

# The Role of the Elected Auditor in Town Government

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# Session Topics

**Election and Employment Issues**  
**Independence and Interdependence of Office**  
**Relationship with Other Officers**  
**Statutory Authority**  
**Limits of Authority**  
**Meeting Requirements**  
**Open Meeting Law**



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# Election of Auditors

Every town in Vermont must have three auditors unless the town has voted to eliminate the office of auditor in accordance with 17 V.S.A. § 2651b.

Elected for three-year terms by the voters at town meeting. Terms are staggered, so that at each annual town meeting only one auditor is elected.

Not required to be CPAs or professional accountants but basic understanding of income and expense statements and balance sheets is crucial.



# Incompatible Offices

Town clerk  
Town treasurer  
Selectboard member  
First constable  
Collector of current taxes  
Collector of delinquent taxes  
Trustee of public funds  
Town manager  
Road commissioner  
Water commissioner  
Sewage system commissioner

Sewage disposal commissioner  
Cemetery commissioner  
Town district school director  
Spouse of any of these officers  
Person who assists of any of these officers in the discharge of their official duties.

17 V.S.A. § 2647



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# Vacancy in Office

Selectboard must fill a vacancy “forthwith”

Person appointed serves until next annual meeting unless the SB calls (or voters petition for) a special meeting to elect a replacement

Person appointed as replacement must be a legally qualified voter in the town

The appointment should be filed and recorded in the municipal clerk’s office

**24 V.S.A. §§ 961–963**



# Employment Status

**Auditor is an elected official, not an employee.**

**BUT Auditor is treated as an “employee” for purposes of tax and payroll purposes.**



# Compensation

**Voters may set auditors' compensation at annual town meeting.**

**24 V.S.A. § 932**

**If voters do not set, Selectboard may set.**

**24 V.S.A. § 933**



# Elimination of the Office of Elected Auditor

**A town may vote by ballot at an annual town meeting to eliminate the office of town auditor.**

- The selectboard contracts with a CPA, licensed in Vermont, to perform an annual financial audit of all town funds.
- The selectboard is responsible for all other services previously performed by the elected auditors, including production and distribution of the annual auditor's report.

**17 V.S.A. § 2651b**



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# Reinstatement of the Office of Elected Auditor

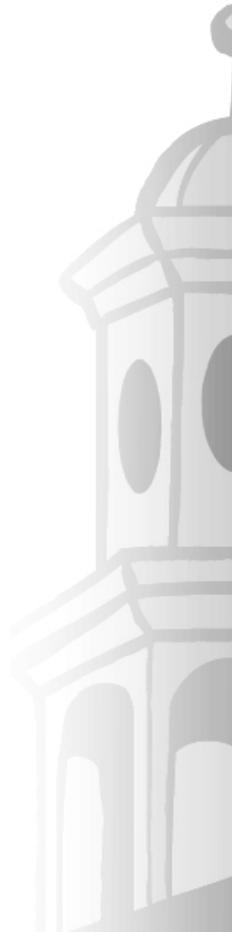
**A vote to eliminate the office of town auditor shall remain in effect until rescinded by majority vote of the legal voters present and voting, by ballot, at an annual meeting duly warned for that purpose.**

**17 V.S.A. § 2651b(a)**



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# Questions



# Statutory Authority

1. Examine and adjust the accounts of all town officers and all other persons authorized by law to draw orders on the town treasurer
2. Report findings in writing
3. Mail “or otherwise distribute” the report to the voters of the town at least ten days before the annual meeting

**24 V.S.A. §§ 1681, 1682**



# Statutory Authority

1. Examine and adjust the accounts of all town officers and all other persons authorized by law to draw orders on the town treasurer

**This does not convey authority to collect debts, pay bills, or change the financial statements of other town officers.**



# Independence of Office

**Elected officials are legally independent of one another**

VT law does not give any elected local official the general authority to tell another elected local official how to do his/her job.



# Town Auditor ≠ School Auditor

- **Town auditors no longer serve as auditors for the town school district**
- Not responsible for audits of incorporated school districts, union school districts, or supervisory unions



# Limit of Authority

Auditor's authority is only as specifically given in statute (and what is incidental or necessary to carry out those functions)

Not authorized to audit outside agencies – even those that receive town funds

Not authorized to “audit” other areas or functions of town government

Risks to acting outside of authority:

- Liability exposure

- Misappropriation of town resources

- Not getting paid!



# Cooperation with Other Officers

**Auditor's job requires the assistance of other town officers and access to their records and accounts**

Every town officer who receives or disburses town funds must “settle their accounts” with the auditors at least 25 days before town meeting.

