The Vermont Folklife Center's new Irene Digital Memory website, www.vermontfolklife-center.org/irene/stories, is an online database where people around the state can upload photographs, videos, audio and text relating to their experience of Tropical Storm Irene.

Over the past eight months, the Folklife Center has worked closely with Vermonters who were hard hit by the storm. In addition to supporting community-conceived documentation projects that explore the impact of the storm, the Center has facilitated Story Circles – participatory, community storytelling events that are recorded for posterity – around the state.

"Because of the enormity of the disaster, the Folklife Center’s response was from its inception need-driven, collaborative, and open-ended," says Co-Director Gregory Sharrow. "The Irene Digital Memory site embodies the 'by community-for community' model. We wanted to provide a platform for Vermonters to share with one another the important media that they created on the ground in their home communities – like a photo album for the entire state."

(continued on page 10)

VLCT manages three insurance trusts for the benefit of their members: VLCT Health Trust, Inc.; VLCT Unemployment Insurance Trust, Inc.; and VLCT Property And Casualty Intermunicipal Fund, Inc. (PACIF). Each trust is owned collectively by its members and governed by boards of directors comprised of elected and appointed local officials from those member municipalities.

PACIF is extremely healthy, and its members are receiving great dividends due to the financial strength and stability of the fund. PACIF did not increase any rates for the 2012 renewal, despite paying approximately $14 million in covered flood damage to municipal property due to Tropical Storm Irene and despite a 50 percent cost increase in the property reinsurance that PACIF purchases above the fund’s retention. In fact, the PACIF Board of Directors voted to return $1,500,000 to the fund’s members in the form of contribution credits and equipment safety grants. Furthermore, PACIF is celebrating its 25th year of covering municipal assets and personnel. What began as a group purchasing arrangement in response to a severe disruption in the commercial insurance market has grown to become the leading provider of workers’ compensation, property, liability, crime, and automobile coverages for Vermont municipalities.

(continued on page 8)
When Quitting Can Pay

Most employers believe that an employee who quits is not eligible for unemployment benefits. While this is true in general, there are exceptions that employers should be aware of. In order to obtain benefits, the former employee must prove that he or she voluntarily quit with “good cause” attributable to the employment or employer.

Good cause is generally established when work-related conditions have substantially deteriorated or when a situation exists that would force a reasonable person who is otherwise interested in remaining employed to nonetheless leave the job. Careful reporting and documentation of voluntary quits is vital to effective control of unwarranted claims. We have created three lists that indicate what typically may or may not constitute good cause. However, employers must keep in mind that this is an issue on which different states vary greatly. If you have questions about voluntary quits or other unemployment matters, see the end of this article for how to contact your TALX Client Relationship Manager.

Reasons for quitting that may not constitute good cause:
• To attend school
• To get married
• To look for other work (such as for a career change)
• To stay at home with children
• Job abandonment (absence without explanatory calls for three or more days)

Employment-based reasons for quitting that may constitute good cause:
Good cause for quitting may exist if an employer substantially breaches a contract or agreement of employment or terms of hire such as in the situations listed below. Usually, the change must be deemed detrimental to the claimant’s interests.
• Substantial or adverse changes in terms of hire, such as:
  1. Reduction in hours or pay
  2. Changes in duties causing a loss of skills
  3. Demotion or loss of responsibility
  4. Changes in worksite that create employee hardship, unless it was communicated at the time of hire that the employee would be required to work at different job sites
• Violations of wage and hour laws (for example, denial of a lunch break without a written waiver from Department of Labor)
• Harassment or discrimination that can be proven with evidence
• Working conditions detrimental to health or safety

Note: Appropriate disciplinary notices or suspensions do not normally provide good cause for quitting. Also, good cause for quitting may be refutable for some of the cases listed above if an employee accepts the changes for a significant period of time.

(continued on page 5)
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Questions asked by VLCT members and answered by the League’s legal and research staff

Must a public information hearing be held when a town votes its bylaws by Australian ballot?

No. Although a public informational meeting must be held within the 10 days prior to an Australian ballot vote on “public questions” (17 V.S.A. § 2680), this requirement does not apply to bylaw adoption governed by 24 V.S.A. § 4442(c). This is because the statutory authority and requirements for adopting by-laws by Australian ballot is different from the authority and requirements for voting on public questions via Australian ballot.

