

Journal of the House

Thursday, January 8, 2009

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Rev. Michael Augustinowitz of St. Augustine Parish, Montpelier.

Joint Resolution Placed on Calendar

J.R.S. 4.

By Senator Shumlin,

Joint resolution relating to Town Meeting adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 27, 2009, or Saturday, February 28, 2009, it be to meet again no later than Tuesday, March 10, 2009.

Was read and, in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

Joint Resolution Adopted in Concurrence

J.R.S. 5.

By Senator Shumlin,

Joint resolution to provide for a Joint Assembly to hear the budget message of the Governor.

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Tuesday, January 22, 2009, at two o'clock in the afternoon to receive the budget message of the Governor.

Was taken up read and adopted in concurrence.

Correspondence Regarding Results of Election in District Washington-1 Referred to Committee

**“State of Vermont
Office of the Secretary of State**

Mr. Donald G. Milne
Clerk of the House of Representatives
State House
Montpelier, Vermont 05609

Re: 17 V.S.A. §2605: Request of Leo Valliere for the House to judge the election and qualifications of its member in house district, Washington 3-1.

Dear Don,

I enclose a copy of the letter of November 26, 2008 from Leo M. Valliere to the Office of the Secretary of State. As required by statute, we transmitted the Valliere letter to the Office of the Attorney General on December 1, 2008 requesting the Attorney General to investigate and report as outlined in the statute.

On December 24, 2008, our office received the Letter of Opinion on the law and the facts from the Office of the Attorney General which we now transmit to you for consideration by the House of Representatives as set forth in the statute.

Sincerely,
/s/Deborah L. Markowitz

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Communication from Leo M. Valliere

Leo M. Valliere
15 Delmont. Avenue
Barre, Vermont 05641

November 26, 2008

Deborah Markowitz
Secretary of State
26 Terrace Street
Montpelier, Vermont 00609-1101

Dear Madam Secretary:

Following the recount in the Washington 3-1 State Representative race between Paul Poirier and me, I would like you to notify the Attorney General pursuant to 17 V.S.A. see. 2605(b) to conduct an investigation into the election of this race, on the grounds that voters living outside the Representative District voted in the General Election and thereby affected the outcome of the vote.

I have researched the actual addresses of persons who voted on November 4 in this election, and would provide the Attorney General with that list. They outnumber the 24 votes that separate Mr. Poirier and me following the recount.

Thank you.
Sincerely,
/s/Leo M. Valliere

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December 23, 2008

Deborah Markowitz
Secretary of State
26 Terrace Street
Montpelier, VT 05609-1101

Re: Washington 3-1

Dear Secretary Markowitz:

Pursuant to 17 VSA Section 2605(b) you have requested that this Office look into the recent election in General Assembly District Washington 3-1. The result of the general election showed that Mr. Poirier received 914 votes and Mr. Valliere 888. A recount was conducted and the recount showed 918 votes for Mr. Poirier and 893 for Mr. Valliere. By letter dated November 26, 2008 Mr. Valliere requested an investigation, "on the grounds that voters living outside of the Representative District voted in the General Election and thereby affected the outcome of the vote". Mr. Valliere makes no allegation that there was any defect in the recount. His allegation is based on his belief that persons voted in Washington 3-1 who did not live in the District at the time of the election.

Under Section 2605(b) this Office is required to prepare for you an opinion on the law and the facts.

1. Law

In Vermont eligible voters are identified by creation and maintenance of voter checklists. 17 VSA Chapter 43. There is a very specific statutory framework that is designed to regulate voter checklists. Included in that framework is a process for removal of voters from a checklist. A voter maybe removed from a checklist if the voter is no longer a resident of the voting district. However, in all but the most obvious circumstances, removal may not occur without compliance with a number of provisions designed to prevent voters from being erroneously removed from checklists.

