

CONSTABLE

Unless it has voted to appoint a constable, the town shall elect a first constable and may vote to elect a second constable. 17 V.S.A. §§ 2646(7), 2651a. The constable is a law enforcement officer, as defined by § 54(c)(6) of the Vermont Rules of Criminal Procedure, and as such has the authority to arrest, and has powers of search and seizure within the town. 24 V.S.A. § 1931. A constable may also serve criminal or civil process. 12 V.S.A. § 691. He or she may:

- Destroy unlicensed dogs, following the requirements of 20 V.S.A. §§ 3621–3623;
- Kill injured deer (10 V.S.A. § 4749);
- Assist the health officer in the discharge of his or her duties (18 V.S.A. § 617);
- Serve as a district court officer (24 V.S.A. § 296); and
- Remove disorderly persons from town meeting (17 V.S.A. § 2659).

When no tax collector is elected, the first constable becomes the collector of state, county, town and town school district taxes (24 V.S.A. § 1529).

Vermont law requires a basic training course of a minimum of forty-five hours for a part-time law enforcement officer. The definition of “part-time law enforcement officer” specifically includes “a constable who exercises law enforcement powers.” 20 V.S.A. § 2358. However, section (d) of that section states that the basic training is optional for any elected official. Notwithstanding these sections of Title 20 of the statutes, a town may vote (a) to prohibit constables from exercising any law enforcement authority or (b) to prohibit constables from exercising any law enforcement authority without having successfully completed a course of training under Chapter 151 of Title 20. 24 V.S.A. § 1936a. The jurisdiction of a constable is limited to the boundaries of his or her town or city.

TREE WARDEN

The selectboard shall appoint a tree warden from among the legally qualified voters of the town. 24 V.S.A. § 871. The office of tree warden has been viewed as an archaic office, but is developing new relevance in the late twentieth century. Shade and ornamental trees within the limits of public rights of way are under the control of the tree warden. The tree warden may plan and implement a town shade tree preservation program for the purpose of shading and beautifying public ways and places by planting new trees and shrubs; by maintaining the health, appearance and safety of existing trees through feeding, pruning and protecting them from noxious insect pests and diseases; and by removing diseased, dying or dead trees which create a hazard to public safety or threaten the effectiveness of disease or insect control programs. 24 V.S.A. § 2502. A municipality may appropriate a sum of money to be expended by the tree warden or, if one is not appointed, by the selectboard. 24 V.S.A. § 2503.

- sewers and sewage treatment plants;
- sidewalks;
- public parks;
- water works, reservoirs and dams;
- lighting (e.g. street lights and possibly to operate an electric company); and
- “for other lawful purposes.” 20 V.S.A. § 2601.

The voters may regulate “the manufacture and safekeeping of ashes, gunpowder and combustibles, and the preservation of buildings, by precautionary measures and by inspection.” 20 V.S.A. § 2602. The voters may empower their prudential committee “to cause the streets to be sprinkled or oiled.” 20 V.S.A. § 2603. (It would probably be wise, however, to check current environmental regulations before “oiling” the streets.) The prudential committee may make contracts and purchases of apparatus and real property. 20 V.S.A. §§ 2604-2605. A fire district has the power of eminent domain as granted in 20 V.S.A. § 2606.

C. CONSTABLES

A town constable may be elected or appointed, and voters, if they choose to do so, have the authority to limit the constable’s law enforcement powers. 17 V.S.A. §§ 2646(7); 2651(a); 24 V.S.A. § 1936(a). A vote to authorize the board to appoint the constable must be by Australian ballot.

If no limitations have been placed on his or her authority, the town constable is the town’s local law enforcement officer, with all powers of search, seizure and arrest within the town. If the town so votes, the constable only has the power:

- to serve civil or criminal process;
- assist the health officer in the discharge of his or her duties;
- destroy dogs when so ordered;
- kill injured deer;
- remove disorderly people from town meeting; and

- collect taxes, if no tax collector is elected.

There is no requirement that an **elected** constable have criminal justice training, however the voters can restrict law enforcement activities of those constables who are untrained. 24 V.S.A. § 1936(a).

1. **Election, appointment and removal of constables.** At present, towns may choose a first constable, and, if needed, a second constable, from among its legally qualified voters at annual town meeting. Alternatively, a town may vote to authorize the selectboard to appoint a constable (an appointed constable does not have to be a resident of the town). 17 V.S.A. §§ 2646, 2651(a). Note that, if five percent of the voters of the municipality file a written protest against the article least 15 days before the vote, such vote to authorize the selectboard to appoint a town constable must be approved by a two-thirds majority in order to be effective. Once adopted, the selectboard will continue to have the power to appoint a constable until that power is rescinded by the voters at an annual or special meeting. 17 V.S.A. § 2651(a).