The process for using the Australian ballot system for public questions requires an informational hearing as a precursor to the vote. “[W]henever a municipality has voted to adopt the Australian ballot system of voting on any public question ..., the legislative body shall hold a public information hearing on the question....” 17 V.S.A. § 2680(g). The purpose of the informational hearing leading up to an Australian ballot vote on a public question is to afford the electorate an opportunity to discuss the article they will be voting on.

Towns are encouraged to have a robust public process to gather input from and to inform citizens and other stakeholders of changes to bylaws that are under consideration. The bylaw preparation and adoption process by Australian ballot have different public hearing requirements: at least one public hearing each by the planning commission and selectboard prior to the Australian ballot vote for bylaws. As an extension of that public process, a town may hold an informational hearing, which is otherwise

(continued on next page)
ASK THE LEAGUE

(continued from previous page)

not required by the bylaw preparation and adoption process law in Chapter 117.
You can find more information about the bylaw preparation and adoption process on
This is a revision to a February 2000 VLCT News article.
Stephanie Smith, AICP, Senior Associate
VLCT Municipal Assistance Center

QUITTING CAN PAY

(continued from page 2)

Personal reasons for quitting that may constitute good cause:
• Medical reasons (for example, receiving a doctor’s advice to move to another climate)
• To care for dependent parent or child
• To follow a spouse who is being transferred elsewhere or who is in the military

Protecting the employer in voluntary quit cases.

As in discharge issues, the key protection for employers in a voluntary quit situation is
documentation. Employers should take care to obtain, if possible, a letter of resignation and/or conduct an exit interview document-
ing reasons for a quit. Employers should attempt to find out exactly why an employee is quitting. Documentation should be signed and dated and note the employee’s last day of work. If an employee is leaving because of an alleged problem on the job, document the background details and attempts, if any, to find a solution, such as the offer of a transfer or leave of absence. An employer should be prepared to present facts to show that the

TRIVIA

Shirley FitzGerald, Louise Luring, Jackie Higgins, Heidi Racht, Sherri Morin, Cheryl Barker, and Ann Myers of Essex, Saxtons River, Williamstown, Huntington, Underhill, Weston, and Essex again, respectively, knew that Misquiquiuangameck is the Abenaki name of the Clyde River. I naturally attributed the correct responses to their thorough knowledge of Native American waterways, but one of the respondents confessed that she “Googled” the question. Well, I was shocked — shocked! — to learn that anyone would avail him or herself of such a resource! Especially since I didn’t think of it first. Meanwhile, on today’s query:

“Aug. 12. Returned home—On the way paid Azel Hatch Esq. fourteen dollars towards a pair of cart wheels in addition to a note on Wilson Dart of ten dollars & thirty five cents, making in all for the wheels $24.25. The wheels I left with Esq. Hatch till I could conveniently get them, with the direction that he might sell them if he could at $24.00—Called at Mr. Kings. Mr. Dorothy had finished haying, and paid Wm Morse $1.37 for half week’s work. I paid Mr. Sprague $5 for 5 days work, & he closed at noon.—Take the Quarterly Register another year & paid for the same to Mr. Gerould $1.50.”

Five bucks for five days work, eh? When you’ve sussed the answer, email it to dgunn@vlct.org. Chances are good that the august August issue will reveal the truth.
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Member FDIC
**State of Trusts**

(continued from page 1)

In 2011, PACIF covered more than 300 municipal entities and generated $17,500,000 in contributions. In addition to the $14,000,000 of Irene damage claims, PACIF paid out $9,500,000 in covered claims and incurred $6,800,000 in operational expenses, including reinsurance premiums. At the close of 2011, PACIF had a net position of $26,700,000, $1,500,000 of which is being returned to its members in 2012. A healthy net position provides for rate stability, financial security, coverage certainty, program enhancements, and—most importantly—a guard against uncertainty in future claim development, reinsurance costs, regulation, and inflation.

The VLCT Health Trust is celebrating its 30th year of providing members with access to competitive health insurance. Over the years it has grown to offer a wide selection of employee benefits including dental and vision coverage, group and voluntary life insurance, short- and long-term disability insurances, and long-term care insurance. But what sets the Health Trust apart is the depth and range of the value-added services we include at no additional charge in our health insurance package; this service-oriented comprehensive format is available only from VLCT.

