

Maine Townsgman

The Magazine
of the Maine Municipal Association

NOVEMBER 2016

Land Trusts and Tax Policies

Fairness, finances are
big factors when groups
seek tax exemptions

ALSO IN THIS ISSUE

Monumental Impact: Montana
New Federal Overtime Rules
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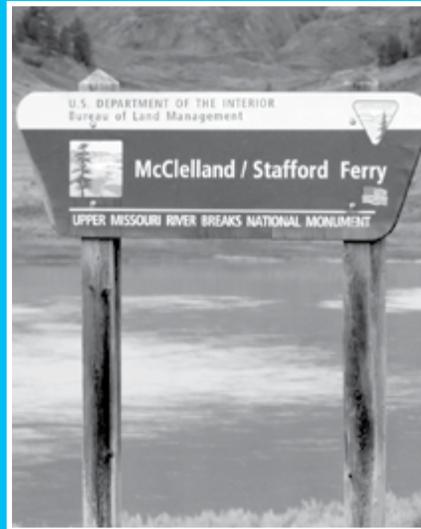
Maine Townsman

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Wide Open Spaces



The massive Upper Missouri River Breaks National Monument once generated strong feelings similar to those in Maine, leading up to its recent designation. Fifteen years later in Montana – not so much.

Local government is changing and MMA is, too. Here are four new and improved “tools” that municipal officials can use to benefit citizens. [Page 5](#)

Recognizing important work. Our profiles of municipal officials in their respective roles continues, as MMA celebrates 80 years. Up this month: Bangor City Clerk Lisa Goodwin. [Page 25](#)

ABOUT THE COVER: *Kate Dufour, MMA’s Senior Legislative Advocate, captured this image of Lubec as she researched her article, which starts on P. 13.*

Conservation Pros & Cons

It’s tempting and even easy to look at local land-preservation efforts as beneficial – because they are. But they also have real-life effects on municipal budgets and other property taxpayers. [Page 13](#)

The Costs of Growing Older

When politicians address entitlement costs for senior citizens, they tend to say poor people use programs more than the wealthy. Two leading economists report that the opposite is true. [Page 21](#)

Scenes from the MMA Convention

The 2016 MMA Convention was held last month at the Cross Insurance Center in Bangor. Feedback was positive and attendees had fun. Here are the photos to prove it. [Page 26](#)

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A MESSAGE FROM MMA

BY ERIC CONRAD / EDITOR

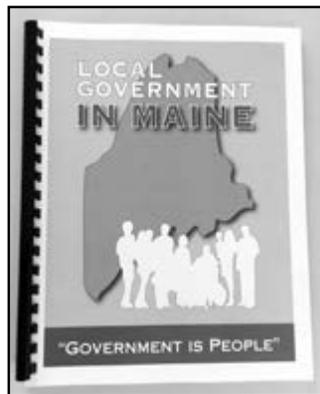
Rapid municipal changes spawn new tools

Changing times require new tools, and Maine Municipal Association is developing new products and services to help towns and cities. This month, I want to highlight four new offerings. Two of them involve technology. Two use good, old-fashioned paper.

Taken together, we believe that they show how MMA listens to members' needs, how we try to anticipate the issues that local officials face and how we respond to those pressure points.

Information Technology Services. A challenge that we hear often from members that don't have full-time IT people on staff involves the incredibly fast-changing realm of computer hardware, computer data and information security.

MMA partnered with Workgroup Technology Partners (WGTECH) in Westbrook early this year to offer an array of IT field services and phone support to municipalities throughout the state. Before you hire an outside consultant or try to solve things on your own, we encourage you to work with WGTECH and benefit from MMA's relationship with the firm. For more information, members can contact WGTECH directly at: 207-856-5300 or sales@wgtech.com.



Local Government in Maine book.

This 64-page book, first published in 1979, was just updated by MMA's State & Federal Relations staff. It provides history about the incredibly deep roots of municipal government in our state and explains how our local government evolved to where it is today.

It's a great read. I'd wager there are facts and historical notes in this book that even the most senior municipal officials don't know. The updates by MMA staff explain recent legislative actions and how they are changing local government. They also point out new areas of municipal collaboration, an underappreciated trend in our state.

We are selling bound copies of the book for \$9 a copy. To order your copies, please email Jane Tondreau at MMA: jtondreau@memun.org. The book can also be downloaded and printed



out for free at our website: <https://www.memun.org/TrainingResources/LocalGovernment/LocalGovtinMEBk.aspx>

2016 Municipal Salary Survey. The new and much improved MMA Salary Survey is up and running. This comprehensive, searchable database allows members to compare salaries and benefits for nearly every elected and appointed municipal position that exists in Maine. To date, more than 220 municipalities have entered their salary and benefit data. We expect 15 more to do so by the end of the year.

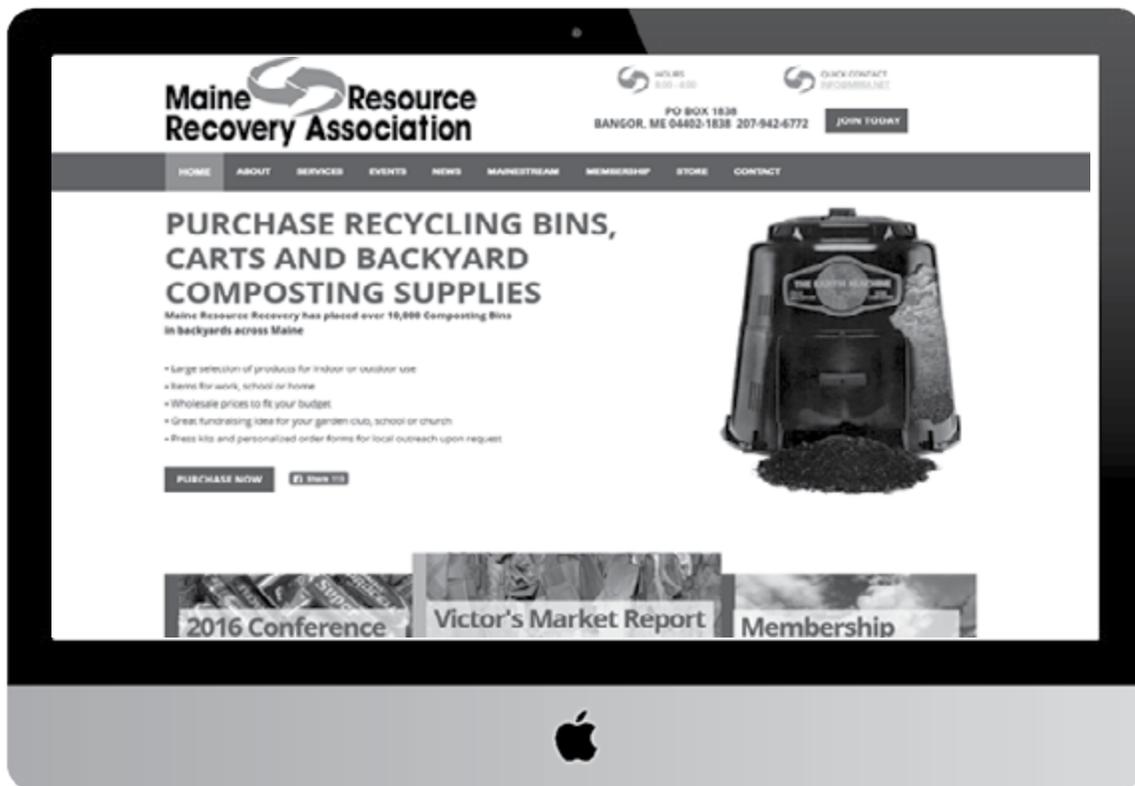
Here's what Richard Bates, a selectman in the Town of Saint George, had to say about it: "Not only is the Salary Survey a great data set, but I love the way the system has filters, including the peer cluster, so one can search data from municipalities that are separate from your county. The scope that you've got, the filters that allow one to sort hundreds of entries, is really powerful."