Boards of civil authority are required to meet at regular intervals to review the most recent checklist and consider "for each person whose name appears on the checklist, whether that person is still qualified to vote." 17 VSA Section 2150(c). If the board is unable to immediately determine that a person is still qualified to vote in the district, the board is directed to attempt to determine the voter's status. 17 VSA Section 2150(d)(1). In that effort, the statute suggests that the board consider official and unofficial public documents including "telephone directories, city directories, newspapers, death certificates, obituary (or other public notice of death), tax records, any checklist or checklists showing persons who voted in any election within the last four years." If after making the inquiry described above, the board is unable to locate the voter or if the inquiry reveals facts indicating that the voter may no longer be eligible to

vote in the district, the board shall then send written notice to the voter at the last known address, asking the voter to verify his or her current eligibility to vote in the district. 17 VSA Section 2150(d)(3). There are number statutory requirements concerning the written notice, including that the voter be informed that if the form is not returned, a written affirmation of the voter's address will be required before the voter is permitted to vote again.

If the voter responds to the notice by confirming that he or she no longer lives in the district, the board shall then remove the voter from the checklist. 17 VSA Section 2150(d)(4). If the voter fails to response to the notice, the board may remove the voter's name from the checklist. However, the board may not do so until the day after the second general election following the date the notice was sent.

The above described statutes provide an orderly process to assure that persons on the checklist are qualified to vote in a particular municipality or district. It is a process that is intended to occur before election day. Checklists are presumed to be conclusive, only under limited circumstance may the eligibility of a person on a checklist be challenged on election day. 17 VSA Section 2149. Residence is not among the issues that may be used to challenge a voter on election day. That is further evidence that it is an issue that should be raised before the election.

In contrast to the clarity of the statutes dealing with voter residence, 17 VSA Section 2605 and Vermont Constitution Ch. II Section 14 provide little guidance concerning the criteria to be used by the House of Representatives in judging the qualification of its members. Consequently, we have looked into the facts concerning Mr. Valliere's complaint.II. Facts

The facts are summarized in the attached report of Investigator Darin Barber. There is evidence that a small number of persons voted in a general assembly district in which they do not currently reside. However, there is no evidence of any organized effort to change the result of the election. There is no evidence that anyone induced a person to vote in the wrong district.

The set up for voting in the City of Barre is to some degree the explanation for persons voting in the wrong district. The City of Barre is divided into three single seat districts. However, there is a single polling place. In such circumstances, both the careful physical layout of the polling place and constant attentiveness by staff and volunteers are necessary to prevent persons from voting in the wrong district. The evidence suggests that, on November 4th the system failed to prevent a relatively small number of voters from voting in the wrong district.

Very truly yours,

/s/Michael McShane
Assistant Attorney General

Approved: /s/ Janet C. Murnane

cc Leo Valliere
Paul Poirier

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**OFFICE OF THE ATTORNEY GENERAL
CRIMINAL DIVISION
INVESTIGATION REPORT**

CASE NAME & NUMBER: CR08-10241-Leo Valliere

INVESTIGATOR: Darin Barber

DATE WRITTEN: 12-15-08

COMPLAINT: During the first week of December 2008, I was asked to look into a complaint concerning the latest election results for State Representative, Barre City, Vermont. The November 4th 2008 race for State Representative in the Barre City region was between Paul Poirier and Leo Valliere. There are three Districts that encompass this land area; they are broken down as District 3-1, 3-2, and 3-3. Mr. Poirier and Mr. Valliere were candidates in district 3-1. The complaint, in chief, is that voters that reside in one district actually voted in another district.

ALLEGATIONS: Leo Valliere lost the State Representative race to Paul Poirier by approximately 24 votes. Valliere, asked for a recount, and the results were similar, Poirier had more votes. In looking at the voter registration list, Valliere noticed several names and addresses of voters that appeared to have voted in the wrong district. Valliere also advised that there were several voters that have moved and either failed to notify the town clerk of their new address, or the employees at the polling station did not handle the procedure properly.

BACKGROUND: Leo Valliere filed a written complaint with the Secretary of State's Office, who in turn, by statute, requested the Office of the Attorney General to conduct an investigation.