The Health Trust is in fair but improving financial condition: 2011 was a challenging year, as the Trust experienced high claims and reduced membership and revenues. Last year, the Health Trust’s net position fell $520,000 to $2,100,000. However, with the implementation of the “Carrier Choice” program, the condition of the trust has improved in 2012. It had a net gain in members for the first time in several years, subscriber count remained stable, and operational expenses were reduced by ten percent. With Carrier Choice, members may choose to purchase health insurance with any of the carriers offering coverage in Vermont (primarily Blue Cross/Blue Shield, MVP, and Cigna). Previously, the trust negotiated an association group rate with a single carrier for all members, and coverage was only available on a calendar year basis. VLCT members may now join the Health Trust at any time of the year and purchase coverage from the full range of carriers and plans available in the marketplace. By buying through the Health Trust, members gain many benefits for no additional charge and can ask the Health Trust to represent their interests to their current carrier.

The Health Trust continues to conduct biometric health screenings and promote wellness programs. Although the financial rewards of the Leader program have been retired, the program itself is still available as a best practices recommendation. In place of the Health Trust’s former Healthy Lifestyle Rewards program, similar funding is being provided by each carrier:

- BlueCross/Blue Shield is offering wellness incentives exclusively to their VLCT Health Trust subscribers.
- MVP offers the “WellStyles Rewards Program” to its subscribers.
- Cigna offers grants of up to $5,000 to each of its employer groups for specific pre-approved wellness initiatives, and the

(continued on page 10)
PACIFIC’s Work Zone Safety Handbook Now in Flaggers’ Hands

PACIFIC is proud to announce that the newest addition to its Best Practices library, Work Zone Safety for Vermont Municipalities, 2012 Edition, is now being distributed. This handbook accompanies other materials used in PACIFIC’s Flagger Trainings, one of the many valuable safety services that PACIFIC provides for free to its member municipalities.

The predecessor to the new PACIFIC publication, Vermont’s Guide to Highway Work Zones, was the product of three organizations: Vermont Local Roads, the Vermont Agency of Transportation, and Associated General Contractors of Vermont. That handbook was a convenient subset of the U.S. Department of Transportation’s Manual on Uniform Traffic Control Devices (MUTCD), but it went out of print, and supplies of it ran out across the state in 2010.

While the new book has much of the same content as its predecessor, it has been updated to match Vermont’s use of the 2009 (current) edition of the MUTCD. Moreover, the layout has been changed to help readers more easily find information and to keep printing costs low while still producing a pocket-size, wear-resistant booklet. Checklists that were in Vermont’s Guide to Highway Work Zones have been removed and provided on separate letter-size pages, which is more appropriate for project-based use and allows completed lists to be filed with project records. Several diagrams have been redrawn for clarity, and the remaining ones are slated for revision in future revisions.

These books are reserved for municipal highway and public works departments, so if you’d like to see a copy, get friendly with someone who took PACIFIC’s flagger training this spring. Even though several trainings took place before the books were ready, VLCT’s Loss Control Team of Chris LaBerge, Wade Masure, and Fred Satink are now distributing them in classes and delivering them to departments that have already hosted trainings this year.

Round 1 of 2012 PACIFIC Grants Awarded

The latest set of PACIFIC equipment grants – for which PACIFIC members submitted their applications from January through April – were awarded in May. Sixty-seven of the 73 applications were approved (in full or in part), so those members can buy the approved equipment this year, knowing that PACIFIC will be sending a check reimbursing them for up to 50 percent of the quoted cost. A total of $187,675.63 was granted, leaving $62,324.37 slotted for the Round 2 awards later this year.

Of the funds applied for in 2012 Round 1, the desired equipment was in two main categories: related to fire departments (just under 30 percent) and safety compliance (just over 25 percent). Between five and 13 percent each were in the categories of EMS related (for example, powered cots), traffic control (road work signage and moveable traffic signals), property security (alarm systems), and law enforcement (ballistic vests). Grants were awarded to applicants who made a compelling case that the requested equipment was needed to reduce the risk of claims involving municipal employees and property.

PACIFIC members that haven’t received a grant in 2012 can submit an application before August 31 for the Round 2 awards, which will be announced in September. Please visit www.vlct.org/rms/pacif/pacif-equipment-grants/ for information and an application form. Contact Jim Carrien at 800-649-7915 ext. 1946 or jcarrien@vlct.org for additional assistance.

