenty years ago, and a number of towns created their own in the early

years. While some towns have invested significantly in their websites, other town governments have been slow to fully utilize them as the technology has evolved. It is easy to see from the experiences of the private sector that we have only scratched the surface of the uses to which websites and the internet can be put by local governments. They will only become of greater use in the future.

On page 4 of this newsletter is an “Ask the League” article that details where else in state statute the legislature has mandated the uses to which towns must put their websites.

One of the reasons town officials have given for their inability to comply with the five-day web posting mandate is their unfamiliarity with how to upload information to their websites, or the great effort that it takes to do

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New IRS Health Dollar Limits for 2015

Employers with high deductible health plans (HDHPs) should note that the IRS has set new 2015 limits both for contributions to Health Savings Accounts (HSAs) and for out-of-pocket expenses for the HDHP plans. Please review these new limits in **IRS Revenue Procedure 2014-30**, available at www.irs.gov/pub/irs-drop/rp-14-30.pdf. If you have any questions, email Kelley Avery (kavery@vlct.org) or Larry Smith (lsmith@vlct.org) or call Kelley or Larry at 800-649-7915.

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Questions asked by VLCT members and answered by the League's legal and research staff

ASK THE LEAGUE

WHAT INFORMATION MUST TOWNS PUT ON THEIR WEBSITES?

By now, most of you are familiar with the amendments to the Open Meeting Law which, among other things, require public bodies of every town to post meeting minutes and agendas to their website “if one exists” or that are maintained or have been “designated as the official website of the body.” But did you know that four other state laws also require or enable you to post information to a town website? The relevant provision of each of these laws is noted below, followed by a summary of what it means. Some of the laws are recently enacted, but you may be surprised to learn that others have been around for years.

Nomination of justices of the peace (17 V.S.A. § 2413(a),(2),(B)) – effective since May 2014.

In addition, for towns with over 3,000 voters, the committee shall post this notice at least one day prior to the caucus: (i)(I) in a newspaper of general circulation within the town; or (II) on a nonpartisan electronic news media website that specializes in news of the State or the community; and (ii) on the municipality's website, if the municipality actively updates its website on a regular basis.

Summation: Although the statute does not define what it means to “actively update a website on a regular basis,” the language here seems to establish a higher threshold than merely having, maintaining, or designating a website as the official website of a town (e.g., the threshold imposed under the Open Meeting Law).

Warning and notice required, publication of warnings (17 V.S.A. § 2641(b)) – effective since July 2014.

In addition, the warning shall be published in a newspaper of general circulation in the municipality at least five days before the meeting, unless the warning is published in the town report, and distributed as provided in 24 V.S.A. § 1682. The legislative body annually shall designate the paper in which such a warning may be published. The warning shall also be posted on the municipality's website, if the

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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

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ASK THE LEAGUE

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municipality actively updates its website on a regular basis.

Summation: Beginning next year, annual town meeting warnings must be posted on a town's website. The law, however, does not specify *when* the warning must be posted. While this requirement can be found in the same section of the law requiring the warning to be published in a newspaper at least five days before the annual meeting, we suggest posting to the website within the same time-frame as the other postings around town (i.e., "not less than 30 nor more than 40 days before the meeting.")

Notice of outside audit of town accounts (24 V.S.A. § 1690(b),(4)) – effective since May 2010.

[T]he legislative body shall post the audit report and the accompanying report on internal control over financial reporting on the municipality's website, if the municipality has a website.

Summation: This requirement only comes into play when a town has a state-licensed public accountant perform an annual financial audit of the town's funds. The public accountant must also present his or her findings or opinion to the selectboard, which must in turn notify the voters of the availability of the auditing reports. The selectboard must also include a summary of material weaknesses or significant deficiencies in its internal controls or statement that the audit report gives a qualified, adverse, or disclaimed opinion in the next published town report. This statute sets a very low threshold and requires the posting to a town website if it has one.

Ordinance Adoption Procedure (24 V.S.A. § 1972(a),(1)) – effective since July 2012.

The legislative body of a municipality desiring to adopt an ordinance or rule may adopt it subject to the petition set forth in section 1973 of this title and shall cause it to be entered in the minutes of the municipality and posted in at least five conspicuous places within the municipality. The legislative body shall arrange for one formal publication of the ordinance or rule or a concise summary thereof in a newspaper circulating in the municipality on a day not more than 14 days following the date when the proposed provision is so adopted. Information included in the publication shall be the name of the municipality; the name of the municipality's website, if the municipality actively updates its website on a regular basis;

the title or subject of the ordinance or rule; the name, telephone number, and mailing address of a municipal official designated to answer questions and receive comments on the proposal; and where the full text may be examined. The same notice shall explain citizens' rights to petition for a vote on the ordinance or rule at an annual or special meeting as provided in section 1973 of this title.