SUMMARY OF EVENTS: After being notified of Valliere's complaint by the Secretary of State's Office, I received a list from the Barre City Town Clerk's Office that was titled "Barre City voters with differences of district etc." On this list were approximately thirty seven names with the address, polling station and district where the person voted, as well as where the person should have voted. On December 9th 2008, I received a detailed list of the voter checklist which also included some voter registration forms, voter address change forms and a letter from Leo Valliere. In consultation with Assistant Attorney General Michael McShane it was decided that I would attempt to call as many voters as possible and ask a set of questions, to include their addresses, their experience at the polling station. and if they were willing, how they voted in the State Representative race.

SUMMARY OF INVESTIGATION : I began calling the voters that were on

the list I obtained from the Barre City Town Clerk. Of the thirty seven names, I was only able to speak to three. This was due to phone numbers being disconnected or not in service or the person did not reside at the number I called. I spoke to two females and one male. One Female described the following: She voted at the Barre Auditorium in the 3-1 district, she was on the list for the 3-3 district but told me she moved recently and filled out the change of address form at the polling station. She then voted where she was told to by polling employees. She advised the process was confusing and when I told her she was on the list I had as voting in the 3-3 district, she was adamant she voted in 3-1 and advised she voted for Valliere. The second Female I spoke to advised she has lived at her current address since January 2008, and filled out the proper address change paperwork at the polling station (Auditorium). She advised she went to the first desk to fill out the paperwork; polling employees walked her to another desk and then wrote her in to vote at that desk. She stated the entire process was confusing and she was told she was voting in 3-1 district, she also voted for Valliere. The town clerk list shows she voted in 3-2. The Male I spoke to went to the Auditorium polling station and advised employees he had moved recently, he was brought to a desk and told to vote there. He stated he did not think the employee ever switched his address and does not remember filling out any forms. He does not know what district he voted in and does not remember who he voted for. He advised it was a long confusing process at the polling station.

I then began calling random names on the list Mr. Valliere provided. It should be noted that some of the names on the Town Clerk's list were also on list Valliere provided. Out of approximately 50 people called, most phones were either disconnected or not in service. One went to a homeless shelter, (which can be a residence for voting) the other a church and one an address in Canada. I spoke to four people and was advised the following: One female stated her address was new to the city from her old address in Barre Town. Before going to vote, she filled out a change of address form at the WIC center. She advised polling employees that she had moved and was directed to a table to vote, she advised she voted for Poirier. One female on Valliere's list, he has notated that she moved, she advised she did not move and had lived at the address he provided for seven years. She did not vote for either Poirier or Valliere as she did not like either. Another female advised she had moved in March of 2008, she went to the Town Clerk's office in July of 2008 and notified them for voting purposes. She went to a table at the polling center and was not on the list, they sent her to a different table (she believes 32) and voted there. She advised she voted for Poirier. Another female was called and advised that she did not have difficulty at the polls but her husband did. His last address was used as his residence due to him serving in Iraq last year, he advised this year he told the polling employee that he had a new residence address and was shown where to vote, however does not remember filling out any paperwork. He voted for Valliere. He advised that it was a most confusing process.

There were a number of people on Valliere's list that he states should not have

voted because they did not first go to the information table for address verification, and he has them listed as an inactive voter. Valliere also sent postcards out in the past few years

for his business, and the ones he received back from the post office as address changed are on his list. He believes that, on some of the names, if the post card was not delivered, there is no such address. I found one in a short period of time that Valliere has listed as "no such address" when fact the address does exist. A simple search of Map Quest actually gave directions to the residence, more than likely the post card was returned due to the person having a post office box and not a mail box at the address. It should be noted you can have a post office box in one district yet reside in another district.