Municipalities Earn Governor’s Wellness Awards

The Governor’s Council on Physical Fitness and Sports held its annual day-long Worksite Wellness Conference in March. Several VLCT members were acknowledged for supporting the well-being of their employees, and a handful of members were present to receive awards for particular levels of excellence in their worksite wellness efforts.

The morning featured a speech by Governor Peter Shumlin; the presentation of awards by Vermont’s Commissioner of Health, Dr. Harry Chen; the keynote presentation, “A Culture of Well-Being: Why it Matters and How to Create It” by Rosie Ward, Ph.D., President, Human Resources Institute, LLC; four different demonstrations of physical activities to reduce injuries and promote fitness within the work day; and a panel discussion of best practices for wellness at various size worksites. The afternoon’s eight workshops included “Moving Beyond Incentives for Optimal Health” and “Resilience: An Organizational Approach to Improve Emotional Health and Well-Being.”

Honored for their workplace wellness efforts were the Town of Rockingham/Village of Bellows Falls; the towns of Berkshire, Charleston, Whitingham, and Richmond; the cities of Vergennes and Barre; the Northwest Vermont Solid Waste Management District; and the Rutland Housing Authority. Earning Bronze awards were the towns of Marshfield, Castleton, and Lyndon. Earning Silver awards were the Village of Derby Line and the Town of Killington. Earning Gold awards were the Village of Derby Center and the Vermont League of Cities and Towns. And the Chittenden Solid Waste District earned the highest accolade, a Gold Standard award for exemplary achievement.

Welcome New and Returning Members

Town of West Haven, new to PACIFIC as of June 1, 2012
Town of North Hero, returning to the Health Trust as of June 1, 2012
**State of Trusts**  
*(continued from page 8)*

Health Trust helps its members qualify for these grants.

The Health Trust is well poised to assist members in understanding, preparing for, and participating in the impending state and federal health care reform initiatives, including the health insurance purchasing exchange. We have been following the developing state legislation from its inception and have attended and testified at many hearings. David Sicilch, Deputy Director of Risk Management Services, has been named to the advisory committee of the Green Mountain Care Board and will be a voice for municipal interests as health insurance reform takes shape in Vermont.

The VLCT Unemployment Insurance (UI) Trust is healthy again. As a result of the recovering economy, the UI Trust finances are improving steadily. Trust members’ unemployment claims fell nine percent in 2010, dropped another 11 percent in 2011, and the UI Trust’s 2011 year-end net position was $1,320,000. For the first time in many years, the UI Trust Board of Directors voted to return a portion of the net position amount to the membership: $50,000 was returned to members in 2012 in the form of contribution credits.

The favorable UI claim trend has continued into 2012 with a 30 percent decline in the first quarter of 2012 compared to the first quarter of 2011. The overall unemployment rate for Vermont has dropped in 2012 from 5.1 percent in January to 4.6 percent in April, and we are optimistic that this trend will continue. If it does, the UI Trust Board may return funds to members as contribution credits for the 2013 renewal.

All three VLCT trusts exist for the benefit of their members. Participation is voluntary at the discretion of the individual local governing bodies. The fact that the overwhelming majority of Vermont municipalities have elected to participate in one or more of these trusts is a testament to their success in meeting the insurance and risk management needs of individual VLCT members. The trusts’ main goal is to serve the membership and provide cost-effective programs that are certain, secure, and stable. Please feel free to call VLCT Member Relations staff or me directly with any questions, comments, or concerns.

Ken Canning, CPCU, AU  
Director, Risk Management Services

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**Irene Digital Memory**  
*(continued from page 1)*

Sharrow says the website is designed to be an active resource, “because it offers an opportunity for people around Vermont to actively engage with one another, because these stories belong to all of us and they need to be heard.”

Irene Digital Memory is modeled after the Hurricane Digital Memory Bank (http://hurricanearchive.org), which was developed after Hurricane Katrina as an online repository of media generated about and in response to the storm.

“Anyone can contribute,” adds Co-Director Andy Kolovos. “From work by professional videographers to someone’s cell phone footage – it’s all important.” Contributors can choose to post a written account, photographs, audio or video excerpts by using an easy step-by-step interface that locates each story on a map of Vermont.

The Folklife Center will be attending a number of Irene-related events in the coming months to support communities as they contribute content. VFC Fellow Aylie Baker is available as a resource and can be contacted by phone (802-388-4964) or email (abaker@vermontfolklifecenter.org).