Summation: When a selectboard adopts an ordinance, it must enter it into the minutes of the meeting when it is adopted and post it in at least five public places in town. It must also be sure that the ordinance or a summary of it is published in a local newspaper not more than 14 days following its date of adoption. That publication must also include other information, such as the title or subject of the ordinance, municipal contact

information, an explanation of citizens' petition rights, as well as the name of the town's website if it "actively updates" it regularly.

Hearing and Notice Requirements for Development Review Hearings (24 V.S.A. § 4464(a),(4)) – effective since September 2005.

The bylaw may also require public notice through other effective means such as a notice board on a municipal website.

Summation: Unlike the other laws noted above, this one isn't a state mandate to post notices on a town website. Rather, it *enables* towns to require the posting of hearing notices for all development review applications if they choose to do so through their zoning bylaws.

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

UPCOMING MUNICIPAL ASSISTANCE CENTER WORKSHOPS

FALL AUDITORS WORKSHOP

Tuesday, October 21, Capitol Plaza Hotel and Conference Center, Montpelier

This workshop is designed for locally elected auditors as well as treasurers, selectboard members, municipal managers and administrators, and finance directors who want to improve internal controls and the quality of financial reporting. Auditors face the sometimes daunting task of auditing the accounts of local government and reporting their findings in the annual town audit report to the voters. Municipal finances have become increasingly complex, requiring greater oversight to ensure that appropriate fiscal controls are in place to prevent misuse or mismanagement of funds and to ensure accurate financial reporting. In this workshop, we will scrutinize the role and responsibilities of the elected auditor and provide tools you can use to audit your town's accounts.

FALL PLANNING AND ZONING FORUM

Wednesday, October 29, Capital Plaza Hotel and Conference Center, Montpelier

The Fall Planning and Zoning Forum offers participants a chance to discuss pressing issues in municipal planning and zoning with officials from across the state. The workshop provides a dynamic mix of legal information, practical solutions, and policy discussions, as well as many opportunities to ask questions and share experiences. It is designed for all local officials involved in the local planning and development review process. Zoning administrators, planning commissioners, DRB/ZBA members, town administrators and managers, municipal planners, and regional planning commission staff are all encouraged to attend. We are seeking AICP Certification Maintenance credits. In order for AICP members to claim credits, they must attend the entire event.

FALL SELECTBOARD INSTITUTE

Saturday, November 8, Lake Morey Resort, Fairlee

The Fall Selectboard Institute will expand our training on the unique roles and responsibilities of Vermont selectboard members. The workshop includes timely town meeting preparation topics of drafting articles, preparing the warning and dealing with petitioned articles, as well as preparing and managing the annual budget. In addition, we will review the important topics of employee termination and ordinance adoption and enforcement. Designed for both newly elected and seasoned members, the workshop is highly interactive and allows members to learn from each other's experiences.

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



LEGAL AND REGULATORY NOTES



DNA SAMPLING LAW RULED UNCONSTITUTIONAL; NO CELL PHONE SEARCHES WITHOUT A WARRANT

Vermont Supreme Court Rules Vermont's DNA Sampling Law Unconstitutional

This summer, the Vermont Supreme Court ruled in the case *State v. Medina*, 2014 VT 69, that Vermont's law requiring individuals charged with a felony to submit a DNA sample is unconstitutional under the Vermont Constitution. A year earlier, the United States Supreme Court came to a different conclusion in *Maryland v. King*, 133 S. Ct. 1958 (2013). In the *King* case, the Court ruled that taking DNA samples from individuals charged but not convicted of a criminal offense is a legitimate police booking procedure, and is reasonable and constitutional under the U.S. Constitution's Fourth Amendment. The opposite rulings in these two cases is attributable to the difference in the Vermont and U.S. constitutions and the fact that states are free to adopt laws and craft their state constitutions in ways that afford their citizens greater protections than those available under the federal constitution. Since the ruling in *State v.*

Medina was based entirely on the Vermont Constitution and not the federal one, the decision in that case faces no risk of reversal. Article 11 of the Vermont Constitution is the equivalent to Fourth Amendment of the U.S. Constitution in that it protects against unlawful search and seizures. Article 11 of the Vermont Constitution provides in part that "The people have a right to hold themselves, their houses, papers, and possessions, free from search and seizure." *Vt. Const. ch. 1 art. 11*. Article 11, however, has consistently been held by the Vermont Supreme Court to be more protective than its Fourth Amendment counterpart.

The Vermont Legislature created the DNA data bank and database in 1998 in order to collect and later analyze DNA from persons convicted of any crime defined as "violent" under state law. In 2005, the state legislature expanded DNA collection to include anyone convicted of any felony or attempted felony. Prior Vermont Supreme Court rulings have upheld the use of the DNA database and data bank, as well as the

expansion of its application to those convicted of felonies and attempted felonies. In 2009, however, the legislature further expanded DNA sample collection to persons charged with but not yet convicted of a felony. It was this last change to the law that brought upon the *State v. Medina* case in which seven criminal defendants challenged the law as unconstitutional.