SUMMARY OF FINDINGS: During the course of this investigation a few common themes were reported. The voters I spoke to expressed that the whole polling process at the Barre Auditorium was confusing, they did not know what district they lived in, and even after voting they were still unsure of their district. Some voters filled out the voter registration/change of address forms at the Clerk's office before voting and when they arrived at the polling station they were still not on the list. The general consensus was that the voters simply voted where they were told to vote. I did not find any evidence of intentional wrongdoing, more often than not it was human error that caused the confusion. I agree with Valliere that it does appear some people voted in the wrong district, the cause of that may never be known. However, some of the names that Valliere listed are still residing at the address he shows on his list, even though he says they are not. Again, you can reside at an address, yet get mail at a different address. It appears that of the people I contacted, about half voted for Valliere anyway, with two voting for Poirier and one could not remember. It appears Mr. Valliere is correct concerning the following on his list: One person listed their address as a church, another person is described as homeless and I discovered one listed a Senior Center as his address. The latter it was discovered also resides in Canada or I should say, has an address in Canada. There were many voters I was unable to reach due to wrong phone numbers or the numbers were not in service, or no one knew the person I asked for. It is possible, that in the age of cellular telephone, many of the voters may have discontinued their land phone lines and are using cellular phones as a home phone.

House Bills Introduced

House bills of the following titles were severally introduced, read the first time and referred to committee or placed on the Calendar as follows:

H. 1

By Reps. Donahue of Northfield and Pugh of S. Burlington,
An act relating to indicating anatomical gifts on a driver license;
To the committee on Transportation.

H. 2

By Reps. Helm of Castleton, Kitzmiller of Montpelier, Stevens of Shoreham, Ainsworth of Royalton, Baker of West Rutland, Condon of Colchester, Consejo of Sheldon, Devereux of Mount Holly, Flory of Pittsford, Jerman of Essex, Lawrence of Lyndon, Lewis of Derby, Malcolm of Pawlet, Marcotte of Coventry, Marek of Newfane, McNeil of Rutland Town, Moran of Wardsboro, Potter of Clarendon and Zenie of Colchester,

An act relating to the sale, use, or installation of outdoor wood-fired boilers;

To the committee on Natural Resources and Energy.

H. 3

By Rep. Emmons of Springfield,

An act relating to technical corrections to the public institutions and corrections statutes;

To the committee on Corrections and Institutions.

H. 4

By Rep. Adams of Hartland,

An act relating to granting reciprocity with respect to licensing requirements for emergency volunteers;

To the committee on Government Operations.

H. 5

By Rep. Peltz of Woodbury,

An act relating to motor vehicle offenses and vehicle forfeiture;

To the committee on Judiciary.

H. 6

By Reps. Klein of East Montpelier and Ancel of Calais,

An act relating to the sale of engine coolants and antifreeze;

To the committee on Natural Resources and Energy.

H. 7

By Rep. Jewett of Ripton,

An act relating to trailer coach property tax exemption;

To the committee on Ways and Means.

Remarks Journalized

On motion of **Rep. Frank of Underhill**, the following remarks by **Rep. French of Randolph** were ordered printed in the Journal:

“Mister Speaker:

I knew Jim Hutchinson casually for a long time, but I got to know him a lot better as a fellow lacrosse fan when his son and my son played lacrosse together in high school. Randolph lacrosse parents were very supportive fans at every game, home and away. We were fairly vocal fans—in a strictly positive way. For those of you who knew Jim, just imagine him as a vocal fan—that strong voice cheering on our team.

When I convinced Jim to run for the House, he took to political life like the proverbial duck to water. He loved talking to constituents and during campaigns we had to remind him there wasn’t enough time to spend an hour with each person he saw. Once he was here in the State House, he found both the process and the substance of the work fascinating—he truly loved learning new things. Jim was a wonderful public servant for both Randolph and for Vermont.

I’ll remember not only Jim’s big, booming voice, but also his intelligence, his integrity, his big heart, and his gentleness and warmth.

Two years ago, in remembering Rozo McLaughlin, I quoted the Roman philosopher Seneca, who, in writing about Death, said, “The comfort of having a friend may be taken away, but not that of having had one. ...He that has lost a friend has more cause for joy that he once had him, than grief that he is taken away.”

I miss Jim a great deal, but it was wonderful to have had him as a dear friend and colleague. We are all richer for having known him while he was here, even though that means we now grieve because he is gone.

Message from the Senate No. 4

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part adopted joint resolution of the following title:

J.R.S. 6. Joint resolution relating to weekend adjournment.

In the adoption of which the concurrence of the House is requested.

Adjournment

At ten o'clock and fifteen minutes in the forenoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.