Any member with questions about the Salary Survey can contact Carol Weigelt at MMA: 207-623-8428. Carol, the Web Publishing Technician in our Resource Center, spearheaded this project, which took more than two years to complete, from start to finish. The statewide salary and benefits data will be updated annually.

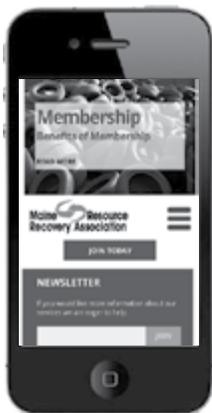
10 Best Practices for Newly Elected Officials brochure.

We developed this "quick read" print brochure for new elected officials in 2015, with funding support from our Risk Management Services Department. It is intended to be a handy, first-step guide for elected officials, who also are encouraged to attend one of MMA's Elected Officials Workshops, which are held throughout the state each year.

We also offer a much more comprehensive Municipal Officers Manual. The manual, written by our Legal Services Department, was recently updated as well. For print copies of the brochure, please contact Jaime Clark at MMA: 207-623-8428 or jclark@memun.org. Both the 10 Best Practices brochure and Municipal Officers Manual can be viewed and printed through our website: www.memun.org. ■



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No boom or bust: Tale of the Upper Missouri River Breaks

Fifteen years after national monument designation, this vast part of Montana – made famous by explorers Lewis and Clark – sees small positives and no negatives.

By Glenn Adams

The idea of turning a great swath of open land into a national preserve stirred opposition from nearby residents who feared a loss of access to lands they had traditionally and freely used. Many worried about the impact on local infrastructure. Others asked: “Just when does the government have enough land?”

That scenario may sound familiar to those who followed the run-up to the federal government’s designation of 87,500 acres in north-central Maine as a national monument. While it does echo some Mainers’ reactions, it actually applies to a similar national monument designation across the continent in north-central Montana.

In 2001, an area known as Upper Missouri River Breaks – 378,000 acres that feature steep bluffs, rock outcroppings and grassy plains along the 149-mile Upper Missouri River – became a national monument. The region’s beauty is accompanied by a rich history: The river, which bears the official tag as a national wild and scenic river, was one of the major routes of expansion during the nation’s westward expansion, according to the U.S. Department of Interior’s Bureau of Land Management. Meriwether Lewis and William Clark used the river as their highway as they traversed the region during their historic 1803-05 explorations. The area looks much as it did during Lewis and Clark’s days.

The description of the Montana site strikes similar notes to that of Maine’s Katahdin Woods and Waters National Monument, which became official with President Barack Obama’s proclamation on Aug. 24, 2016. Like



A majestic cliff stands guard over Cow Creek, a tributary of the Upper Missouri River, as it drifts past cattle grazing in a stand of cottonwood trees. (BLM Photo Jonathan Moor)

Montana’s preserve, the Katahdin monument includes a historically significant river, the East Branch of the Penobscot.

No boom – or bust

Henry David Thoreau and his Native American Indian guide used that waterway in 1857 as their route through the unspoiled Maine wilderness that Thoreau later described. Its mountains and forests are now a popular haven for hikers, canoeists, anglers, showshoers, cross-country skiers and other outdoors enthusiasts. It adjoins Maine’s highly popular Baxter State Park, home of the state’s highest mountain peak, Katahdin, and numerous trails and camping sites that nearly burst in summer months with users.

So what can Mainers learn from Montana’s 15 years of experience hosting a national monument?

Be careful of predictions of an economic bonanza, but also be wary of suggestions that the new preserve will be a bust for the region, say local and federal officials as well as an outfitter who’s made a living in Montana’s preserve for decades.

“It’s not the end of the world, but it’s not the beginning of the world either,” said Michael Gregston, owner of Missouri River Outfitters, which guides people on three-, four- and six-day trips. “You’re not going to get rich, but you’re not going to get kicked out of the forest either.”

The transfer of the Katahdin monument preserve was preceded by years of public debate over whether it should be set aside as a government-run attraction. The owner of the land, Roxanne Quimby, co-founder of personal care products company Burt’s Bees, envisioned a Maine Woods Na-

Glenn Adams is a freelance writer from Augusta and relatively new contributor to the Maine Townsman, gadams6786@aol.com

tional Park, eliciting gasps from local residents and hundreds of businesses. Among their concerns were loss of access to the land and disappearance of a valuable logging venue.

The Maine Forest Products Council was joined in its opposition by groups representing snowmobilers, hunters and inland fishermen. Three of four members of Maine congressional delegation made their opposition known, as did the governor and Legislature. Nearby towns of East Millinocket, Medway, Millinocket and Patten were among those that went on record as opposed to the park idea.

But Quimby's philanthropic organization, Elliotsville Plantation Inc., pushed on, keeping the idea before the public as she honed her focus. Gradually, supporters – including the City of Bangor and some 200 businesses – made their voices heard. Proponents pointed to the potential for new business in an area devastated by the loss of its long-time economic pillar, the paper industry.

Elliotsville's Lucas St. Clair, Quimby's son, sounded a moderating tone, saying the national preserve was



The McClelland/Stafford Ferry offers visitors the rare opportunity to cross the Missouri River with a vehicle. (BLM Photo Jonathan Moor)

ONLINE COMPARISON

Upper Missouri Breaks National Monument: http://www.blm.gov/publish/content/mt/en/prog/nlcs_new/UMRB_NM.html

Katahdin Woods and Waters National Monument: <https://www.nps.gov/kaww/index.htm>

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“no silver bullet” to singularly revive the area’s economy. But he said having a new national attraction in interior northern Maine would generate business opportunities. A study authorized by Ellitsville Plantation concluded the proposed national recreational area’s presence would create 450 to 1,055 jobs. The federal government cited studies showing that every dollar invested in national parks generates \$10 for the national economy, with most of that money staying in local communities.

Action came fast. On Aug. 24, Obama signed the proclamation protecting the 87,500 acres as Katahdin Woods and Waters National Monument. The roughly \$100 million gift from Quimby’s foundation included \$20 million to supplement federal funds for initial operational and infrastructure needs and a promise of another \$20 million in future philanthropic support.

The general reaction following the proclamation was one of relief and resignation, and a willingness to make the new reality work. Barely a day passed before the National Park Service named a superintendent for the Katahdin monument and opened a field office in Millinocket.

Montana access concerns

In the months leading up to the Montana land’s designation, some local folks feared the national monument tag would hamper their access.

Cattlemen and ranchers said they were perfectly capable of maintaining and preserving from development lands they had used for generations, The New York Times reported in September 2000. Some local landowners were afraid the government would buy them out.

People in Fort Benton, a city of 1,490 people that’s located to the west of Upper Missouri River Breaks, wondered if they would lose access to the land they had long used at will, said Roger Axtman, who has been a member of Fort Benton City Council since 1986, is currently council president and was mayor when the national monument was declared. Most of the land was government-owned previous to that, but the Bureau of Land Management had new ideas when the monument plan came up.

Initially, the government envisioned the Upper Missouri River Breaks to be a “destination” or “legacy” site attracting 100,000 to 200,000 people per year, with its main entry marked by a “grand interpretive center” that cost more than \$14 million in Fort Benton, Axtman said, in an interview with the Maine Townsman.

Local officials were concerned about how this influx of visitors would impact local roads, how parking would be handled, what new police presence would be needed and how the local infrastructure would be affected, said Axtman. Local people feared the river corridor protective zone would be ex-

panded and signs and gates would pop up at their familiar entry points.