All of the defendants in *State v. Medina* had been arraigned on qualifying charges and subsequently refused to give DNA samples. The State moved to compel them to do so at statutorily mandated hearings in superior courts, where each defendant claimed that the statute violated the Vermont Constitution. Each separate case was consolidated into one, which became the *State v. Medina* case before the Vermont Supreme Court. In analyzing this case, the Court turned to its

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LEGAL AND REG.

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opinion in the 2008 case of *State v. Martin*, 2008 VT 53, which upheld a post-conviction DNA database on the theory that “using DNA to determine who committed a past crime is fulfilling an ordinary law enforcement purpose,” but using it to link the same person to future crimes is a kind of “special need” for which a warrant is not necessary so long as the State’s interests outweigh those of the convicted offender. This test created by the Court has come to be known as the “special-needs test,” and it requires that the law fulfill a special need, beyond the normal needs of law enforcement, and that the balance between public and private interests at stake weighs in favor of allowing the search or seizure.

When the Court applied the special needs test to the facts in *State v. Medina*, it found that the State failed every point of the analysis. The Court stated that “each defendant’s privacy interest is greater [than it would be after conviction] because he or she has not been convicted,” and still has a presumption of innocence. The justices questioned the notion that pre-conviction DNA sampling was a “valid and timely governmental

interest” to better ensure the accurate identity of the person arrested. The Court reasoned that identification is “tangentially accomplished by post-arraignment DNA collection and analysis,” and that the State had articulated no special need for DNA sampling beyond that for post-conviction. Further, the Court found that, under Article 11, while it “is possible that the fruits of a DNA search will produce information bearing on conditions of release or confinement with

respect to a particular defendant, that possibility alone is insufficient to justify a warrantless DNA search of every defendant, with no distinction among those who will be searched.” The Court continued that although pre-conviction fingerprinting at booking has never “been held to run afoul of Article 11, DNA sampling was different in that DNA samples “provide a massive amount of unique, private information about

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VTGFOA FALL WORKSHOP

The annual fall workshop of the Vermont Government Finance Officers’ Association (VTGFOA) is scheduled to be held at the Windjammer Inn and Conference Center in South Burlington on Friday, October 24, 2014. The half-day workshop will feature two topics that municipal finance professionals, certified public accountants, municipal managers, selectpersons, and nonprofit organizations statewide will find beneficial.

The workshop will begin with a timely review of Statements 63 and 65, recently issued by the Governmental Accounting Standards Board (GASB). The discussion will focus on the two new financial statement elements: deferred inflows of resources and deferred outflows of resources. The second session – “Fraud, Waste and Abuse: What Government Officials Need to Know about Employee Theft and How to Combat It” – will be led by keynote speaker Christopher Marquet, CBA. Marquet, an expert in fraud and embezzlement, is the founder and CEO of Marquet International and publisher of the annual Marquet Report on Embezzlement.

VTGFOA will be offering CPE credits to all attendees.

Please visit www.vtgfoa.org for additional information and registration details.

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HAVE 50 OR FEWER EMPLOYEES? PREPARE FOR VHC (“THE EXCHANGE”) FOR 2015

The 2015 health insurance renewal season is upon us! Most small employers (those with 50 or fewer FTE employees according to the federal counting method) have already switched to Vermont Health Connect (VHC, or Exchange) plans, and they are accustomed to working directly with their carrier for payments and administrative tasks. These employers need to prepare for next year’s health insurance in October because employees must learn their options and make their choices (or changes) in November so that everyone will be covered on January 1, 2015. A handful of small employers have a more accelerated timeline because they are still on pre-VHC plans with coverage that ends on the last day of September, October, or November of 2014.

As you have probably heard by now, the small business employer/employee enrollment portion of the VHC website will not be functional for this renewal, so all small employers will continue to renew directly with their chosen insurance carrier for 2015 coverage.

Renewal Information

- If your group is moving to the Exchange for the first time in October, November, or December of this year, feel free to call Larry Smith or Kelley Avery at VLCT at 800-649-7915 for more information and direct assistance.
- If your group moved to VHC **any time during 2014**, state law requires you to renew for a January 1, 2015 effective date. VHC now offers only calendar-year contracts.
- **NEW FOR 2015:** Blue Cross (BCBSVT) will now allow for full employee plan choice for all of its Exchange plans. However, your group can decide to retain your “status quo” and continue with your current Exchange plan offerings. In other words, you are not required to offer all Exchange plan options to your employees, but you have the option to do so. MVP continues to offer full plan choice for enrollment as well.

Renewal Timeline for Groups in VHC Plans (to be covered on January 1, 2015)

October: You will receive renewal information from your carrier, with the new plan rates, instructing you on the new process for direct enrollment. Please review these instructions carefully and adhere to all deadlines and requirements from your carrier.

November: This is your employees’ Open Enrollment period, so as usual you should make all of them aware of their plan options by November 1st. If you decide to offer full choice, you will need to communicate this to your employees. If you decide to continue to offer the Exchange plans you have already selected, your employees will need the opportunity to switch plans for January 1, if they choose to do so.

