

Journal of the House

Friday, January 14, 2011

Rep. Leriche of Hardwick presiding.

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. David Newlun of Morningstar Worship, Barre, VT.

Communication from Secretary of State

“Date: January 13, 2011

To: Speaker of the House Shap Smith
Clerk of the House Donald Milne

Gentlemen:

Enclosed please find the Attorney General's finding on the question of the seating of the member from the Windsor-Orange 1 District, in accordance with the requirements of 17VSA 2605.

Yours truly,
James C. Condos”

Communication from Michael McShane Assistant Attorney General

“December 28, 2010

Deborah Markowitz
Secretary of State
26 Terrace Street
Montpelier, VT 05609-1101
Re: Windsor- Orange 1 Election

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 Windsor-Orange 1. The result of the General Election showed that Ms. Buxton received 882 votes and Mr. Ainsworth 881. A recount was conducted and the recount showed 881 votes for Ms. Buxton and 880 for Mr. Ainsworth.

By letter dated December 2, 2010 Mr. Ainsworth requested an investigation. The request alleges three grounds:

1. Voters living outside the Representative District voted in the General Election.
2. Provisional Ballots were not used by the towns as required by 17 VSA § 2555 and § 2556.
3. Ballots were lost or misplaced in the town of Tunbridge between the election night count and the recount.

By letter dated December 6, 2010, this Office requested details from Mr. Ainsworth concerning his complaint. By letter dated December 15, 2010, he provided a list of five individuals who voted but were believed to reside outside of the representative district. The letter offered no explanation or basis for the belief that the five voters listed resided outside of the representative district.. The letter also listed four voters, believed to have registered in the Town of Royalton after the deadline. (Three of the four voters who were identified as having registered late were among the five whose residence was also questioned.)

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

The first allegation is resolved by the statutory process for challenging the residence of voters.

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 may be 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

(Footnote 1. The town clerk may remove a voter from the checklist if that voter has been placed on the checklist in a different district or is deceased, as evidenced by a death certificate. 17 VSA Section 2150(a).)

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, and 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 a number statutory of 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, and 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.

The second allegation was expressed in Mr. Ainsworth's first letter as a failure to use provisional ballots. The second letter clarified that the concern is that four voters were added to the checklist after the deadline to register had passed.² The assumption apparently is that if a voter was not on the checklist by the registration deadline, the only means for that voter to participate in the election would be by provisional ballot. That assumption is not accurate.

In cases in which an applicant has failed to provide any of the information required by the application form, the town clerk shall notify

the applicant that the form was incomplete and the applicant may provide the information "on or before the date of the election"; 17 VSA § 2144b (a).

We have interviewed the Royalton Town Clerk concerning the four voters identified as having been added to the list after the registration deadline. We will refer to the voters by initials. The facts are as follows for each voter:

1) S.B. The voter filed an application dated October 20, 2010. The application was incomplete because it lacked a Social Security number and Vermont Driver's License number. Efforts to contact the voter by phone were unsuccessful. The voter did appear on Election Day; he filled out and signed a Voter Affirmation Form for Addition to the Voter Registration Checklist (Voter Affirmation Form). The completed form includes all of the required information, including a specific street address in Royalton. He was added to the checklist and allowed to vote.

2) J.J. The voter and his spouse had previously been on the Royalton checklist. They had left their former residence and been removed from the checklist. The spouse was added to the checklist again as a result of information provided by the Department of Motor Vehicles that showed she had again become a resident of Royalton. J.J. appeared with his spouse on Election Day and filled out a Voter Affirmation Form. He was added to the checklist and allowed to vote.

3) L.S. The voter claimed to have filled out and signed a voter registration form prior to the final registration date during a voter registration drive that was conducted at Vermont Law School. A number of registration forms which had been collected at the Vermont Law School drive were delivered to the Town Clerk's Office prior to the registration deadline. However, L.S.'s form could not be found. On November 1, 2010 L.S. appeared at the Clerk's Office, filled out another registration form as well a Voter Affirmation Form, and voted early.

4) S.H. voted at the polls on Election Day. She stated that she had filed a voter registration form. Her voter registration form (application to be placed on check list) could not be found, She filled out a Voter Affirmation Form and was allowed to vote.