“There was fear, too, this place was going to be boarded up like Fort Knox,” Axtman recalled.

Some elected officials mocked the idea of more government encroachment.

“How much land is enough?” John E. Witt, then a Montana state representative, asked at the time, The New York Times reported in 2000.

“There were sides that were very much for it and very much against it,” said Jonathan Moor, public affairs specialist with the U.S. Department of Interior’s Bureau of Land Management in Montana.

The Montanans’ worst fears were never borne out. The interpretive center plan was scaled back (“It’s been done fairly tastefully,” said Axtman.) and the national monument never turned out to be the destination draw that was once envisioned.

Modest crowds

Last year, the center drew 8,000 people, said Connie Jacobs, the center’s director. Of those, 1,000 were school children who learned about the area’s history and its natural features, Jacobs said. The center is open year-round, seven days a week from Memorial Day to Oct. 1 and five days a week the rest of the year.

“The number of people coming in is by no means what they predicted,” said Axtman.

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In its 2010 manager's report, the Bureau of Land Management said the Upper Missouri Breaks River National Monument drew more than 30,000 visitors to its "developed and dispersed" recreation areas between Oct. 1, 2009 and Sept. 30, 2010. But the report also notes that due to the monument's large size and roads traversing its interior and scattered private parcels, exact visitor counts are hard to determine.

As in other western states, huge chunks of Montana – nearly 30 percent the total land area – are owned by the federal government. In Maine, it's about 1 percent, according to federal figures. That gives easterners and westerners very different perspectives on federal land ownership in their states.

Even 15 years after the Upper Missouri River Breaks National Monument designation, sentiments against it remain in some areas.

"Northeast of the monument, in Malta, if you drive up there you still see anti-monument signs in people's yards," said Moor, the BLM official. Malta is a city of about 2,000 in the region's rolling prairie lands.

"People from the area view it as, 'OK, it's here.' Some love it and some hate it," said Moor.

Traditional uses remain

But federal ownership doesn't mean traditional uses aren't allowed. People fish, and hunt bighorn sheep, antelope, elk and other big game in the monument area. Grazing is allowed in some areas, Moor added. He hasn't seen an explosion of new business activity in the area, but he notes it is a very remote region.

Today, the federal presence is limited in visibility, signage and personnel when compared to a national park, Moor said.

"Most of the boundary has no official monument markings. It is less developed than a national park of similar size. However, in the past three years, entrance signs have been installed at some of the main access points so visitors can know when they have arrived," Moor added.

Missouri River Outfitters' Michael Gregston, who is familiar with the Katahdin plan in Maine, said numbers of people being guided down Montana's river are actually down since 1998, when a lot of outfitters jumped into

the business. He figures one reason is that fewer young families are taking river trips. Business has shifted to people Gregston calls "TOGs" – Tough Old Guys.

"I've got more TOGs than you can shake a stick at," Gregston said.

He sees little chance the emergence of Katahdin Woods and Waters monument will turn the fortunes of nearby Maine mill towns overnight.

"The people who are saying this is some form of saving Millinocket, they are wrong," said Gregston. "Dire predictions (of the monument's effect) are probably suspect as well."

Since 1906, more than 100 national monuments have been created, according to the U.S. Interior Department's Bureau of Land Management. Like Maine's Katahdin Woods and Waters, Montana's Upper Missouri Breaks National Monument was created by presidential proclamation, 15 years be-

fore Maine's designation came along. Besides areas of natural significance, including marine and volcanic sites, national monuments include historic sites like forts and places associated with Native Americans.

Fort Benton does not miss the opportunity presented by the national monument. Its website calls the community "the ideal starting point for your journey into the beauty and solitude of the Wild and Scenic Upper Missouri River." It draws attention to "fine lodging, campgrounds, dining, and shops with the necessary supplies for your adventure."

A welcoming letter from Fort Benton Mayor Richard D. Morris trumpets the city as "the gateway to the Wild and Scenic Upper Missouri River" that's near "all of the spectacular scenery and historical sites of North Central Montana," much of it accessible on uncrowded highways. ■

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A deeper look at Maine's land conservation tax policies

Municipal officials see both benefits and burdens in permanently protecting land from development. There are important fairness, taxation and legislative considerations.

By Kate Dufour, Senior Legislative Advocate, MMA

With its expansive ocean vistas, acres of farm and forested lands and miles of hiking, it is not surprising that Maine residents and visitors support land conservation efforts. The state's commitment to protecting its natural resources is reflected not only in its preservation efforts and successes, but also in its tax policies. State statutes and underlying constitutional provisions bestow generous property tax breaks on the conserved land owned by qualifying organizations.

While the property tax breaks help support current maintenance and future land acquisition efforts, the relief provided to one class of property owners inevitably shifts property tax burdens onto other property owners. This article provides an overview of Maine's current use and exemption programs and explores both the benefits and burdens of these programs from the municipal and land trust perspectives.

Exemption & reductions: Property tax policies

Land trusts and other conservation-focused entities generally qualify for property tax savings provided under two programs. The more generous of Maine's tax programs provides qualifying "benevolent and charitable" organizations with a 100 percent tax exemption on the property "owned and occupied or used solely" for the benefit of the charitable organization (36 MRSA, §652). While under no obligation, some tax exempt entities do make "payments in lieu of taxes" (PILOTs) to help offset the cost of municipal services.

Current use programs, generally. The other land conservation tax program finds its roots in the state's Constitution. Maine voters approved a constitu-



An apple tree found along the Hersey Point Preserve in Pembroke. The property is owned and maintained by The Nature Conservancy. (Photo by Kate Dufour)

tional amendment in the Nov. 3, 1969 referendum election. After that action, through subsequent implementing legislation, the Legislature established three resource protection-focused current use programs: Tree Growth Tax; Farm and Open Space Tax; and, Working Waterfront programs. These programs allow qualifying property to be taxed on the basis of "current use" value, rather than the higher "just" (or market) value.

Open Space program, specifically. More often than not, the conserved land found in organized municipalities is enrolled in the Open Space Tax program. Under the Open Space Tax program, enrolled properties are assessed according to either a locally developed schedule or under the state's "alternative valuation method." The "alterative valuation method" provides for progressively tiered property tax benefits, with more significant prop-

erty encumbrances (e.g., permanent development restrictions, open public access, etc.) yielding larger reductions in the taxable value of the property. As established in state statute (36 MRSA, §1101-1121), qualifying open space properties receive a minimum 20 percent tax assessment reduction under this "alternative" system and are potentially eligible for as much as a 95 percent reduction in the value of the property subject to taxation. However, the alternative method cannot reduce the value of conserved forested land by more than the county's Tree Growth Tax program rates. A more detailed description of the "alternative valuation method" is found in a sidebar to this article.

Benefits of conservation

Advocates and representatives of land trusts across the state are eager to point out the benefits of land conser-

vation. In testimony provided before the Maine Legislature, the Maine Coast Heritage Trust (MCHT) claimed that on balance the benefits associated with land conservation far outweigh the losses in property tax revenue.

According to MCHT: "In the few communities where some land trust conserved land is off the tax rolls, the average property owner receives benefits that greatly outweigh the minor increases in their annual property tax bills." Samples of the benefits received by the property taxpayers shouldering greater property tax liabilities include land trusts' efforts to "...host school children, serve as destinations for tourists, support local businesses, house community gardens, preserve our history, protect drinking water, and welcome hikers, hunters, birdwatchers, picnickers and other outdoor enthusiasts throughout the year."

While land trusts play a public service role, the level of services provided and the value ascribed to the benefits received vary from municipality to municipality.