December: Provide all group and employee Open Enrollment changes to your carrier by December 1st according to the carrier’s instructions. Remind employees that their plan deductibles and out-of-pocket expenses will reset on January 1.

January: If all of your employee changes have been submitted by the specified deadlines, employees who switched plans should have their new insurance cards in hand by January 1.

Note: If you take no action on the instructions provided from your carrier, **your employee plans will automatically be renewed as is for 2015 at the new rates.** For assistance, BCBSVT groups should call the Exchange Specialists Hotline at 800-255-4550, and MVP groups should call 800-825-5687.

PACIF Members:

Be sure to complete your 2015 Renewal Application and return it **by Friday, October 10, 2014**. Questions? Call 800-649-7915 to talk with an Underwriter.

COMING SOON: UI TRUST RENEWAL FOR 2015

Although as of press time the 2015 rates for VLCT’s Unemployment Insurance Trust members have not yet been officially approved, we again anticipate good news. UI Trust members can expect to see a mailing by mid-November that announces the approved rates – probably with little or no increase – and will also include:

- the annual renewal cover memo,
- the annual renewal assessment and breakdown, and
- the first quarter invoice, which will be due by January 1, 2015.

Details will follow in the November issue of the *VLCT News*.

DELTA’S PREMIER PROVIDERS

If you offer Northeast Delta Dental (Delta) coverage to your employees, you might already have received a notice from Delta that on January 1, 2015, it will change how much it pays to providers who are in its Premier network. This change will be invisible to most Delta customers, but Delta anticipates that some of the affected providers may choose to leave the Premier network. The fact that as of September 1, 2014, the majority of these same providers had renewed their contracts with Delta gives us reason to hope that this change will cause very few customers to notice any difference in how they are charged by their dentist.

If you have any questions regarding this information, please contact Kelley Avery (kavery@vlct.org or 800-649-7915, ext. 1965).

KEEP USING HEALTH ADVOCATE!

Employees who received their 2013 health insurance through the VLCT Health Trust have full access to Health Advocate through 2014. Health Advocate is a completely independent and confidential third-party service that answers healthcare-related questions; cuts through the red tape to address health insurance billing and coverage issues; locates hard-to-find medical specialists and schedules appointments with them; and researches local resources for eldercare, among other things. Subscribers only need to **call 1-866-695-8622 any**

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MENT SERVICES

HEALTH ADVOCATE

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time to get started. Personal Health Advocates (typically registered nurses who have immediate access to health insurance benefit specialists) are on hand Monday through Friday from 8 a.m. to 9 p.m., so if you call outside of those hours, you'll get a call or email back, whichever you specify. Health Advocate staff know the medical care and insurance systems (including Medicaid and the Vermont Health Connect insurance plans) from the inside out, and will field questions from the covered employee or his or her spouse and help address questions and issues relating to them or their dependent children, parents, or parents-in-law.

Here are some real-life examples of how Health Advocate has helped subscribers.

Medical Claims: Sara had been trying to get coverage for a recent hospital stay. Health Advocate found a coding mistake on the bill and worked with her doctor, hospital, and health plan to correct it so the claim could be reprocessed, saving her \$10,000.

Complex Healthcare: Jeanna's son was diagnosed with a rare cancer and needed comprehensive medical care. Health Advocate found doctors, specialists, and a treatment center and helped schedule appointments.

Insurance-Related Red Tape: Gina's husband needed surgery for a life-threatening condition, but the paperwork approving the procedures got "lost in the system." Health Advocate tracked down and coordinated the paperwork

between the doctor, insurance plan, and hospital and helped convince the insurance company to permit a prompt operation.

Eldercare: Alan needed services for his mother who lived out-of-state and had a number of medical and mental health problems. Health Advocate found home healthcare and subsequently a nursing home with an Alzheimer's unit for his mother's long-term care.

If your group has access to Health Advocate, we encourage you to remind your employees that they can use this important resource at no charge. To watch videos explaining the service, go to <https://members.healthadvocate.com/Secure/>, type VLCT

for the organization name, and click submit, then click on Get Started followed by Member Video. For more information, you and covered employees can always visit VLCT's Health Advocate page at www.vlct.org/rms/health-trust/health-advocate/. Employers can use the payroll enclosure file posted there to easily put Health Advocate information into every employee's hands. If you have other questions about Health Advocate, contact Larry Smith (lsmith@vlct.org or 800-649-7915, ext. 1943) or Kelley Avery (kavery@vlct.org or at 800-649-7915, ext. 1965).

2014 RMS CALENDAR

2014 Vermont Safety and Health Council Annual EXPO. Friday, October 3, Killington Grand Hotel and Conference Center, Killington. \$65 for VSHC members; \$85 for non-members. For information and to register, go to the VHSC October Events Calendar, <http://vshc.org/calendar/?month=oct&yr=2014>.