24 V.S.A. § 992

At any time in their discretion, town auditors may, and if requested by the selectboard, shall, examine and adjust the accounts of any town officer authorized by law to receive or disburse money belonging to the town.

24 V.S.A. § 1686



# Cooperation with Other Officers

**Potential penalties for a town officer's willful refusal or neglect to settle accounts or provide information to auditors upon request:**

- Not eligible for reelection. 24 V.S.A. § § 992, 1686
- Potential criminal sanctions. 13 V.S.A. § 3006



# “Settling” with the Auditors

Every town officer who receives or disburses town funds must “settle their accounts” with the auditors at least 25 days before town meeting. **24 V.S.A. § 992**

## “Settle” not defined in statute, but...

- Auditors do not have legal authority to pay bills or collect debts; and
- Auditors do not have authority to alter records of other town officials



# Relationship with Selectboard

- Selectboard sets auditors' compensation if voters fail to do so.  
24 V.S.A. §§ 932, 933
- Selectboard may not generally direct the work of the auditors, but if selectboard requests, auditors must examine and adjust the accounts of any town officer authorized by law to receive funds.  
24 V.S.A. § 1686(a)
- Annually, on or before February 1, the selectboard must submit to the auditors the record of all orders drawn by the board showing the number, date, to whom payable, and for what purpose.



24 V.S.A. § 1622

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# Relationship with Treasurer

- (Like every other town officer who receives or disburses town funds) must “settle their accounts” with the auditors at least 25 days before town meeting.
- The treasurer must also settle with the auditors 5 days before town meeting.
- In addition, the treasurer must settle with the auditors any time that the selectboard requires it and when the treasurer retires from office.

**24 V.S.A. §§ 992, 1578**



# Relationship with Collectors of Current and Delinquent Taxes

- Auditors are required by to examine "the account that the treasurer is required to keep with the collector [and] the tax accounts of the collector."

24 V.S.A. § 1681

- At the end of the term of a collector of taxes, or if a collector dies, is placed under guardianship, or "removes from" the town, he or she must deliver to the treasurer all tax bills that remain uncollected in whole or in part. Such tax bills must be audited and reissued to the succeeding collector of taxes.

32 V.S.A. § 4671



# Relationship with Delinquent Tax Collector

- On or before February 5, the collector shall deliver to the auditors all volumes of municipal tax collection receipts “and the auditors shall audit the books forthwith and after the completion of audit shall return such books to such collector.” 32 V.S.A. § 5137
- On or before January 15, collector must make a list of delinquent taxpayers as of December 31 of the previous year, showing the amounts due and the years in which such taxes were due. This list must be certified by the collector and delivered to the treasurer and the auditors. The auditors must verify the list and if it is correct, must certify the list. 32 VSA §§ 5162, 5163

# Relationship with Cemetery Commissioners

On or before February 1 of every year, the board of cemetery commissioners must submit to the auditors the record of all orders drawn by the board showing the number, date, to whom payable, and for what purpose.

**18 V.S.A. § 5373, 24 V.S.A. § 1622**



# Relationship with Library Trustees

On or before February 1 of every year, the board of library trustees must submit to the auditors the record of all orders drawn by the board showing the number, date, to whom payable, and for what purpose.

**22 V.S.A. § 143, 24 V.S.A. § 1622**



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# Relationship with Trustees of Public Funds

The auditors must include information in their report regarding all trust funds in which the town is interested with a list of the assets of such funds including an account of receipts and disbursements for the preceding year.

**24 V.S.A. §1684**



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# Relationship with Listers

Since the listers are not "authorized by law to receive or disburse money belonging to the town" pursuant to 24 V.S.A. § 1681, **the work of the listers does not technically fall within the purview of the auditors, and the listers are not legally required to report to the auditors.**



# Relationship with Listers

However, the grand list (taxable value of all property in town) is the basis for all tax revenues and the listers determine the taxable value of property. As such, some consider it necessary for the auditors to review the work of the listers to the extent of tracking the collection of taxes, starting with a check on the grand list itself.

NOTE that any review that is conducted should be limited to reconciling grand list values with collection and billing of taxes and should NOT include a review of valuation methods, land schedules, etc.