(Footnote 2. The deadline for acceptance of applications to add names to the checklist is 5:00 PM on the Wednesday preceding the day of the election. 17 VSA§ 2144(a).)

None of the four voters mentioned above requested a provisional ballot. All filled out Voter Affirmation Forms. All took the voters oath. All listed a specific address within the Town of Royalton as their principal dwelling place and affirmed under penalty of perjury that the information provided was accurate. In each case the procedure outlined in 17 VSA §2144b was followed.

The Third allegation is that ballots were lost or misplaced in the Town of Tunbridge between election night and the recount. The basis of this allegation is the fact that on election night, a total of 651 votes were counted in Tunbridge in the Windsor/Orange District 1 race and the recount totaled 649.

We have interviewed the Tunbridge Town Clerk who presided at the vote count on election night. The ballots in Tunbridge are hand counted. On election night both the number of voters on the checklist checked as having voted and the tally showed 651. After the count was concluded the counted ballots were placed in the ballot bag and were sealed by the clerk. The clerk then transported the bag from the Town Hall at which the voting and count had taken place to the Town Office. At the Town Office the bag was placed in the vault. The following morning the ballot bag was tagged and the Official Return of Votes was sent to the Office of Secretary of State. The ballot bag was returned to the vault in the Town Office and remained there until it was transported to the Windsor County Building for the recount.

The ballot bag was transported from the Tunbridge Town office to the Windsor County building in Woodstock by two town officials, one a Democrat and one a Republican. When the ballot bag arrived to the Windsor County Building it was locked in the Probate Court vault. On the day of the recount the ballot bag was removed from the vault and was unsealed by the Deputy County Clerk in the presence of four observers. The bag and seals were intact. A hand count was done by twenty counters, in the presence of the Deputy Clerk and four observers. The total number of votes counted from Tunbridge in the Windsor/Orange District 1 race was 649. The break down was Buxton 345, Ainsworth 295, write-in candidate 1, and 8 spoiled ballots. When added to the recount total from the Town of Royalton, the complete recount total was Buxton 881 and Ainsworth 880. Consequently, the recount did not change the result of the general election.

17 VSA § 2605 and Vermont Constitution Ch. II § 14 provide little guidance concerning the criteria to be used by the House of

Representatives in judging the qualifications of its members. However, in this election the evidence shows that proper statutory procedure was followed.

Four persons were added to the checklist in Royalton on Election Day or in the week immediately preceding the election. As outlined above, proper statutory procedure was used in all four cases. The recount of the Tunbridge ballots totaled two less than the count in the General Election. There is no explanation for the difference. However, the ballots were property sealed and stored after the count on Election Day. The ballots were stored in a secure place and were transported from the Town Office to the County Office by a Democratic municipal office holder and a Republican municipal officer holder. It has been verified that the seals and bags were intact when they were open for the recount. Although the totals differed by one vote per candidate, the recount and the general election produced the same result.

Very truly yours,

/s/Michael McShane
Assistant Attorney General”

Rules Suspended; House Bills Introduced

House bills of the following titles were severally introduced. Pending first reading of the bills, on motion of **Rep. Komline of Dorset**, the rules were suspended and the bills were read the first time by number and referred or placed on the Calendar as follows:

H. 39

By Reps. Grad of Moretown, Bouchard of Colchester, Fisher of Lincoln, French of Shrewsbury, Howrigan of Fairfield, Jerman of Essex, Koch of Barre Town, Moran of Wardsboro, Partridge of Windham, Pugh of South Burlington, Ram of Burlington, Savage of Swanton, Shand of Weathersfield, Stevens of Waterbury, Sweaney of Windsor and Wizowaty of Burlington,

House bill, entitled

An act relating to advance directives for service members;

To the committee on General, Housing and Military Affairs.

H. 40

By Rep. Shand of Weathersfield,

House bill, entitled

An act relating to antique motor vehicle year-of-manufacture registration plates;

To the committee on Transportation.