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to reduce the length of time for both the design and construction phases of a bridge project and its cost. VTrans is also drafting performance measures for ABC projects that include limiting the duration of every project – from design to “shovel ready” – to 24 months. Having learned of their utility from specific case studies in Chester on Vt. Route 103, VTrans supports the implementation and expansion of these ABC projects and expects that the program can be used in the future to replace more short- and long-structure bridges.

While some towns may be disinclined to accept an ABC project because of its requirement of complete road closures (versus constructing temporary bridges, or phased construction), the recently passed 2012 Transportation Bill (Act 153) provides incentives to municipalities that implement accelerated bridge construction. Under the Act, in any case of highway or bridge construction in which a federal/state/local or state/local funding match is authorized, towns that close a bridge completely during construction instead of building a temporary one (as per the ABC program) will pay 5 percent – not the usual 10 percent – as a local share of the total project cost. This will substantially reduce costs and speed construction. Other local share costs for existing bridge rehabilitation projects are also reduced from 5 percent to 2.5 percent if the municipality closes the bridge (and does not construct a temporary bridge) for the duration of the project.

Local officials can help VTrans’ ABC implementation by thinking creatively about incentives and how such projects might work in specific situations, as well as through support of pre-construction public outreach and local government awareness initiatives. VLCT urges municipal officials to engage in discussions on streamlining the permitting process as part of the accelerated bridge construction dialogue. For more information, please contact VLCT (jwilliams@vlct.org) or VTrans (Wayne.Symonds@state.vt.us), as the program may soon be coming to a municipality near you. By 2014, VTrans hopes to have 30 percent of all bridge construction and rehabilitation projects developed under the auspices of the ABC program.

Jonathan L. Williams
Associate, Advocacy and Information
VLCT Public Policy and Advocacy

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VLCT’s 2012 Local Officials Golf Outing will be held on Wednesday, August 8, at the St. Johnsbury Country Club. Known as “the Crown Jewel of the Northeast Kingdom,” this course has earned a reputation for flawless greens, lush fairways, and well carpeted tees. The outing will be a four-person scramble with a 9 a.m. shotgun start followed by a casual lunch. Funds raised will benefit the Vermont Strong Fund.

Each registration includes 18 holes of golf, a shared cart, a buffet lunch, and a chance to win some great raffle prizes. Registration and payment of $65.00 per person are required before Monday, July 9, 2012. Golfers may either name their foursomes or let VLCT select their partners. We are also seeking sponsors and donations of any goods or services for awards and raffle items.

Show your enthusiasm for Vermont local governments and join us for this enjoyable event. For details, please contact Larry Smith at lsmith@vlct.org or 802-229-9111 ext. 1943.

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• Know your state’s excavation requirements. Go to digsafe.com for educational material and current laws.

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Public Works Director. The Town of Thetford is seeking a Public Works Director. Responsibilities include personnel management, road maintenance and construction, and repair of town roads and property, including recycling center, town parks, and buildings. Requires excellent communication, hands-on skills, CDL, and management experience. Competitive benefits including health insurance and paid vacation. To apply, email letter of interest and resume to selectboard@thetfordvermont.us. (06-06)

Police Chief. Hartford, Vermont (pop. 10,400+) seeks a Police Chief for its progressive and dynamic Police Department. Overall operating budget of approximately $2.4 million, with a staff of 26 delivering a broad spectrum of emergency law enforcement, traffic, and other public safety functions to the community. Minimum requirements: bachelor’s degree from an accredited college or university, preferably in criminal justice or related field, supported by a history of ongoing training. Minimum 10 years progressive senior or command level experience in law enforcement. Combination of education and experience considered. Salary, $78,526 to $90,751, DOQ, with a competitive benefits package. For more information, please visit www.hartford-vt.org/content/policejobs/. To apply, email letter of interest and resume by July 9, 2012, to elebrun@hartford-vt.org, or mail to Eliza LeBrun, Executive Assistant, Office of the Town Manager, Town of Hartford, 171 Bridge Street, White River Junction, VT 05001. EOE. (06-05)