In some municipalities, land trust members and community leaders work collaboratively to provide access to natural resources that residents and visitors desire. Representatives from MCHT and The Nature Conservancy (TNC) note that towns and cities often contribute financially in their organizations' efforts to acquire properties of significant interest or of benefit to the community. In order to maintain positive working relationships, TNC and MCHT say their representatives annually meet with municipal officials and community interest groups. The success of those outreach efforts and collaborative working relationships are evident in several municipalities.

In Fryeburg, for example, TNC recently established 1.5 miles of trail to the summit of Mount Tom. The trail, which is open to the public, provides access to mapped natural resources and habitats. In Trenton, TNC maintains the easement on property it donated to the town. In Castine, MCHT makes its property available for bow hunting, allows residents to cut Christmas trees and maintains approximately four miles of walking trails in the town.

Eastport City Manager Elaine Abbott said residents appreciate the ability to hike on the properties and par-

ticipate in "beach clean-up" events. Abbott believes that as a result of these efforts, "residents feel more invested in the property than when it was privately owned."

In Jefferson, municipal leaders believe the benefits associated with conservation efforts are not limited solely to access to natural resources. Land preservation also enhances the general character of the community. According to the municipality's assessor, Gary Geaghan, the tourism benefit of conserved land is "one heck of an economic engine that leads to a cer-

tain lifestyle. With open space you lose assessed value, but in exchange you increase the inherent value of the community. It becomes more attractive. It leads to a better quality of life."

Burdens of conservation

While it is apparent that conservation efforts provide advantages to some communities, the benefits are not universally experienced. Some community leaders struggle to identify positives associated with conserved properties within their municipal boundaries.

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Addison Selectman Tim Thompson believes there are few positive attributes associated with the MCHT property or any other of the many exempt organizations owning properties in his community. Thompson said: “The properties generate additional road traffic and potential liability. There are no consumer-oriented businesses in town. Should the few visitors to the properties need to make purchases, they must go out of town to do so. Our tiny, volunteer fire department has had to burden its members with additional training to be equipped to handle the eventuality of rescues on the properties.”

Maintenance-related concerns are an issue for municipal officials from Cranberry Isles. Town Clerk Denise McCormick recalled a winter storm that took down a few power lines. When people at MCHT were contacted, “they had no interest in getting someone to clean up the downed trees. The town had to hire someone to cut the trees so the power could be turned back on for the rest of the community. This was considered an act of total disrespect to the year-round community.”

Machiasport Town Administrator Donna-Jean Metta paints a stark reality of the effects conservation efforts have on her community. “Seriously and for real, I am not sure who is being benefited,” she said.

In response to the fact that MCHT voluntarily provides a \$100 payment in lieu of taxes on five acres of land assessed at \$355,234, and that TNC provides a \$400 PILOT on 500 acres assessed at \$437,656, Metta wonders why the entities do not contribute more for municipal services.

“Perhaps they don’t know that this is valuable property,” Metta said. “This is eye-opening. This is a hard working fishing community. With state limits on fishing, people are hurting. This year, I issued 66 tax liens. These are not wealthy people.”

State policymakers also have raised concern with the exemptions and tax benefits provided to land conservation entities. During the 2015-2016 legislative session, the Legislature debated the merits of LD 1148, *An Act To Implement a Local Ballot Referendum for Municipalities To Disallow Tax-exempt Status to Large Land Trusts*, and LD 1667, *An Act To Protect the Tax Base of Municipalities by*



A scenic vista found on Sipp Bay Preserve in Perry. The 92-acre preserve is owned and maintained by Maine Coast Heritage Trust. (Photo by Kate Dufour)

ACTUAL PILOTS VS. TAXES ASSESSED AT 5% OF PROPERTY VALUE

The data found in the table below come from municipal officials who responded to an MMA request for information. The data show the owner of the conserved land, the number of acres preserved, the value of the payment made in lieu of taxes and the taxes that would be assessed if the property was enrolled in the Open Space Tax program and assessed at 5% of the property’s value. The data found in the last column is the difference between the PILOT (payment in lieu of taxes) and the assessed tax. A positive number reflects a PILOT that exceeds the tax that would have been assessed under the Open Space program. Average data are also provided. For example, on average, the PILOTS provided by the 12 communities represented in the table were \$313 greater than what would have been assessed under the current use program.

	Owner	Acres	PILOT	Tax Assessed 5% of Value	Difference
Addison	MCHT	36	\$50	\$125	\$125
Arrowsic	TNC	460	\$750	\$619	\$131
BarHarbor	TNC	98	\$-	\$2,979	\$(2,979)
BarHarbor	MCHT	703	\$3,675	\$5,484	\$(1,809)
Brooklin	MCHT	238	\$2,000	\$527	\$1,473
Castine	MCHT	305	\$2,000	\$1,378	\$622
Eastport	MCHT	68	\$800	\$1,288	\$(488)
Falmouth	MCHT	15	\$1,500	\$1,025	\$475
Lowell	TNC	618	\$-	\$127	\$(127)
Machiasport	MCHT	5	\$100	\$311	\$(211)
Machiasport	TNC	500	\$400	\$383	\$17
MountDesert	MCHT	59	\$1,125	\$2,240	\$(1,115)
NorthHaven	MCHT	50	\$500	\$877	\$(377)
Phippsburg	MCHT	41	\$200	\$213	\$(13)
Phippsburg	TNC	535	\$10,000	\$1,031	\$8,969
Average - All		249	\$ 1,553	\$ 1,240	\$ 313
Average - MCHT		152	\$ 1,215	\$ 1,347	\$ (132)
Average - TNC		442	\$ 2,230	\$ 1,028	\$ 1,202

Removing the Property Tax Exemption for land Held for Conservation or Public Access Purposes. Both bills sought to place limits on the tax benefits provided to conservation groups. LD 1148 would have allowed municipalities to limit the total number of conserved acres that could qualify for a tax exemption. As proposed in LD 1667, land trusts would continue to be eligible to participate in a current use tax program, but would not qualify for the outright property tax exemption.

The testimony offered by representatives of land trusts was instrumental in defeating both initiatives. However, two claims made by the bills' opponents raised a few municipal eyebrows.

In its opposition to LD 1667, MCHT claimed that "of the nearly 2,400,000 acres of land trust conserved land that existed in 2011, roughly 95 percent remained on the tax rolls." MCHT further asserted that the few times that land trusts opt for the exemption, the ensuing payments in lieu of taxes on the exempt property are often "greater than or equal to what the property taxes would have been had the property been enrolled in Tree Growth or Open Space, i.e., still on the tax rolls."

Claim 1: 95 percent of conserved property remains on tax rolls. While the "95 percent of land trust property remains on the tax rolls" claim may hold true for some land trusts, MCHT admits that a majority of the conserved land it holds is fully exempt from taxation. According to the data provided by MCHT, as of August 2016, the trust owned 10,063 acres of property in 39 organized Maine municipalities. Of that total, only 28 percent (2,768 acres) was enrolled in the Open Space program, while 68 percent (6,811 acres) was exempt from taxation. The remaining 414 acres of conserved land were taxed at full value.

If the claim that 95 percent of land trust property remains on the tax rolls does not apply to MCHT, one would expect that other major land trust organized both in Maine and internationally – The Nature Conservancy – would either meet or exceed that standard. A sampling of organized communities shows that TNC falls well short of that "95 percent" claim. Data that MMA gathered from 12 TNC communities shows that 71 percent (5,303

acres) of its 7,514 preserved acres remained on the tax rolls through enrollment in the Open Space program.