H. 41

By Reps. Wizowaty of Burlington, Burke of Brattleboro, Donovan of Burlington, French of Shrewsbury, Grad of Moretown, Lorber of Burlington, Marek of Newfane, Moran of Wardsboro, Mrowicki of Putney, Ram of Burlington, Reis of St. Johnsbury, Sharpe of Bristol, South of St. Johnsbury and Weston of Burlington,

House bill, entitled

An act relating to requiring employment breaks;

To the committee on General, Housing and Military Affairs.

H. 42

By Reps. Wizowaty of Burlington, Donovan of Burlington, Evans of Essex, French of Shrewsbury, Lorber of Burlington, Marek of Newfane, Martin of Springfield, Martin of Wolcott, Moran of Wardsboro, Mrowicki of Putney, Ram of Burlington, Sharpe of Bristol, South of St. Johnsbury and Till of Jericho,

House bill, entitled

An act relating to employment decisions based on credit information;

To the committee on General, Housing and Military Affairs.

H. 43

By Reps. Ancel of Calais, Andrews of Rutland City, Bissonnette of Winooski, Bohi of Hartford, Botzow of Pownal, Branagan of Georgia, Buxton of Royalton, Clarkson of Woodstock, Condon of Colchester, Conquest of Newbury, Deen of Westminster, Fisher of Lincoln, Font-Russell of Rutland City, French of Randolph, Gilbert of Fairfax, Greshin of Warren, Haas of Rochester, Heath of Westford, Kitzmiller of Montpelier, Klein of East Montpelier, Krebs of South Hero, Kupersmith of South Burlington, Lanpher of Vergennes, Lenes of Shelburne, Lorber of Burlington, Malcolm of Pawlet, Manwaring of Wilmington, Marcotte of Coventry, Marek of Newfane, Masland of Thetford, Miller of Shaftsbury, Mitchell of Barnard, Mook of Bennington, Moran of Wardsboro, Munger of South Burlington, O'Brien of Richmond, Olsen of Jamaica, Partridge of Windham, Peltz of Woodbury, Pugh of South Burlington, Sharpe of Bristol, Spengler of Colchester, Sweaney of Windsor, Till of Jericho, Townsend of Randolph, Waite-Simpson of Essex,

Webb of Shelburne, Weston of Burlington, Wilson of Manchester, Wizowaty of Burlington and Yantachka of Charlotte,

House bill, entitled

An act relating to creating an index comparing current expenditures per pupil to secondary school cohort graduation rates;

To the committee on Education.

H. 44

By Rep. Till of Jericho,

House bill, entitled

An act relating to establishing a maternal mortality review panel;

To the committee on Human Services.

H. 45

By Rep. Olsen of Jamaica,

House bill, entitled

An act relating to the Winhall school district's budget;

To the committee on Education.

H. 46

By Reps. Till of Jericho, Ancel of Calais, Andrews of Rutland City, Aswad of Burlington, Bohi of Hartford, Browning of Arlington, Burke of Brattleboro, Buxton of Royalton, Canfield of Fair Haven, Christie of Hartford, Courcelle of Rutland City, Dakin of Chester, Deen of Westminster, Donahue of Northfield, Evans of Essex, Fisher of Lincoln, Font-Russell of Rutland City, Frank of Underhill, French of Shrewsbury, French of Randolph, Haas of Rochester, Head of South Burlington, Heath of Westford, Jerman of Essex, Johnson of South Hero, Keenan of St. Albans City, Kitzmiller of Montpelier, Koch of Barre Town, Krebs of South Hero, Lanpher of Vergennes, Larson of Burlington, Lewis of Derby, Lorber of Burlington, Macaig of Williston, Marcotte of Coventry, Martin of Springfield, Martin of Wolcott, Masland of Thetford, McCullough of Williston, McFaun of Barre Town, Miller of Shaftsbury, Mitchell of Barnard, Mook of Bennington, Moran of Wardsboro, Mrowicki of Putney, Munger of South Burlington, Nuovo of Middlebury, O'Brien of Richmond, Potter of Clarendon, Pugh of South Burlington, Ram of Burlington, Shand of Weathersfield, Sharpe of Bristol, South of St. Johnsbury, Spengler of Colchester, Stevens of Waterbury, Toll of Danville, Townsend of Randolph, Waite-Simpson of Essex, Webb of Shelburne, Wizowaty of

Burlington and Yantachka of Charlotte,

House bill, entitled

An act relating to youth athletes with concussions participating in athletic activities;

To the committee on Education.