A constable who is appointed by the selectboard may be removed for cause after notice is given to the constable and he or she has had the opportunity of a hearing on the matter. 17 V.S.A. § 2651(a). The hearing may be held in executive session or may be public, depending upon the wishes of the constable. The selectboard may then meet in a deliberative session and decide whether to dismiss the constable for just cause. 1 V.S.A. § 312(e). An elected constable may not be removed by the selectboard.

A constable's term of office is for one year unless a town votes to elect or appoint the constable for a two-year term. 17 V.S.A. § 2646. The constable must take an oath, administered by the justice of the peace (24 V.S.A. § 831) and must be bonded prior to embarking on his or her duties. The amount of the bond is set by the selectboard, which may ask for a larger amount if it sees fit.

2. **Incompatible offices.** The constable cannot serve as a selectboard member, school director, auditor, or town manager. 17 V.S.A. §§ 2456, 2647. This rule does not apply to towns having 25 or fewer legal voters, except that the constable may not audit his or her own accounts. 17 V.S.A. § 2648.

3. **Independence of office.** An elected constable is an independent official who is not under the direction or control of the selectboard. However, the constable may not spend town money without the prior permission of the selectboard. This means that if a constable needs uniforms and equipment, the selectboard must agree to spend this money on behalf of the town. If a salary for the constable is not separately voted at town meeting, the selectboard may set the salary for the constable, and may limit the number of hours of law enforcement activities the town will pay for in a given year.

The first and second constables are independent from each other, with neither acting as the supervisor of the other.

4. **Training requirements.** A town constable is not generally required to have any special training to exercise the functions of the position. 20 V.S.A. § 2358(d). However, because of a concern that an elected constable acting without proper training could harm individuals or subject the municipality to liability, state law now allows towns to limit a constable's law enforcement power by voting to prohibit the constable from exercising law enforcement powers or by requiring him or her to complete a course of training offered by the Criminal Justice Training Council or another institution as a prerequisite to the exercise of law enforcement powers. 24 V.S.A. § 1936(a).

For training purposes, the constable is generally considered a part-time law enforcement officer, working fewer than 32 hours a week or fewer than 25 weeks a year. 20 V.S.A. § 2358. In order to become a certified part-time law enforcement officer, a town constable must complete a three-part training from the Criminal Justice Training Council (the "Police Academy").

For more information about training opportunities for constables, call the Criminal Justice Training Council at (802) 828-2130.

- 5. Sources of law enforcement authority.** Unlike other law enforcement officers who have historically enjoyed broadly implied law enforcement powers, the authority of town constables has been limited to only those powers and duties *expressly* granted by statute, and only those implied powers necessary to carry out the express duties. Op. Atty. Gen. No. 52–80 (Jan. 8, 1980). Thus, a constable may only act when authorized by a specific statute, and this power may not be extended by implication.

A constable with law enforcement authority has the power of search, seizure and arrest within the town. 24 V.S.A. § 1931. Unlike other law enforcement officers, however, constables do not have statewide jurisdiction. As mentioned above, their jurisdiction is limited to the boundaries of the town. *State v. Hart*, 149 Vt. 104 (1987).

- 6. Other duties and functions of the town constable.** The constable, like the sheriff, may serve civil and criminal processes including complaints, summonses, subpoenas, writs and restraining orders, in all civil actions and in criminal process for lawbreaking. 12 V.S.A. §§ 691, 693. No constable is allowed to serve writs in cases in which he or she has a personal and/or financial interests in the debt involved. 12 V.S.A. § 694.

In addition, the constable is authorized to collect delinquent taxes when ordered to do so by the tax collector, by seizing and selling the delinquent taxpayer's property by legal process. 32 V.S.A. § 5139. The constable will become tax collector if no specific officer by that title is elected at town meeting. 24 V.S.A. § 1529. The constable may be appointed as a court officer for district court. 4 V.S.A. § 446. The constable is authorized to destroy unlicensed animals, following the requirements of 20 V.S.A. §§ 3621–3623, and may kill an injured deer in accordance with 10 V.S.A. § 4749. The constable may assist the health officer in the discharge of his or her

duties. 18 V.S.A. § 617. Finally, during town meeting, the constable may be called upon by the moderator to remove a particularly obstreperous person who is disturbing the meeting. 17 V.S.A. § 2659.