Claim 2: PILOTS equal or exceed Open Space Tax requirements. The data found in the accompanying table show that in the aggregate the payments made in lieu of taxes do, in fact, equal or exceed the taxes that would otherwise be assessed if the conserved land was enrolled in the Open Space program and receiving the maximum allowed 95 percent reduction. However, without providing the appropriate context, state level policymakers might be led to believe that despite the exemption, the community is receiving a substantial tax payment. There are municipal officials who find this advocacy approach frustrating for two reasons.

First, in most cases, non-forested conserved land owned by land trusts and enrolled in the Open Space program is assessed at a mere 5 percent of the property's full assessed value. For example, an acre of oceanfront property, with a market value of \$1 million in a community with a mil rate of \$15/\$1,000 would be assessed a tax of \$750 rather than \$15,000. In this example, the minimum tax contribution under the Open Space Tax program provides enormous property tax savings to the land trust.

Second, the decision to provide a voluntary PILOT rests solely with the land trust. There is nothing the

municipal officials can do to require a payment. Both the value of the voluntary payment and whether it continues or not on a year-to-year basis is entirely controlled by the land trust.

The solution?

When asked if laws that provide tax benefits for land conservation efforts should be amended, the municipal response is mixed. In some communities, the benefits associated with land conservation outweigh the effects associated with property tax revenue losses. However, some municipal officials believe that these tax policies need to be amended. Officials from Lubec and Phippsburg have a few ideas.

John Sutherland, administrator for the Town of Lubec, describes land conservation efforts in his community as a "cancer that is eating us up one to two parcels at a time." Sutherland conservatively estimates that 30 percent of Lubec's land mass is either under-taxed or exempt from taxation. The community plays host to Quoddy Head State Park, and properties owned and managed by both the Maine Coast Heritage Trust and Downeast Coastal Conservancy, to name a few. Just in September this year, 350 more acres came off the tax rolls, a \$9,000 loss in property tax revenue that other taxpayers will make up for with higher taxes and/or reduced services.

While the Lubec administrator sees value in conserving land, he be-



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lieves land owners should either pay their taxes or be subjected to a limit on the amount of land they can take off the tax rolls. "We still need to maintain roads, provide fire, ambulance and police, educate our children and provide the services our community needs," Sutherland said.

The Town of Phippsburg, which plays host to four land trusts and a state park, has over 22 percent of its 18,291 acres enrolled in a conservation or public-access program. All of the 3,037 acres owned and conserved by TNC, MCHT, Bates-Morse Mountain and Phippsburg land trusts are exempt from taxation. According to data provided by Phippsburg Tax Assessor Juanita Wilson Hennessey, the property conserved by the four land trusts is assessed at \$10 million. If taxed at the full value, these properties would generate \$85,800 in property taxes. In 2015 the four land trusts contributed \$38,101 (45 percent of the full assessed tax) to the municipality through negotiated and voluntary payments in lieu of taxes.

Although, the residents of Phippsburg have experienced many positives associated with the presence of the

land trusts (e.g., tourism, access to trails and recreational opportunities), Wilson Hennessey observed that the benefits are due to the relationships forged between municipal and some land trust leaders. In other communities, those relationships may not exist.

Wilson Hennessey believes that Maine's tax policies should underscore the principle most often expressed as "taxation is the rule; exemption the exception" by requiring land trusts to avail themselves of the current use

programs. The data provided by Wilson Hennessey show that if all the land trusts' properties had been enrolled in the Open Space Tax program and assessed at 5 percent of value, the four land trusts' tax obligation would have been less than what they voluntarily provide. To her, that is not the point. The current use programs provide the municipality a seat at the table. Without that, there is no opportunity to find a balance between benefits and tax burden. ■

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Andy is committed to improving Maine communities through public and private investment, and has served in many leadership roles in the Bangor region and eastern Maine.

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Flint remains a crisis, but the WRDA is moving ahead

By Sarah Berndt, Program Director for Infrastructure and Sustainability, National League of Cities

Recent outbreaks of bacterial illness in Flint and other Michigan cities remind the American public and local leaders that Flint's drinking water crisis is still very much an ongoing crisis. These outbreaks also drive home the fact that Congress needs to act soon to provide financial aid to the struggling city and its residents, and to bring some relief to a crisis that has lasted too long and affected too many.

Access to clean drinking water is a basic human right, and local leaders need the resources to deliver, maintain and protect that promise. For months now, the people of Flint have been unable to use their own taps – and now fears of Shigellosis make the need for congressional action all the more urgent.

While the situation may seem dire, there is some good news on the horizon for those in Flint and for local leaders around the nation.

Over the past month, as Congress prepared to adjourn until after the elections, the National League of Cities celebrated small policy victories when both the House and the Senate passed versions of the Water Resources Development Act (WRDA) that included provisions for Flint relief.

Attention now turns to the 'to be determined' WRDA conference committee that will try to hammer out differences between the two bills in time to send a final bill to the President's desk before the end of the year – which is an absolute necessity.

In the House, disagreement over Flint aid was much stronger and became entangle with the negotiations for funding the federal government past Sept. 30, the start of a new fiscal year. With NLC's support, an 11th-hour agreement allowed for a Flint aid vote as an amendment to WRDA.

But, WRDA will provide much

more than the relief for Flint. Both versions of the bill authorize restoration projects under the U.S. Army Corps of Engineers that will improve infrastructure for flood protection, navigation, and ecosystem restoration. These projects are so important to communities and local leaders nationwide – from restoring the Florida Everglades to flood protection in Cedar Rapids, Iowa.

For local elected officials, passage of a strong version of WRDA is a must. As Clarence Anthony, executive director and CEO of the National League of Cities stated, "Improved water infrastructure is essential to keeping our cities strong, our local economies

vibrant and our residents healthy."

Both bills also include funding to any state, such as Michigan, that receives an emergency declaration under the Stafford Act due to a public health threat from lead or other contaminants in a public drinking water supply system. The Senate bill goes further, with additional provisions for wastewater and drinking water infrastructure such as: funding for WIFIA; grants for lead service line replacement, testing, planning, corrosion control and education; grants to address sewer overflows and assist small and disadvantaged communities in complying with the requirements of the Safe Drinking Water Act; and

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addressing integrated planning and affordability issues.

Congress must pass WRDA for the sake of Flint, but also for the cities and towns nationwide which are in need of these proposed water infrastructure projects. NLC has been calling for and continues to fight for a strong version of WRDA that not only does the most good for nation's water infrastructure, but also restores a basic human right to the City of Flint.

We commend both chambers of Congress for bringing us this far. And with our ongoing efforts, we urge Congress to come to a swift conference compromise that puts cities first. ■

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Growing inequality in life expectancy, benefits for elderly

The rich live longer than the poor, which means they receive more – not less – support from federal programs such as Social Security and Medicare. There are policy ramifications.

By Ronald Lee and Peter Orszag

Average life expectancy in the United States has been rising for many decades and is expected to continue to rise in the future. However, the overall average masks large differences across social groups: life expectancy is higher for people who have more education or have higher incomes. Furthermore, these differences have grown in recent decades. In fact, recent gains in life expectancy have accrued largely to those with high incomes or high education, while life expectancy for those with lower incomes and little education has stagnated. This is a serious problem in itself, but it also has other implications.

A committee of the National Academy of Sciences, which we co-chaired, investigated the way these growing disparities in survival affect the amount that different income groups receive from the federal government in lifetime benefits from programs such as Social Security, Medicare and Medicaid. If higher-income people gain more years of life in old age, then they will also receive benefits from these programs for more years. The committee's report was released a few months ago. Its findings are striking.

We estimated the remaining life expectancy of men and women who were already 50 according to their average earnings levels when they were in their 40s. We found that 50-year-old men born in 1930, with earnings in the bottom 20 percent of the population, would live another 26.6 years, while men in the top 20 percent would live another 31.7 years, for a difference of

Ronald Lee is an economist and demographer at the University of California, Berkeley. Peter Orszag is an economist, author, and chairman of the Financial Strategy and Solutions Group at Citigroup. Contact Ronald at rlee@demog.berkeley.edu.

