

ASK THE LEAGUE

We have a vacant seat on the selectboard that will be filled by appointment soon. Robert's Rules of Order, which has been adopted by the selectboard, provides "A member who believes that a secret vote will give a truer expression of the assembly's will on a pending motion can move that the vote be taken by ballot." Can the members of the selectboard use a secret ballot to vote to fill the vacancy?

No. Secret ballot voting by the selectboard is not allowed under the Open Meeting Law, notwithstanding provisions in Robert's Rules of Order to the contrary. The Vermont Supreme Court has made very clear that the Open Meeting Law is to be construed liberally to support the overriding goal of open access to public meetings. It has also made clear that exceptions to the Open Meeting Law will be strictly construed against the party seeking to invoke them. *Trombley v. Bellows Falls Union High School District No. 27*, 160 Vt. 101 (1993).

The Open Meeting Law "[P]rotects the interest of the public to hold its elected officers accountable by, among other ways, requiring meetings of a public body to be 'open to the public at all times', except when in executive session, 1 V.S.A. § 312(a), and by requiring that the public be given a 'reasonable opportunity to express its opinion' on matters being considered." *Town of Brattleboro v. Garfield*, 180 Vt. 90 (2006). In addition to the above quote, Robert's Rules of Order states that, "Voting by ballot is used **when secrecy of the members' votes is desired.**" [Emphasis added.] RRO 11th Ed. Sec 45. P 412. To the extent that the secrecy afforded by ballot voting runs counter to the underlying purpose of the Open Meeting Law, a Vermont court is likely to look unfavorably upon ballot voting.

There is a mechanism in Open Meeting Law for a selectboard to conduct a straw vote prior to the appointment of a candidate to fill a vacancy. Under 1 V.S.A. § 313(a)(3), the selectboard can hold an executive session to consider the appointment of a public officer. In the executive session, the selectboard can discuss the merits of each candidate. However, the law requires the

vote to make the appointment to be taken at a meeting that is open to the public. 1 V.S.A. § 312(a) ("No resolution, rule, regulation, appointment, or formal action shall be considered binding except as take or made at such open meeting..."). This executive session provision is intended to allow a full private discussion and vetting of a candidate by a board without fear of disclosure of sensitive information that might injure the interests of the candidate or the municipality. The selectboard could hold any number of straw votes in conjunction with this executive session discussion but, at the end of the day, the vote to appoint a candidate must be made at an open meeting and could not, in our opinion, be done by secret ballot.

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