

## A commonly misunderstood state law:

### Vermont State Statute, 1961 no. 311<sup>1</sup>

“An act to validate the organization, define the powers and confirm certain proceedings of Colchester Fire Districts Numbers 1, 2 and 3,” [being S. 82], has often been cited as a state law that established (chartered) one or more of the three Colchester fire districts. I submit that the 1961 law did not do so. Rather it ‘validated’ their all “having been organized” from certain earlier dates and confirmed their proceedings from their respective dates of organization. The 1961 law did not state who had approved their original organization, as there was no need to do so. State law had long assigned that function to each town’s ‘selectboard’, upon petition of a stipulated number of local voters (see 20 VSA §2481). That procedure was clearly followed in the case of Fire District No. 1. But it seems the Colchester selectboard overlooked formally creating Fire District’s Nos. 2 and 3 in 1949. At least the Town records do not record the selectboard having acted to create the districts or determine their respective boundaries, as called for in 20 VSA §2481),<sup>2</sup> on those dates. That oversight may have been behind the need for the 1961 state statute, as it validated retrospectively the creation and actions taken by all three districts since their organization. But the 1961 statute did not establish the districts.

Below are reproduced the relevant sections of the 1961 statute. As I indicate in the notes, there are still some items that need further research.

Section 1. The organization of the Colchester Fire Districts numbers 1, 2 and 3 . . . is hereby validated, and those districts, having been organized August 29, 1938, May 24, 1949 and June 6, 1955<sup>3</sup> respectively, are declared to be and at all times since their respective dates organization to validly existing districts. All proceedings of each district before the effective date of this act are hereby validated and confirmed.

Section 2. [Sets out the territory for each district and ends with the following non-numbered paragraph]

Nothing in this section shall be construed to limit the power of any of those districts to change their boundaries under 20 VSA §2481Section 3. The districts shall each have all the

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<sup>1</sup> *Acts & Resolves of Vermont, 1961*, pp. 465-67.

<sup>2</sup> CFD1 was indeed erected by the Colchester Selectmen on 29 Aug 1938, who also determined its boundaries. The action was taken upon receipt of the petition signed by 40 Winooski Park freeholders (dated 27 August 1938). Both items are so found in the Town records. On 3 May 1949 a petition signed by 53 freeholders was received by the Colchester Selectmen requesting to be created as CFD2. A certificate of the Selectboard (dated 26 May 1949) recorded the same, but made no mention of any formal action having been taken by the Selectboard. However, it did report that one its members had presided at the first meeting of CFD2 held on 24 May 1949. On 3 June 1949, a petition signed by 50 freeholds was received by the Colchester Selectmen requesting to be created as CFD3. A certificate of the Selectboard (dated 15 June 1949) recorded the same, but again made no mention of any formal action having been taken by the Selectboard, though it reported one its members had presided at the first meeting of CFD3, which was held on 14 June 1949. Further research is needed to see if the Selectmen took formal action on 24 May and 6 June 1949.

<sup>3</sup> The year ‘1955’ seems to be a mistake, unless the selectboard did in fact establish CFD3 on that later date.

powers and duties of municipal corporations under 24 VSA subchapter 2 of chapter 47 and 24 VSA chapter 73 and any amendment thereto and all the powers and duties of fire districts under the provision of 20 VSA chapter 171 in effect on June 1, 1955.<sup>4</sup>

Section 4. [Regarding provision of water to the State Militia Grounds and United States Military Reservation commonly known as Fort Ethan Allen.]

Section 5. This act shall take effect from its passage. Approved: May 16, 1961

With respect to the concluding provision in section 2, CFD1 has never made use of it to alter its original boundaries, but CFD3 has, on one occasion, in 1997.<sup>5</sup> And the Town may also have on some other occasion altered CFD3's northerly boundary to the Milton line. But the one given in the 1961 state law was: "by a stream known as Sucker Brook and Colchester Pond, the entire waters of Colchester Pond being within the area thus described." On the maps I've consulted Sucker Brook runs (or ran) westerly from the southeastern end of the Pond, which would be a few miles south of the Milton town line. And there would be no need to assert that the District included "the entire waters of Colchester Pond" if its northerly boundary was Milton. Town and District 3 records should be able to settle this point.<sup>6</sup>

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<sup>4</sup> None of the cited statutes in this paragraph are found in the current *Vermont Statutes Annotated* online edition, nor have I researched earlier editions of the VSA on this point.

<sup>5</sup> "The Town Select Board, in February 1997, in response to a formal request from CFD 3 and in accordance with State law (see 20 VSA §2481), expanded the original boundaries of that District to encompass both Winchester Place and Camp Johnson. Subsequently, in April 1997, both of the latter became CFD 3 customers by virtue of an agreement between CFD 3 and CWD, which had been the previous retail supplier. . . . Chairman McLaughlin sent out a report on 4 February, 'The Winchester story: a backgrounder', summarizing matters for District officials." (from CFD 1 Prudential Committee Minutes, 11 March 2011, item 7). If CFD3's northern boundaries

<sup>6</sup> If CWD had first provided water services in the vicinity of Exit 17, CWD's records may also be relevant.