# Relationship with Listers

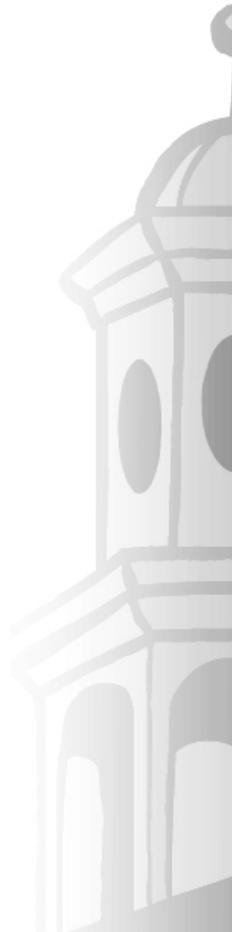
**Auditors have no role in the assessment and valuation of property**

**Work of the listers may only be reviewed and /or challenged by:**

- Tax assessment appeal process (taxpayer, listers, BCA, and Court or PVR); and
- State Tax Department through the State's annual Equalization Study and calculation of the Common Level of Appraisal or "CLA."



# Questions



# Joint Authority

All auditors have equal right and responsibility. Each has the same right of access to the books and input to the work assigned to the auditors by law.

When joint authority is given to three or more, the concurrence of a majority of such number shall be sufficient and shall be required in its exercise.

1 V.S.A. § 172

An action of only one auditor in auditing the town's accounts has no official significance.

*St. George v. Tilley*, 87 Vt. 427 (1914)



# Auditors' Meeting - Legal

Town auditors shall meet at least 25 days before each annual town meeting to examine and adjust the accounts of all town officers and all other persons authorized by law to draw orders on the town treasurer.

**24 V.S.A. § 1681**



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# Auditors' Meeting - Practical

**Reality = meet more than once.**

## **Common approach:**

1. Initial (official) meeting – divide tasks to be completed by individual auditors
2. Independent (informal) work by individual auditors (outside of a warned meeting)
3. Final (official) meeting(s) to review work and formally adopt the auditors' report



# Open Meeting Law

## The Open Meeting Law applies auditors!

But there is an exception in the Law that covers many of the activities of the auditors:

“routine, day-to-day administrative matters that do not require action” by the board of auditors.

1 VSA § 312(g)

**Be Careful:** Not everything the auditors do will fit within that exemption. The Law applies when the auditors meet to take action that is required by law (e.g. adopting the audit report).



# Open Meeting Law Requirements

1. Only conducting business in duly-warned, open meetings (unless specifically exempted).
2. Advance public announcement of meetings.
3. Preparation and posting of agendas.
4. Allowing for public comment at meetings (subject to reasonable rules).
5. Taking minutes at meetings, making those minutes available 5 days after the meeting, and posting on a website, if there is one.
6. Responding in a timely manner when there is an allegation of violation of the law.



# Open Meeting Law

**Only conducting business in duly-warned, open meetings (unless specific exemption).**

- Auditors' have an exception
- “Routine, day-to-day administrative matters that do not require action [by the board of auditors] may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.” 1 VSA § 312(g)



# Open Meeting Law - Notice

**Advance public announcement of the meeting that the auditors are required to hold 25 days in advance of town meeting:**

Notice of such meeting shall be given by posting or publication ten days in advance of such meeting. 24 V.S.A. § 1681



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# Open Meeting Law - Notice

**Advance public announcement for all other meetings depends on type of meeting:**

- “Regular” meetings: those that are set by resolution of the board and occur at a regularly-re-occurring time and day.
- “Special” meetings: meetings that take place outside of the regular schedule



# Open Meeting Law - Notice

## “Regular” meetings:

- Must be made available to any person on request
- Should be posted in town office

## “Special” meetings: at least 24 hours in advance to:

- (1) all members of the body either orally or in writing (unless previously waived by that member);
- (2) an editor, publisher or news director of a newspaper or radio station serving the area;
- (3) any person who requests to be notified of special meetings;
- (4) physically posted in or near the clerk's office; and
- (5) physically posted in at least two public places in town.



# Open Meeting Law - Agendas

## Preparation and posting of agendas

- At least 48 hours in advance of a regular meeting, and at least 24 hours in advance of a special meeting
- Posted in or near the municipal office and in at least two other designated public places in the municipality
- Posted to an official website, if one exists that is maintained or has been designated as the official website

1 V.S.A. § 312(d)



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# Open Meeting Law – Public

**Allow for public attendance and participation during (official) MEETINGS.**

**Public comment may be subject to “reasonable rules” established by the chairperson**

1 V.S.A. § 312(h)



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# Open Meeting Law - Minutes

**Minutes are required for every meeting**  
**Minutes must be available 5 days after the meeting,**  
**and posted to a website, if there is one.**

1 V.S.A. § 312(b)



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# Open Meeting Law – Respond to Complaints

**Respond in a timely manner when there is an allegation of violation of the law.**

1 V.S.A. § 314(b)



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# Questions