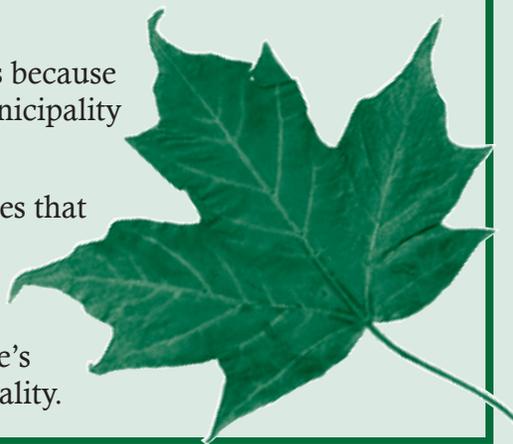
Deadline for PACIF Members to submit completed 2014 Renewal Applications. Friday, October 10, 2014. Update all schedules and return your completed application to Vicky Abare by (1) scanning and emailing it to vabare@vlct.org; or (2) mailing it to VLCT Attn: Vicky Abare, 89 Main Street, Suite 4, Montpelier, VT 05602; or (3) dropping it off at the VLCT Risk Management Services exhibit at Town Fair on October 9th. If you have any questions while updating your schedules, contact a PACIF Underwriter: Vicky Abare (vabare@vlct.org or 800-649-7915, ext. 1941), or Pam Fecteau (pfecteau@vlct.org or 800-649-7915, ext. 1934).

Deadline for PACIF Member Volunteer Fire Departments to return completed Annual Assigned Risk Contact Form. Tuesday, October 14, 2014. To return your completed form, (1) scan and email it to sbenoit@vlct.org; or (2) mail it to Susan Benoit, VLCT, 89 Main Street, Suite 4, Montpelier, VT 05602; or (3) fax it to Suzie's attention at 802-229-2211.

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.



RUST

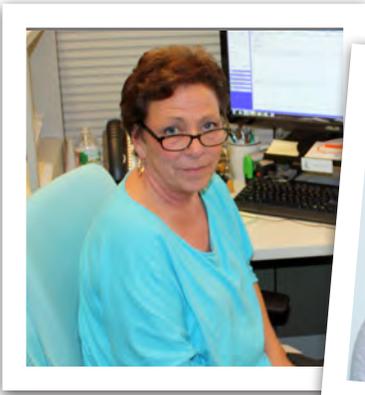
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VLCT STAFF NEWS



Susan Ward



Jen Woodward



Claire Millette

Susan Ward had been working in Workers' Compensation Claims on a part-time, temporary basis since *March*, for crying out loud, but she has since officially joined VLCT as a Senior Workers' Compensation Claims Representative. Susan has oodles of years of experience in the insurance field that includes Liberty Mutual, Acadia Insurance Company, Cannon Cochran Management Service, and The Zenith Insurance Company. When not figuring out workers' compensation claims, she likes to spend time with her family. Her 15 grandchildren account, she says, for some serious birthday party events. She also likes to travel and once had a pet salamander. I think there's a connection there.

A different Susan – Masters – departed the Claims Division in July, heading south with her family to a metropolis famed for being home to both a 30-foot tall can of 7-Up and the World's Largest Floating Goldfish Cracker. (This is not a Trivia question; it's simply information I hope you can use in your municipal quotidian world.)

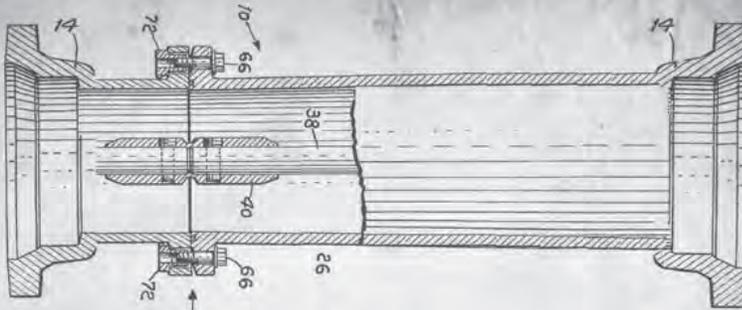
Jen Woodward takes Susan's place as Property and Casualty Claims Representative. In addition to being with VLCT for several years during her first stint here back in the days of typewriters and mimeograph machines, Jen also rejoined the staff for several months following Irene (the tropical storm, not the French scientist who won the Nobel Prize in Chemistry in 1935), working with towns damaged by the storm. She lives in Ferrisburgh with her husband and two children in a home that she plans to landscape until it looks like it belongs in Better Homes and Gardens.

Claire Millette is the new Document and Database Systems Administrator, overseeing the installation and configuration of the On-Base document management system for the Claims Department. Claire most recently worked for National Life, but had a long tenure in Norwich University's IT Department. She spends her free time with her two sons and all of the activities and extended families that come with them (such as hockey, soccer, football, lacrosse, track). Although she never owned a salamander, she has over the years called hermit crabs, fish, red-eared sliders (*Trachemys scripta elegans*), a hamster, and a large stuffed dinosaur named Lasagna her animal companions.