H. 47

By Rep. Grad of Moretown,

House bill, entitled

An act relating to the licensure of electronic life safety and property protection systems;

To the committee on Government Operations.

H. 48

By Reps. Obuchowski of Rockingham and Partridge of Windham,

House bill, entitled

An act relating to allowing merchants to include the sales tax in the price;

To the committee on Ways and Means.

H. 49

By Rep. Gilbert of Fairfax,

House bill, entitled

An act relating to the calculation of household income for purposes of income sensitivity;

To the committee on Ways and Means.

H. 50

By Reps. Grad of Moretown, Bouchard of Colchester, Donaghy of Poultney, Donahue of Northfield, Head of South Burlington, Howrigan of Fairfield, Jerman of Essex, Koch of Barre Town, Moran of Wardsboro, Partridge of Windham, Ram of Burlington, Savage of Swanton, Shand of Weathersfield, Stevens of Waterbury, Sweaney of Windsor and Waite-Simpson of Essex,

House bill, entitled

An act relating to military pension income tax exemption;

To the committee on Ways and Means.

H. 51

By Reps. Bohi of Hartford and Christie of Hartford,

House bill, entitled

An act relating to expanding the issuance of gold star registration plates;

To the committee on Transportation.

H. 52

By Reps. Partridge of Windham, Conquest of Newbury, Lawrence of Lyndon, Malcolm of Pawlet, McAllister of Highgate, McNeil of Rutland Town, Stevens of Shoreham and Taylor of Barre City,

House bill, entitled

An act relating to the definition of poultry products;

To the committee on Agriculture.

Message from the Senate No. 6

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

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 Tuesday, January 18, 2011, at ten o'clock in the forenoon, pursuant to the provisions of J.R.S. 8.

Concurrent Resolutions Adopted

The following concurrent resolutions, having been placed on the Consent Calendar on the preceding legislative day, and no member having requested floor consideration as provided by Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence.

H.C.R. 6

House concurrent resolution honoring the Dean of the House of Representatives, Michael Obuchowski of Rockingham;

H.C.R. 7

House concurrent resolution congratulating the 2010 Hartford High School Hurricanes Division I championship football team;

H.C.R. 8

House concurrent resolution congratulating the Leland & Gray Union High School baseball Rebels on winning their third consecutive Division III championship;

H.C.R. 9

House concurrent resolution congratulating the 2010–2011 NewBrook Elementary School Vermont State Spelling Bee championship team;

H.C.R. 10

House concurrent resolution congratulating retired Orleans County physician Dr. Frank Fiermonte on his 90th birthday;

H.C.R. 11

House concurrent resolution welcoming the exhibition *The Hale Street Gang: Portraits in Writing* to the State House;

H.C.R. 12

House concurrent resolution honoring the bravery and dedication of the members of the Vermont National Guard;

H.C.R. 13

House concurrent resolution in memory of the American military personnel who have died in the service of their nation in Iraq or Afghanistan from April 11, 2010 to December 27, 2010;

H.C.R. 14

House concurrent resolution honoring John Nelson as a respected advocate for public education in Vermont;

H.C.R. 15

House concurrent resolution congratulating the 2010 Essex Hornets Division I championship boys' soccer team;

H.C.R. 16

House concurrent resolution honoring John T. Stoodley on his amazing journey to umpiring the 2010 College Softball World Series;

H.C.R. 17

House concurrent resolution congratulating the 2010 Bellows Falls Union High School Terriers Division III championship football team;

H.C.R. 18

House concurrent resolution congratulating Chroma Technology Corporation of Rockingham on being honored for its democratic managerial practices;

H.C.R. 19

House concurrent resolution wishing United States Representative Gabrielle Giffords and the other surviving victims of the tragic Tucson shooting incident a successful recovery, and expressing sincere condolences to the families of those who died;

S.C.R. 1

Senate concurrent resolution in memory of Secretary of the Senate David A. Gibson;

[The full text of the concurrent resolutions appeared in the House Calendar Addendum on the preceding legislative day and will appear in the Public Acts and Resolves of the 2011, seventy-first Biennial session.]