


From: Prosser, Jenny Jenny.Prosser@vermont.gov 
Subject: RE: your call to SoS
Date: April 26, 2021 at 3:39 PM
To: bill.weale@builderman.com



Hello,

I should start by letting you know that the Secretary of State has no authority over municipalities or municipal officials, and no investigative or enforcement power under Vermont's municipal laws. I can't give legal advice to the folks who contact our office, and so I generally can't weigh in on whether particular conduct is permissible under the law or offer advisory opinions regarding specific scenarios. I can, however, share my general understanding of the applicable laws and point out the resources of which I'm aware. To that end, here are my thoughts.

The Vermont local elections and municipal statutes don't, in my view, necessarily distinguish between elected and appointed boards in the way you indicate below. The statutes establishing municipal offices generally articulate whether these offices are to be elected by the voters, appointed by a specific individual or body, or – frequently – some mix of the two. For example, towns may choose to transform certain elected positions into appointed ones, typically by a town-wide vote. If an elected town office becomes vacant, the statutes permit filling the vacancy by appointment until an election is had. Some boards may seat a mix of elected and appointed officials. And, a given town may have a governance charter that deviates from the generally applicable law with regards to elected and appointed positions and their duties.

So, the powers and duties of a given board and the officials that comprise it depend, I think, more on the specific statutory obligations accorded that board/official rather than the board members' status as elected or appointed. The open meeting law governs the meetings of "public bodies," regardless of whether a public body's members are elected or appointed. There are no generally applicable laws on the books requiring town boards, whether elected or appointed, to adhere to any specific public bidding process (school boards, though, are a different story). The laws that establish the broad framework for how municipal spending occurs – making the town voters generally responsible for authorizing appropriations via the budget vote, and typically (but not always) giving the selectboard the power to sign orders instructing the treasurer to pay the bills – don't create an elected vs. appointed bright line either.

Granted, appointed officials generally answer to the appointing authority, so, there, oversight and accountability may be more direct. Independently elected local officials typically answer only to the voters.

To get in the weeds a little, I will note that there are some generally applicable municipal statutes that address the sale of real estate. In case it helps, here is what the Vermont League of Cities and Towns has to say on the subject of purchase and sale of land, from its [Handbook for Vermont Selectboards](#) (pp. 133-134). In short: Selectboards can buy, but need voter approval for the expenditure of money. Selectboards can sell, but usually need to comply with statutory notice requirements and then put the question to the voters if petitioned. A town's governance charter can trump all this, and there are also some exceptions in the general municipal statutes pertaining to certain types of property. And, school property is different – school boards do need voter approval before buying or selling.

Regarding the specific questions you ask below, the first thing I notice is that board in question, and the relevant obligation to create board positions by election versus appointment, appears from the info you provide to be tied to funding requirements, not necessarily statutory ones. So, as a general matter, a primary set of source documents here for understanding the board's duties (and resulting consequences of failure to perform those duties) would be any contracts and so forth pertaining to the funding source. If the grant is issued pursuant to a specific set of statutes, those statutes may also provide guidance or context.

Second, I should make clear that I don't have expertise with the federal and state programs you mention, nor their enabling statutes. So, there may well be specific laws in play with which I am entirely unfamiliar. (It might be worth your while to consult with a private attorney with expertise in these matters – the Vermont Bar Association has a [lawyer referral service](#), and I understand their attorneys offer initial 30-minute consultations for \$25 or less.)

Otherwise, in terms of accountability, and again very generally speaking, I'd say that:

- Appointed bodies generally answer to the appointing entity, which can usually remove its appointees (though sometimes for cause only, and sometimes only with certain process). So, concerned members of the public may certainly bring any concerns about a local board's structure or performance to the appointing entity in question.
- The open meeting law's requirements apply to "public bodies," defined as "any board, council, or commission of the State or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the State or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils, or commissions, except that 'public body' does not include councils or similar groups established by the Governor for the sole purpose of advising the Governor with respect to policy." [1 V.S.A. § 310](#)(4). The open meeting law itself gives enforcement power to the aggrieved individual and to the Attorney General, in his or her discretion. [1 V.S.A. § 314](#).
- Because there is no single broad provision of law that regulates the ethical conduct of municipal officials, one must generally look to what a particular municipality has on the books (e.g. governance charter provisions, conflict of interest ordinance, COI/ethics/personnel/other relevant policy) to evaluate the conduct of a particular local official in this regard and understand what sort of enforcement might exist.
- Of course, any allegations of fraud or other criminal conduct should be taken to law enforcement.

I hope this helps. Please let me know if you have further questions.

Best regards,
Jenny Prosser

Jenny R. Prosser
General Counsel & Director of Municipal Assistance
Vermont Secretary of State's Office
802.828.1027
sos.vermont.gov

PLEASE NOTE THAT MY EMAIL ADDRESS HAS CHANGED.

My new address is jenny.prosser@vermont.gov

From: bill.weale@builderman.com <bill.weale@builderman.com>

Sent: Wednesday, April 21, 2021 1:16 PM

To: Prosser, Jenny <Jenny.Prosser@vermont.gov>

Subject: Re: your call to SoS

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hello Jenny—

I understand “working remotely and with unconventional hours.” Thanks for responding. I’m sure we’ll have to speak at some point.

My first question regards possible differences between Town-elected boards and Select Board-appointed boards.

To conform to the requirements for obtaining Federal and State funding through the LWCF/HCRS program to obtain 770 acres of forest land, our SB was supposed to create a “...permanent Board of Trustees of at least 5 members serving for a term of 5 years and elected by the town...”.

Instead, they created a SB-appointed FB of 5 members. And those members serve as long as they wish. The FB then picks someone to replace the departing member. This change from an elected FB to an appointed FB took place having been pre-planned and unnoticed by the voters at the time.

In our town, elected boards have a budget approved by the town each year. They operate within their budgets and submit expenses to the Town Treasurer. She checks to make sure they meet budget requirements than she submits payment orders to the SB. The SB has oversight—but only to the extent the payment requests meet the budget (and other obvious legal) requirements.

This appointed Forest Board has never had an expense or revenue budget. It enters Timber Sales contracts whenever it feels like it, with no public input or notice. During the past 10 years, our forest funds have lost a lot of money. Furthermore, because of unrestricted ATV activity and no road and trail maintenance, our town now faces over \$200,000 in mandatory forest road and trail repairs; there are dozens of Water Quality and Acceptable Management Practices violations. This FB is a self-appointing board with complete authority over 1600 acres of forest land. They are not accountable. There is no oversight. Taxpayers are on the hook for their negligence and lack of qualifications.

It seems to me that the authority to sell public assets and to spend the proceeds should rest with the voters, until and unless, by a town vote, they specifically delegate that authority? This has never happened vis-a-vis our Town Forest.

This is only the tip of the iceberg... I think our SB committed fraud at the time they defied the LWCF contract. I know our current FB and SB are aware that the rules they are following now do

not conform to the grant requirements. But they do feel they have complete authority to act virtually in secrecy regarding all Town Forest activities.

There is a lot more involved. I'm trying to find some authority to help fix this.

Thank you,

Bill Weale
Fairlee
802 384-4791

On Apr 20, 2021, at 3:30 PM, Prosser, Jenny <Jenny.Prosser@vermont.gov> wrote:

Hello,

I wanted to let you know that I've received your voicemail, regarding appointed vs. elected positions.

I am working remotely and with unconventional hours, and I'm finding email works best for me right now. So, if you are able to email me your specific questions, please do.

If not, please let me know and I will give you a call as soon as I can.

Best regards,
Jenny Prosser

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