So, let's see, to the Susans we say "welcome" and "good-bye and good-luck," in that order; to Jen, it's "Oh, it's *you* again, eh?" And to Claire: "are you *sure* you never had a pet eel, too?"

David Gunn
Editor, VLCT News

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TOWN WEBSITES AND OML

(continued from page 2)

it, given how and by whom the website was constructed. In many cases, the website was built and maintained by a community volunteer, who is now being inundated with minutes from up to a dozen town boards and committees several times a month.

In many towns – and, soon, in every town – the town website is an essential part of the town infrastructure, just like its bridges, roads, and highway trucks. And like the rest of a town's infrastructure, a town website cannot just be constructed and left static. That serves no more of a purpose for the town or its citizens than does a billboard on the highway (if it wasn't illegal in Vermont). It takes a driver to upload the information to be delivered and to respond to the transactions that transpire on the site. It takes a maintenance person to keep it running smoothly. It takes useful content to fuel and operate it. Every so often, it needs a new part or two and, after some time, perhaps even the whole site needs to be replaced.

As a result, towns will need to invest people power (staff or volunteer time, expertise, and effort) as well as money to keep up with the demands of the public and the legislature to make their websites a more front-and-center feature of the service delivery system of local government. And we will get there. Just as town clerks transitioned from hand copying deeds and other land records into the town books to using photocopiers, and just as we all have made the leap from typewriters to computers for just about every office function, we will learn and invest in what it takes

to make the website a fully functioning and useful tool for our taxpayers.

In conjunction with the Snelling Center for Government, VLCT is surveying all 246 cities and towns to gauge the status of town websites, for what purposes they are using their sites, and what towns need to be able to put their websites to better use and to comply with the Open Meeting Law changes – as well as other changes that will be considered this coming legislative session. The Snelling Center, through its Vermont Digital Economy Project and e-Vermont initiative, has helped 45 cities and towns build and begin to maintain new websites. We hope by learning more about the status of websites across the state, we can determine how VLCT and other partners can best help municipalities clear this most recent technological hurdle.

We believe that many of the most concerning features of the Open Meeting Law changes can be mitigated with some corrections by the 2015 legislature. We also believe it is just the beginning of a dramatic change in how local governments will serve their citizens in the future.

If you have questions about how to comply with the Open Meeting Law, please contact the Municipal Assistance Center at 800-649-7915 or info@vlct.org.

Steve Jeffrey, Executive Director
VLCT

From the Executive Director



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CLASSIFIEDS

Please visit the VLCT website www.vlct.org/marketplace/classifiedads/ to view more classified ads.

VLCT NEWS Advertising Information

The *VLCT News* is published eleven times per year – the August and September issues are combined – and reaches readers no later than the first week of the month.

Two kinds of advertising are available in the *VLCT News*:

CLASSIFIEDS

(Posted online and also placed in the printed VLCT News)

The *VLCT News* publishes classifieds 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.

While there is no deadline for posting classifieds online, the print advertisement deadline (below) applies to classifieds that run in the printed VLCT News.

Classifieds are generally limited to 200 words due to limited space in the newsletter, but they may be longer when posted online. The online version can also include hyperlinks to images or other websites.

For more information on placing classifieds, contact classifieds@vlct.org.

DISPLAY ADS

(Placed in the printed VLCT News)

The deadline for submitting display advertisements is the first Friday of the month prior to the issue date.

Download a calendar of print deadlines and find information on print ad requirements, sizes, and prices at www.vlct.org/advertising-information.

For answers to specific questions about print advertising, email vlctnews@vlct.org.

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.

HELP WANTED

Water/Wastewater Operator. The Town of Milton seeks an Operator for its Water/Wastewater Division. This full-time, union, entry level position in the Public Works Dept. performs duties in operating and maintaining the Municipal Water/Wastewater Treatment Facilities. Tasks include pump and control panel operation, flow adjustments, hydrant flushing, routine maintenance and equipment cleaning, troubleshooting problems that arise, sample collection, hand and power tool use, and meter reading and repair. This job is performed primarily in a field setting including enclosed and/or confined spaces. It frequently requires bending, work on uneven ground, and lifting up to 80 pounds. There are prolonged periods of walking, standing or sitting and exposure to harsh climates during emergency operations (like a water main break). Requirements: a basic knowledge regarding the operation and maintenance of pumps, mechanical equipment, and small tools or is willing to learn; knowledge of basic math and science principles, use of basic computer applications, and safety hazard awareness; high school diploma or equivalent; Associate's degree in related discipline preferred; Vermont Class 1 driver's license to start and a Vermont Class B Commercial Driver's License within six months of hire; Grade 2 DM-Wastewater Certification and a Class D Water Distribution Systems Operators Certification within two years of hire. (There are training programs in place to assist in meeting these certification requirements.) Work is 40 hours per week with occasional on-call hours (with shift differential), Monday to Friday, 7 a.m. to 3:30 p.m. based at the facilities on Lamoille Terrace. This is an AFSCME Union position with a one-year probationary employment period. Starting pay, is \$16.43/hour; this position is eligible for all Town benefits. To apply, email a resume, letter of interest, and completed Town of Milton Employment application (available at www.miltonvt.org/resources/employment.html) to Erik Wells, HR Coordinator, at ewells@town.milton.vt.us, or submit your documents to Erik Wells, HR Coordinator, Town of Milton, 43 Bombardier Road, Milton, VT 05468. Position open until filled. Equal Opportunity Employer. (09-09)