Twenty V.S.A. § 2221 states that the governor may employ constables and other law enforcement officers in the event of a state and/or national emergency. This only authorizes the employment of additional constables (and law enforcement officers); it does not enlarge the scope of their authority.

It is no longer possible for a town to appoint special constables. Instead, that need is met in towns without a police force by the appointment of temporary police officers to work under the jurisdiction of the constable. 24 V.S.A. §§ 1931(a), 1936. These temporary police officers are required to have completed law enforcement training. 24 V.S.A. § 1936 (b).

Constables are not automatically authorized to enforce local ordinances in the town. Selectboards that have enacted civil ordinances can designate the officials who are authorized to enforce the civil ordinances by issuing tickets, and can designate those officials who may represent the town in the Traffic and Municipal Ordinance Bureau when a ticket is appealed. The designated individual may be the town constable, but the selectboard is not required to appoint the constable to these positions. If a municipality has retained some or all of its criminal ordinances, then a constable with law enforcement authority may enforce the ordinances.

For more information about the office of town constable, contact the VLCT Municipal Law Center at (800) 649-7915.

D. FLOOD PROTECTION

Anyone who has ever been a selectperson or a road commissioner during a flood and its aftermath can appreciate the power of water and ice on the rampage. Combine that

meeting. 24 V.S.A. §§ 932, 933. However, if the town votes to compensate (or not compensate) a town officer for his or her official service at an annual meeting, the voters' decision is binding on the selectboard. 24 V.S.A. § 933. If the town has not set the compensation for members of the selectboard at the annual town meeting, the auditors must fix it at the time of the annual town audit.

Note that the town is only authorized to set compensation at an annual meeting, and if it fails to do so, the selectboard must set the compensation until the next annual meeting.

C. SETTING BONDS

Before certain town officers begin performing their duties, the selectboard must, by law, require each of them to give a bond to the town and/or school district conditioned on the faithful performance of his or her duties. 24 V.S.A. §§ 832, 1234. The officers who must give bond are the school directors, constable, road commissioner, collector of taxes, treasurer, assistant treasurer, clerk (24 V.S.A. § 832) and manager (24 V.S.A. § 1234). However, the municipality must pay for all bonds required of these officers. 24 V.S.A. § 835.

The purpose of the bonding requirement is to protect the municipality from the possible wrongdoing or misappropriation of its officers. Accordingly, the selectboard often sets the bonds at the amount of money the particular officer is likely to have control over at any particular time. However, the board is not limited by statute as to the amounts in which the bonds must be set, so that it may exercise its discretion and set the bonds as low as zero dollars. By law, the selectboard also sets the surety on the bond and is not limited in this regard, except that it may not allow as surety another officer of the same municipality. 24 V.S.A. § 832.

If an officer fails to provide the required bond ten days after he or she is requested to do so, that office shall be deemed vacant. 24 V.S.A. § 832. Note that if the selectboard fails

to require bond, it is open to question whether the officer is legally serving even though he or she has been properly elected to office. Under these circumstances, however, a court will consider such person a *de facto* officer, and he or she may continue to act as officer until the office is “vacated” by the selectboard on the officer’s refusal to execute a bond to its satisfaction.

The selectboard may, at any time, require a particular officer to provide an additional bond, if it considers the current bond to be insufficient. 24 V.S.A. § 832. When a bond is set by the selectboard and provided by an officer, the board must file such bond in the office of the town clerk for recording in a book kept for that purpose. 24 V.S.A. § 832.

Selectboards have sometimes set an extremely high bond in an effort to remove a town official from office. This is not wise or practical, however, since the town is responsible for paying for the bond. 24 V.S.A. § 835.

D. FILLING VACANCIES

When a vacancy occurs in any town office, the selectboard has the authority to fill the vacancy forthwith on a temporary basis until an annual or special town meeting is held at which the vacancy is filled. 24 V.S.A. §§ 962, 963. An office becomes vacant if the town officer resigns, is removed from office, dies, becomes insane, or moves out of the town in which he or she serves. 24 V.S.A. § 961.

When an office becomes vacant, the selectboard must alert the public of this vacancy by posting notice of the vacancy in at least two public places in the town and in and near the town clerk’s office within ten days of the vacancy. 24 V.S.A. § 961. Note that the selectboard may fill the position on a temporary basis prior to such posting. The voters may petition the selectboard for a special election to fill the position. If the voters do not do so, or do so without the required number of signatures (5% of the electorate), the selectboard’s temporary appointment may remain in office until the next annual meeting