ABOUT THIS ARTICLE

This article first appeared in *Communities & Banking*, a magazine published by the Federal Reserve Bank of Boston. The article does not necessarily reflect the views of the Federal Reserve Bank or of Maine Municipal Association. It is reprinted with permission.

5.1 years. For men born in 1960, however, the corresponding numbers are 26.5 years and 38.8 years, for a difference of 12.3 years. The gap in life expectancy, which was already big, more than doubled. Results for women are similar.

Disturbing trends

How did these disturbing trends in length of life affect the government benefits received by the elderly? To answer that question, we considered a group of people turning 50 in 2010 and asked what benefits they would have received over their lifetimes (above age 50) under the estimated mortality conditions of this generation on the one hand, and on the other hand what they would have received under the mortality conditions of the generation born in 1930, when differences in life expectancy by income were smaller. We also took into account that those with lower life expectancy would generally have worse health and higher disability, because that would mean that they would receive more benefits each year from Medicare and Medicaid.

For Social Security retirement benefits, we found, unsurprisingly, that men and women in the top 20 percent

received more benefits than those in the bottom 20 percent, because they qualified for higher benefits per year and because they received those benefits over more years on average. However, while the gap in lifetime benefits for men under the mortality conditions of those born in 1930 was \$103,000, with the mortality of those born in 1960 the gap was \$173,000, or \$70,000 greater. The comparable increase in the gap for women was \$48,000. These larger gaps resulted entirely from the fact that higher-income people gained more years of life in which to receive benefits.

For Medicare benefits, the gap rose by \$53,000 for men and by \$70,000 for women. Even though people with lower incomes use Medicare more in each year that they are alive, because they are on average in worse health, the greater increases in lifespan for the high-income groups more than offsets their lower usage of Medicare per year.

Medicaid funds long-term care for individuals whose assets fall below a threshold value. Lower-income people receive Medicaid benefits for this purpose to a much greater extent than do high-income people, and women receive Medicaid benefits much more than men because they tend to have more disabilities. The rising gap in lifespan also favors the lifetime Medicaid benefits of higher-income people, in the amount of \$7,000 for men and \$36,000 for women. The committee also carried out similar calculations for Social Security disability benefits and for Supplemental Security Income (SSI).

The big picture

We can add together the lifetime benefits for all five of these programs

for the elderly to get a comprehensive picture. Comparing the mortality conditions of the 1960 generation with those of the 1930 generation, we find that the gap in lifetime benefits between earners in the top 20 percent and bottom 20 percent grows by \$130,000 for men and by \$160,000 for women. These are strikingly large numbers.

To be sure, we have thus far only considered the increasing gaps for lifetime benefits. Perhaps the picture changes if we take tax payments into account? When we looked at payments of federal income taxes and both employee and employer payroll taxes after age 50, we found that the mortality context made very little difference to the gap between high- and low-income people – only a \$5,000 increase in the tax gap under the mortality conditions of the 1960 generation. When we put all this together to calculate how the widening disparity in lifespan affects net lifetime benefits (that is, after subtracting taxes paid after age 50), we found that the gap increased by \$125,000 for men and \$155,000 for women.

Clearly, the widening gap in life expectancy between high- and low-income people has reduced the progressiveness of the federal programs for the elderly in a very important way. It is well known that Social Security, Medicare, and Medicaid will face very serious financial problems as the population ages and as health care prices rise. These systems are not sustainable without policy adjustments. But the same changes in lifespan by income class that swung lifetime benefits in favor of high-income groups may also matter for the policy changes that are being discussed.

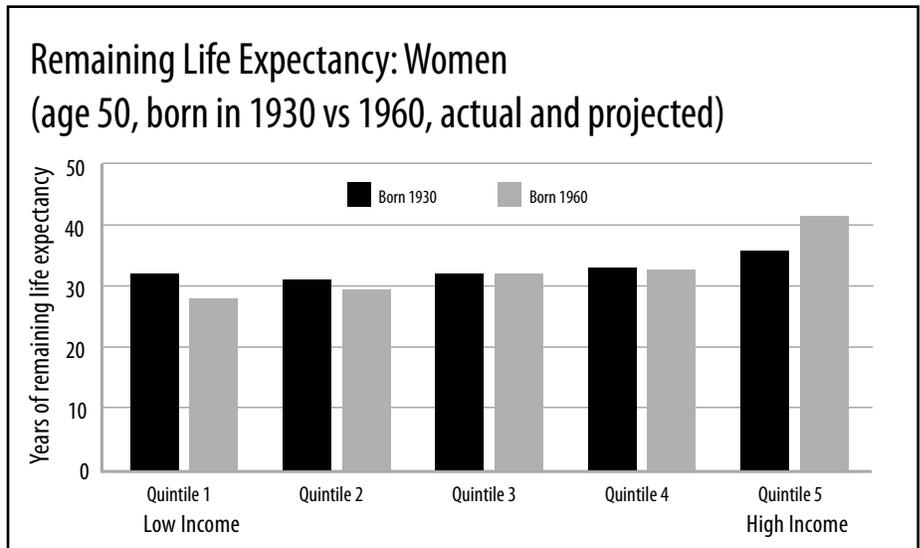
For example, raising the retirement age or the age of eligibility for Medicare might fall harder on lower-income people whose shorter lives will mean a proportionately bigger cut in lifetime benefits, a topic the committee also investigated.

The policy changes considered were raising the early retirement age and the normal retirement age for Social Security, raising the age of eligibility for Medicare, calculating the cost-of-living allowance in a different way, and reducing benefit rates for higher-income groups. For these potential policy changes, we assessed how

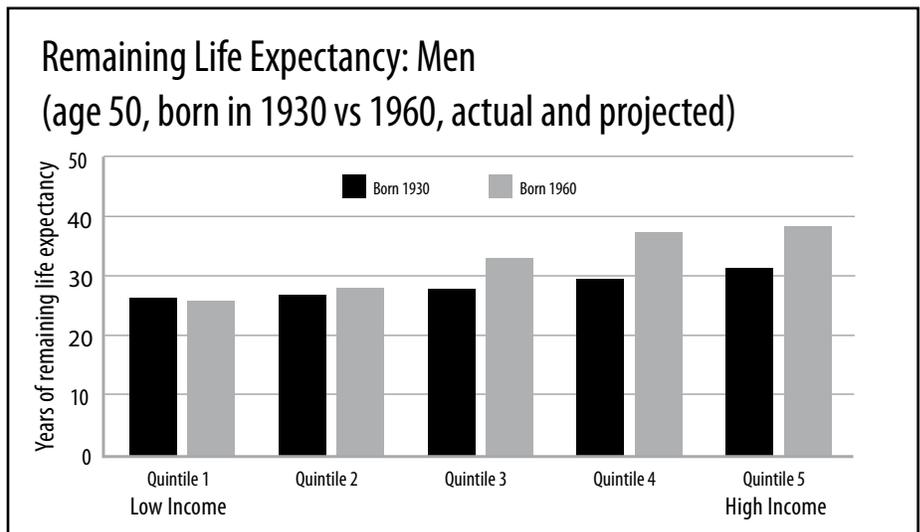
lifetime benefits would be affected, given the wide disparities in life expectancy. (We were not able to consider another potential change, raising or eliminating the cap on wages subject to the salary cap, because of limita-

tions of our model and data set.)

The bottom line is that policymakers need to consider the consequences of the widening disparities in health and survival when they evaluate current policies and propose new ones. ■



Source: "The Growing Gap in Life Expectancy by Income: Implications for Federal Programs and Policy Responses" (report, National Academies Press, 2015).