[milton.vt.us](http://www.milton.vt.us), or submit your documents to Erik Wells, HR Coordinator, Town of Milton, 43 Bombardier Road, Milton, VT 05468. Position open until filled. Equal Opportunity Employer. (09-09)

FOR SALE

Sewer Cleaner. The Village of Swanton is accepting bids on a Vactor Model 2103 mounted on a 1997 Ford F-Series diesel truck. The vehicle has 50,000 miles, a 3½ yard debris body, 32 feet of vacuum pipe, 300 feet of 1-inch rodder house, 35 GMP at 3,000 PSI. The unit has many new parts, is in very good shape, and has always been stored indoors. This unit sells as is, with a reserve bid. For more information or to arrange an inspection of the vehicle, please contact Mike Menard, Public Works Superintendent, at 802-868-3397. Mail bid in a sealed envelope by 4 p.m. **Friday, October 3, 2014**, to Vactor Bid, Village of Swanton, PO Box 279, 120 First Street, Swanton, VT 05488. The Village of Swanton reserves the right to reject any and all bids. (09-02)

Tanker Truck. The Town of Warner, New Hampshire, is offering for sale a 1982 GMC Tanker Truck built by Valley Fire Equipment in Bradford, N.H. Features include 427-cubic inch engine, five-speed transmission with two-speed rear end, air brakes, 1,100 gripper tires on rear, 1,500 gallon poly tank, rear and side air dumps, and porta tank. Vehicle length = 19'8". Asking \$8,500, or best offer. The truck is being sold as is, with no warranty. To inspect the vehicle during normal business hours, call Fire Chief Ed Raymond at 603-456-3770. (09-02).

Please Support Our Advertisers

If your municipality is planning a purchase of products or services offered by our advertisers, please consider contacting them. Don't forget to say you saw their ad in the *VLCT News*.



LEGAL AND REG.

(continued from page 7)

a person that goes beyond identification of that person.”

With the aforementioned points made, the Court ruled that the State’s interest in the pre-conviction collection of DNA samples was outweighed by the privacy interests retained by arraignees prior to conviction, and was therefore in violation of Chapter I, Article 11, of the Vermont Constitution.

The decision is archived at <http://info.libraries.vermont.gov/supct/current/op2012-087.html>

*H. Gwynn Zakov, Staff Attorney I
VLCT Municipal Assistance Center*

Police Officers May Not Search the Cell Phone of a Suspect Without a Warrant

In the recent case of *Riley v. California*, 537 U.S. ___ (2014), the United States Supreme Court addressed the question of whether a law enforcement officer may search the information contained on a cell phone seized from a suspect at the time of arrest. The Court held that an officer will generally need to obtain a warrant before conducting such a search.

The facts in the case are as follows: David Riley was arrested for driving with a suspended license. An officer searched Riley incident to the arrest and discovered a cell phone in his pants pocket. The officer examined the contents of the phone and found videos, photographs, and contact information that connected Riley to an unsolved gang-related shooting. When Riley was charged with the shooting, he moved for suppression of the evidence found on the phone, on the grounds that the

search violated his rights under the Fourth Amendment to the U.S. Constitution.

The Fourth Amendment provides:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The amendment is understood to be a safeguard against governmental intrusion into the privacy of individuals. It establishes the general rule that a search warrant is required whenever a law enforcement officer conducts a search of a person or a place. The warrant process ensures that the decision of whether to search is objectively made by a neutral judge or magistrate.

Court cases have created exceptions to the general warrant rule when there is a justifiable need to intrude on an individual’s privacy for legitimate governmental interests. For instance, warrantless searches are allowed when a person is arrested and taken into custody. In these instances, the governmental interest is heightened by the need to protect police officers from the use of weapons that are being carried by the suspect and the need to ensure that the suspect will not destroy evidence in his or her possession. Therefore, the law allows an officer to search through the arrestee’s clothing and personal effects without obtaining a warrant.

In the *Riley* case, the Court found that there was less need to immediately search

(continued on next page)

FAREWELL, PAPER C101s; HELLO, NEW FTE CALCULATIONS!

Vermont’s quarterly reporting process is going through some significant changes this month. Starting with Third Quarter 2014 (3Q14) reporting (due by October 31, 2014), the Vermont Department of Labor (VDOL) is adjusting **how employers must submit and calculate** their quarterly Unemployment Wage and Health Care Contribution data.