Program Assistant. The Central Vermont Solid Waste Management District (CVSWMD) seeks a conscientious and reliable Program Assistant to work with CVSWMD staff to implement programming to achieve our zero waste mission. The work is a unique balance of office and outside work in our member communities. This entry level, full-time position based in Montpelier requires frequent travel throughout central Vermont. Preferred qualifications: experience or education in solid waste management, composting, recycling, data management and data reporting; good organizational skills and attention to detail; must be a team player with the ability to work independently; and must be flexible and willing to do what is needed to enable our small but dedicated staff to accomplish our zero waste mission. Experience with nonprofit or public sector organizations preferred. Project management experience a plus. Compensation, $24,000-$30,000 per year, plus benefits. For more information visit www.cvswmd.org. To apply, send cover letter, resume and at least three references by July 6, 2012, to Program Assistant Search, CVSWMD, 137 Barre Street, Montpelier, VT 05602. You may also email your documents to administration@cvswmd.org and place Program Assistant search in the subject line. (05-31)

Facility Operations Manager. The Windham Solid Waste Management District is accepting applications for the position of Facility Operations Manager to manage the District’s recycling facility, trucking...
The legal and regulatory ramifications of the First Amendment have been the subject of much debate and litigation. The Establishment Clause of the First Amendment to the U.S. Constitution reads, “Congress shall make no law respecting an establishment of religion.” This clause applies to the acts of local officials under the Fourteenth Amendment. To determine whether the Town of Greece violated the Establishment Clause, the Second Circuit looked at the town’s practice including its prayer-giver selection process, the content of the prayers, and the actions and inactions of its town officials to ascertain whether the town conveyed the view that it favored or disfavored certain religious beliefs as perceived by an ordinary, reasonable observer.

In ruling against Greece, the Second Circuit seemed just as concerned with what it was saying as with what it was not saying, which was that legislative prayers do not in and of themselves violate the Establishment Clause. Rather, a sectarian legislative prayer that is “inclusive of multiple beliefs and makes clear, in public word and gesture, that the prayers offered are presented by a randomly chosen group of volunteers, who do not express an official town religion, and do not purport to speak on behalf of all the town's residents or to compel their assent to a particular belief – is fully compatible with the First Amendment.” Aspiring to and accomplishing this balancing act, the Second Circuit acknowledged it is no easy task and these “difficulties may well prompt municipalities to pause and think carefully before adopting legislative prayer, but they are not grounds on which to preclude its practice.” Essentially, the Second Circuit said municipalities within its jurisdiction (New York, Connecticut, and Vermont) can hold legislative prayers, just not the way the Town of Greece, New York, did. The federal prayer train therefore is still rolling down the tracks, albeit a little slower. A couple more barriers lie ahead, but so long as it treads carefully, it can still get to its destination. Though this case may be appealed, it is unlikely to be heard by the U.S. Supreme Court.

Another train of the same configuration (see Joyner v. Forsyth County, No. 10-1232 (4th Cir. Ju. 29, 2011)) left the station in North Carolina, was denied cert. (i.e., the U.S. Supreme Court refused to hear it), and never reached its destination in Washington, D.C.

The reason why the federal train runs on a separate track – and, by extension, the problem with applying the same reasoning from the Second Circuit’s holding to Vermont – is that its decision was grounded in the U.S. Constitution, not Vermont’s. While similar, the outcome of these cases turns on the differences in the two Constitutions. Where the Establishment Clause of the U.S. Constitution states that “Congress shall make no law respecting an establishment of religion...,” the Vermont Constitutional corollary, Article 3 or the Compelled Attendance Clause, provides that, “no person shall be compelled to attend any religious worship... contrary to the dictates of conscience, nor can any person be justly deprived or abridged of any civil right as a citizen, on account of religious sentiments, or peculiarities of mode of religious worship.” Vt. Const. Ch. I, Art. 3. (Emphasis added.) Herein lies the rub: Vermont’s Constitution “speaks not to establishment of religion” (Chittenden Town School Dist. v. Department of Educ., 169 Vt. 310, 311 (1999)) but rather to a person being “compelled to attend any religious worship...” (Emphasis added.)