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New federal overtime rules affect municipal employers

The long-awaited rules take effect on Dec. 1. Municipal officials need to know about the changes and educate staffers whose work schedules, and customs, may change.

By Sarah Newell, Attorney and Shareholder, Eaton Peabody

On May 18, 2016, the U.S. Department of Labor issued long-awaited, final overtime rules changing the salary basis requirement for overtime exemption and the total annual compensation requirement for highly compensated employees. Since that time, employers have struggled to determine what steps they need to take to ensure compliance by the quick approaching Dec. 1, 2016 deadline. This month, employers must put the plans they have made in place and prepare to manage the actual and cultural changes that will take place at the beginning of December.

Summary of the change

The new regulations change the salary basis requirement for overtime exemption from \$455 per week to \$913 per week. In addition, the regulations set the total annual compensation requirement for highly compensated employees at \$134,004. The regulations made no changes to the duties tests under the Fair Labor Standards Act (FLSA) and those tests remain the same. However, if employees are not paid \$913 per week in salary, they will not qualify for the exemption even if their job duties meet the requirements under one of the exemptions.

In the past, employers have not been permitted to use bonuses and other payments in the calculation of salary under the FLSA. The final rule amends the regulations to permit employers to use nondiscretionary bonuses and incentive payments, including commissions, in the calculation of salary. However, bonuses and

incentive payments can only account for 10 percent of the new salary level and must be paid on a no less than quarterly basis.

Another change made by the final rule establishes a mechanism for increasing the salary level every three years. Beginning on Jan. 1, 2020, the threshold will increase to maintain the salary level at the 40th percentile of earnings of full-time salaried workers in the lowest wage Census region (currently the south). After that time, an increase will occur every three years.

Employer plans for compliance

Since the issuance of the new regulations, employers have scrambled to put plans in place to ensure compliance. Employers must ensure that employees making less than \$913 per week are eligible for overtime under the Fair Labor Standards Act. Employers also need to ensure compliance with record keeping requirements and track employee hours. In addition, unionized employers may need to modify labor agreements and bargain over changes and/or the impact of such changes.

Employers have also used the impending changes as an opportunity to review current exemption classifications to ensure that exempt employees meet the duties tests of one of the exemptions under the current law. Once employers have determined that current salaried employees are properly classified, a decision must be made as to how the employee will be classified in light of the salary basis change. With regard to employees who make less than \$913 per week, employers have several options:

1. Increase the employee's annual salary to \$47,476 or more.

Employers should consider this step if budgets allow it and if the employee is somewhat close to the benchmark. Employers may want to consider this step if the employee works significantly more than 40 hours in a week. If an employer takes this step, nothing else needs to change regarding the employee's hours and work as the employee is properly classified as exempt under the new regulations.

2. Re-classify the employee as non-exempt at an hourly rate based on current salary and either limit work hours to no more than 40 per week or pay overtime for hours worked over 40.

This solution is a good one if the nature of the employee's job is such that it can be performed in 40 or fewer hours a week or if the employee is expected to work an amount of overtime that can be paid without significant budgetary implications. If the employee is reclassified, the employer must record the employee's hours as it does its non-exempt employees and avoid the pitfalls discussed later in this article.

3. Re-classify the employee as non-exempt at an hourly rate calculated to account for potential overtime cost.

In some cases, where an employee cannot be raised to the new threshold but works a significant amount of overtime, employers are calculating hourly rates meant to maintain the employee's current annual earnings in light of overtime. This approach can be difficult because, unless the employer has been tracking the hours of salaried employees, it isn't an exact science. Some employers are creating a rate by reducing the employee's current salary by 10 percent and dividing it by 2,080 hours to find an hourly rate that accounts for some overtime.

Sarah Newell is an attorney and shareholder with Eaton Peabody, a statewide law firm. Newell, who works in Bangor, can be reached at: snewell@eatonpeabody.com.

If employers take this approach, they can evaluate the outcomes and adjust the employee's rate if necessary in the future.

Pitfalls to avoid after Dec. 1

After Dec. 1, 2016, it is likely that most employers will have employees who have been reclassified as non-exempt hourly employees. Practically, this means that employers will need to address the cultural changes employees will face as they are transitioned from salaried to hourly employees. Training and monitoring will be necessary to ensure that hours are tracked properly and any hours worked over 40 in a week are recorded for overtime purposes. Employers will need to address issues such as working from home, use of cell phones and access to work email after business hours, and start and stop times for employees who are accustomed to working outside of the office or regular working hours. In addition, employers will need to ensure that newly classified employees' hours worked are being recorded in line with the FLSA. Some areas employers should pay particular attention to are:

1. Work from home or outside of regular working hours.

If employees are permitted to work from home or outside of regular working hours, it is important that the employer have some mechanism for ensuring that the employee is accurately reporting hours worked and that the employee signs off on their reported hours every week or pay period. If the work an employee performs at home or outside regular working hours cannot be regularly monitored, the employer should consider not allowing the employee to work from home or during irregular hours.

2. Access to work related email or programs on personal devices.

If employees have access to work related email or programs on personal devices and they access those programs after regular working hours, employees must be paid for that time worked. In light of this, employers need to ensure that employees know whether and when they are to access email or other programs after hours and must track the time as hours worked. If an employer cannot regularly monitor an employee's use of email or other work programs on the employee's personal

devices, the employer should consider not allowing the employee such access.

3. Breaks and meals.

Exempt salaried employees often appreciate the flexibility they have to work more when things at work are particularly busy and less when things are quiet. It isn't unusual in many workplaces for an exempt employee to work through lunch and into the night during the week of a deadline and to leave early every day the following week when the project is complete. A salaried employee who is reclassified as non-exempt may have a difficult time adjusting to this fact. For example, a formerly exempt employee may be used to eating lunch at her desk while working each day. As a non-exempt employee, a lunch break where she performs work is an hour worked and must be tracked and paid as such.

4. Travel time.

The FLSA regulations regarding travel time distinguish between home to work travel (which does not count as hours worked), travel that is all in a day's work (which does count as hours worked), home to work travel for a one-day assignment in another city (which does count as hours worked, except for the time the employee would normally spend commuting) and travel away from the employee's home community (some of which counts as hours worked). Since employees who were previously classified as exempt are more likely to perform duties requiring travel, it is important that employers evaluate how a newly classified non-exempt employee will be paid for travel time and inform the employee what should be tracked as hours worked.

5. Waiting or on-call time.

FLSA regulations consider whether an employee is engaged to be waiting or waiting to be engaged to determine whether waiting or on-call time is working hours. In general, if an employee is required to stay on the employer's premises or is unduly restricted in what they can do during the period, it is "waiting time" and it is compensable. If the employee is permitted to go home and attend to his or her own affairs while waiting for a potential call, they are "on-call" and the time is not compensable.

Considerations for employers

In 2009, the FLSA was expanded

to cover municipal employers – so municipalities need to prepare for this upcoming change. There are a few differences in the manner in which government employers are covered by the FLSA:

1. Municipal employers may allow employees to accrue compensatory time under certain circumstances.

Under certain conditions, municipal employees may receive compensatory time off, at a rate of not less than one and one-half hours for each overtime hour worked, instead of cash overtime pay. The law limits the amount of overtime that may be accrued. Law enforcement, fire protection, and emergency response personnel and employees engaged in seasonal activities may accrue up to 480 hours of comp time. All other municipal employees may accrue up to 240 hours. An employee must be permitted to use comp time on the date requested unless doing so would "unduly disrupt" the operations of the agency.