Employers of All Sizes Must Now File Electronically

- Paper filing has been discontinued: **form C101 is now out of date.**
- Employers that fail to file online will incur a **\$100.00 penalty.**
- By late September, you should have received a mailing from VDOL with a temporary password to log in and file your quarterly reports online. If you haven’t received a password yet, please email a request to the VDOL’s Kathy Tessier at Kathy.tessier@state.vt.us.
- Employers that have not already started filing electronically and are reporting **0-249 employees** must register before October 13, 2014. To register, visit www.labor.vermont.gov, click on “employer online services” located at the bottom of the home page, and select “register for UI quarterly tax reporting”.
- Employers reporting **250 or more employees** must use the Large Employer Online Reporting Application. Any that hasn’t already done so must register to use the online application. For the PDF file that has the application and relevant information, go to www.labor.vermont.gov and select “forms”, “employer forms”, and “c-29a.”

“Uncovered” Employees: New Definitions and Costs

- The employer Health Care **Contribution for the third and fourth quarters** of the 2014 reporting period has increased to **\$133.30 for each “uncovered”** full-time equivalent (FTE) employee in excess of four.
- Any full-time, part-time, or seasonal employee who is not on a health insurance plan offered by his or her employer and who is **enrolled in Medicaid** will be considered “uncovered”, and the employer must add that person to the organization’s FTE calculation.
- Any full-time employee who is not on his or her employer’s health insurance and **purchases health insurance as an individual** through Vermont Health Connect will also be considered “uncovered” for the employer’s FTE calculation.
- Employers that calculate their health care assessment fee incorrectly will incur a **\$100.00 penalty.**

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LEGAL AND REG.

(continued from previous page)

through the digital information stored on a cell phone than there was to search other items found in the pockets or purses of those arrested. Unlike tangible items, the contents of a cell phone are not dangerous or easily destructible. The destruction of evidence contained within the phone can be prevented by taking the phone into police custody during the time it takes to obtain a search warrant¹. Any concern for officer safety can be alleviated by a cursory examination of the cell phone to ensure that the phone case does not conceal a weapon.

Another reason that the Court used to justify the different standard for cell phones is that information stored in phones is qualitatively and quantitatively different from information kept in pockets and purses. Phones often contain an aggregate of sensitive personal information – including financial,

personal, and medical information – that one would never and could never carry on one's person. Moreover, a search of a cell phone allows access to information stored remotely. These factors make the invasion of the arrestee's privacy exponentially greater when his or her phone is searched than when his or her pockets or purse are searched.

Ironically, it is the ability of the cell phone to aggregate data that makes the phone an invaluable asset in criminal investigations. The decision in *Ryan*, therefore, creates an impediment in the efficient and effective investigation of crime. The Court acknowledged as such, writing:

We cannot deny that our decision today will have an impact on the ability of law enforcement to combat crime. Cell phones have become important tools in facilitating coordination and communication among members of criminal enterprises, and can provide valuable incriminating information about dangerous criminals. (*Id.* at p.25.)

However, the Court found that such an impediment is necessary to protect the

privacy rights guaranteed by the Fourth Amendment. "Privacy comes at a cost." *Id.* In criminal investigations, the cost will be measured in the delay and uncertainty in obtaining a search warrant.

It is important to note that while a search of a cell phone now generally requires a warrant, there are exceptions to that rule, such as when "exigent circumstances" are present. Exigent circumstances include rendering emergency assistance to an injured person, preventing an imminent injury, pursuing a fleeing suspect, and preventing the imminent destruction of evidence. As the Court recognized, "the Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others." *Id.* at 12.

The decision is archived at http://www.supremecourt.gov/opinions/13pdf/13-132_819c.pdf.

Sarah Jarvis, Staff Attorney II
VLCT Municipal Assistance Center

¹The Court dismissed the risks of automatic data encryption and remote wiping of information.

TRIVIA

Last month's trivia question – In Vermont in the 1840s, a postmaster could send letters for free if his or her annual compensation did not exceed what figure? – generated nary a response. Maybe I should've allowed the answer (\$200.00) to be expressed in (154.60) Euros?

This month's question derives from a well-documented conversation that took place on November third of some years ago: A tourist was driving along Route 114 in the Northeast Kingdom when he spotted a farmer out in a field (note that I didn't say he was *outstanding* in his field) holding a handful of rocks. Stopping the car, the tourist asked the farmer what he was doing. "Pickin' up rocks," answered the farmer pithily. "Where'd they come from?" asked the tourist. "Glacier brought 'em," replied the farmer. Excessively curious, the tourist asked, "Well, where did the glacier go?" Pausing only a moment, the farmer said ... **well, what *did* the farmer say?**

Do you know? Were you in the vicinity of Route 114 some number of November thirds ago? If so, either email your answer to dgunn@vlct.org or contact PACIF to request a VLCT carrier pigeon pick up. The answer, such as it is, will appear in the nicely neoteric November issue.



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- Construct rail freight and intermodal facilities.

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2015

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LOCAL GOVERNMENT DAY
February 18
Capitol Plaza, Montpelier

Register Online!
www.vlct.org/eventscalendar