We now jump the track to the Vermont case where the state prayer train came to a screeching unscheduled stop (at least in Franklin County and at least for now). In summary, the Town of Franklin opened its annual town meeting by having a local Christian minister deliver a sectarian prayer after the gaveling of the meeting with frequent and express references to the Christian faith. Ms. Hackett, a resident of Franklin who has attended every town meeting since at least 2000, objected to this prayer practice a number of times. Despite her objections, the prayer practice continued through 2011. In contrast to the federal case, the facts mattered much less to the Franklin County Superior Court in finding that the Town compelled attendance at a religious worship by having prayer at town meeting. The Franklin Superior Court’s focus wasn’t on how how or how not the Town of Franklin tried to avoid endorsing a particular religion. Instead it focused on the fact that the prayer was “religious” in the least and that Ms. Hackett (the plaintiff) was “compelled” to listen to it.

Starting from the basis as other courts have done that prayer is an inherently religious act, the Court sought to determine whether the prayer or sectarian invocation constituted religious worship. The Town argued that it was not because the prayer was offered at its annual town meeting and not in a church. The Court disagreed, stating that such an argument would carry more
Legal and Reg.
(continued from previous page)

water in other states that prohibit compelled attendance at any “place of worship,” but Vermont’s constitution was written more broadly to prohibit compelled attendance at “any religious worship.” The Court then turned to the Town’s argument that the prayer offered wasn’t “religious worship” but rather an invocation of guidance based on widely held beliefs steeped in a unique historical tradition. The Court rejected this argument as well, holding that “even if prayer at Vermont town meetings had a long-standing tradition, the Court is skeptical that this would necessarily render the prayer non-religious. The argument that a religious prayer becomes non-religious through use over time would, strangely, imply that earlier prayers at town meetings did violate the Vermont Constitution, since there would be no extended history to sanitize the prayer.”

The Court then addressed the Town’s position that Ms. Hackett was not “compelled” to attend the prayer in order to participate in town meeting within the plain meaning of that word. The Court refused to rely on what it considered the Town’s narrow meaning, countering that the word “compel” can also take the form of influence or causing by overwhelming pressure. The Town’s position was that Ms. Hackett was never forced to recite the prayer or to in any way demonstrate an outward manifestation of her assent to this practice. In the eyes of the Court, there is no distinction between actively participating in town prayer or attending a town meeting at which a sectarian prayer is delivered. “What matters is that, given our social conventions, a reasonable dissenter in this milieu could believe that the group exercise signified her own participation or approval of it.”

Holding a prayer at town meeting, the Court reasoned, put Ms. Hackett in the position of having to choose between attending a religious worship and exercising her right to vote. That she could arrive after the prayer negates the fact that Ms. Hackett has the right to attend the entire town meeting, and “Article 3 prohibits a person from being ‘deprived or abridged of any civil right as a citizen, on account of religious sentiments, or peculiar mode of religious worship.’”

Though a Franklin County Superior Court opinion is binding precedent on Franklin County only and does not necessarily compel any other state superior court to reach the same conclusion, opinions of sister courts (those with the same adjudicatory authority but different jurisdictions) are given persuasive weight (no court likes to be the first one to get a decision wrong) and that’s not a ticket (to completely exhaust the whole train analogy) that I’d be willing to punch.

The holdings of these two cases can best be summed up this way: the federal court said you can still conduct town prayer but it’s going to be a journey fraught with peril. The Franklin Superior Court said you can’t do it at all in Franklin County.

So where does this leave us? With respect to prayer at town meeting, the trains have stopped, at least temporarily. The next stop? The U.S. and Vermont Supreme Courts – maybe. But in Vermont, for the time being, you can’t get there from here.

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VLCT Municipal Assistance Center

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service, and solid waste transfer station. A complete job description is available at www.windhamsolidwaste.org/. Requirements: at least five years of equipment and/or operations experience in the solid waste industry or related field. To apply, email a resume to Bob Spencer at director@windhamsolidwaste.org or mail to Bob Spencer, Executive Director, Windham Solid Waste Management District, 327 Old Ferry Road, Brattleboro, VT 05301. Position open until filled. EOE. (05-24)
claimant did not have good cause to quit or evidence that the reason the claimant gave for quitting is not factually correct. The employer may need to show that it has attempted to resolve the situation with the employee, i.e., alternatives were made available to the employee prior to the resignation.

If you are a member of the VLCT Unemployment Insurance Trust and have questions about voluntary quits or other unemployment matters, contact your Unemployment Insurance Consultant Afshan Mughal at 800-846-9210, ext. 4382, or amughal@talx.com. She is familiar with Vermont employment law and will address your questions thoroughly.

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Visit www.vlct.org/events-news-blogs/event-calendar/ for the most up to date list of events.