Compensatory time may be given pursuant to an agreement with employees or their representatives. Any comp time arrangement must be established pursuant to the applicable provisions of a collective bargaining agreement, memorandum of understanding, any other agreement between the public agency and representatives of the employees, or an agreement or understanding arrived at between the employer and employee before the performance of the work.

2. The new regulations supersede provisions in labor agreements.

Municipal employers tend to have segments of employees who are represented by labor unions. Employers should check their labor agreements to ensure that no provisions conflict with the new law. To the extent they do, the law supersedes the agreement and employers must comply with the law. If the change, however, impacts working conditions, the employer may be required to bargain the impact with the bargaining agent.

3. Elected officials are not covered by the FLSA.

Conclusion

While the changes to the regulations are daunting, if employers properly educate and supervise employees, compliance can be achieved by the Dec. 1, 2016 deadline. ■

Keeping municipal records top job of any clerk, Goodwin says

By Liz Mockler

Lisa Goodwin had no clue about being a municipal clerk when she applied for the position in Lincoln in 1991. Today, she can't imagine wanting to do anything else.

Goodwin says a municipal clerk's prime focus is to be the "keeper of the records." While city and town clerks perform multiple tasks, "keeping the records of the community ranks at the top of the list," Goodwin said.

Now Bangor's city clerk, Goodwin began her government career working as Lincoln clerk and then as Lincoln town manager from 2008 until the Bangor City Council voted unanimously in early 2012 to offer her the city clerk's job.

"The municipal clerk is responsible for preserving the history of a community," she said, "accurately documenting all decisions made by the municipal officials."

Goodwin noted that the job of clerk dates to biblical times and was the first municipal office created in Colonial America in recognition of the importance of keeping accurate written records of everything from "land deals to birth records."

"Today's municipal clerk has many more duties, but the importance of recording government actions has not diminished. In my opinion, the importance of keeping records is time-honored and will always be necessary. It is the essence of what municipal clerks do," Goodwin said.

Goodwin is a master municipal clerk and has achieved lifetime certi-



Lisa Goodwin

fied clerk status. She was named Maine's top clerk by her peers in 2005, one of many awards and distinctions over her career.

She has been a member of county, state, regional and national clerks' associations, serving in leadership posts for the groups.

"Education and networking are the core reasons why these groups are important,"

Goodwin said. "There is no college program to learn the nuts and bolts of being a municipal clerk."

Goodwin, who prepared long and hard for the Nov. 8 elections, earned her lifetime certification from the Maine Town & City Clerks' Association and master's status from the International Association of Municipal Clerks.

She presently serves as president of MTCCA.

Although the clerk is responsible for a slew of data and duties, a presidential election every four years is an especially arduous task that takes months of preparation.

"Elections require the most time and effort. There are few months during the year that municipal clerks are not doing something related to elections," said Goodwin, who was also honored with the prestigious Lorraine M. Fleury Award in 2004.

The award is presented each year by the Secretary of State to a clerk who has "made a significant contribution to the election process" and emulates the fairness, experience, knowledge and service of former state election director Fleury.

In 2016, Goodwin said there was only one month when she did not work on election-related issues, ranging

from verifying citizen petitions, recording campaign finance documents, attending caucuses and preparing for the election of federal, state and municipal elections.

"By mid-October it will be an all-consuming task," Goodwin said of election work. Even after the voting is done, "the municipal clerk's work is far from over."

"Every voter registration change must be entered into the state's central voter registration program and voter participation has to be entered for each person casting a vote," she added. "Barring any recounts, work should be completed by mid-December."

When asked what aspect of the clerk's position she would favor changing, she said the question was tough to answer.

"It really is a personal preference," she said. "Since the elimination of night meetings is impossible by virtue of what we do, my second choice would be to have all genealogy done at the State Vital Records department. I find that we are so busy with day to day work that stopping to search for a record that we may or may not have is not a good use of our time." ■



ABOUT THIS SERIES

Elected and appointed municipal officials provide essential services to their communities all across our state. As Maine Municipal Association celebrates its 80th year – we were founded in 1936 – the Maine Townsman will highlight our members and honor the work that they do.

Liz Mockler is a freelance writer from Randolph and regular contributor to the Maine Townsman, lizmockler@hotmail.com

Scenes from the 80th MMA Convention

Photos by Ben Thomas

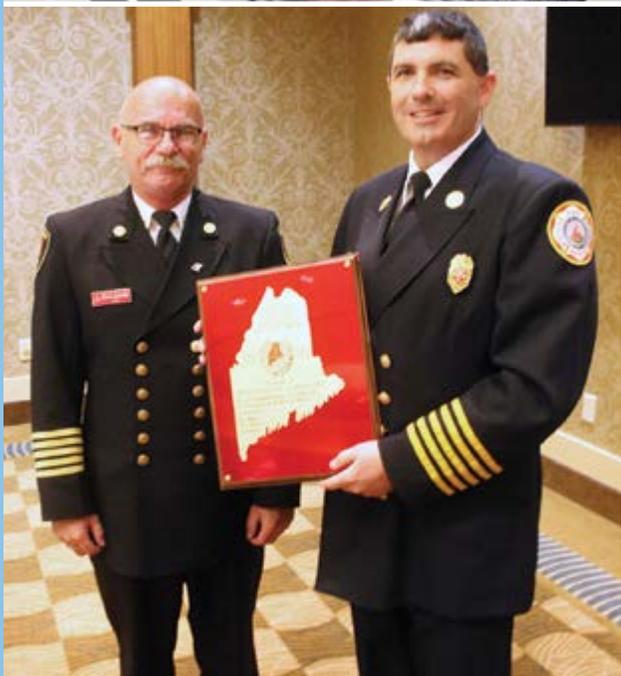
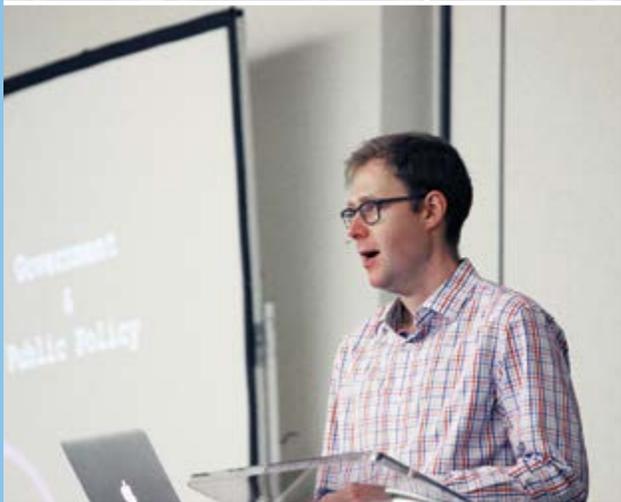
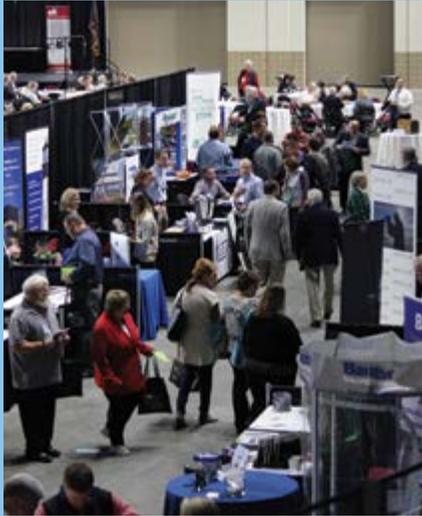
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Scenes from the 80th MMA Convention

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PEOPLE



Osmond "Oz" Bonsey

Longtime former Maine Town Manager **Osmond "Oz" C. Bonsey** died Oct. 30 at the age of 88. He passed away at the Maine Veterans' Home in Bangor and is survived by his wife of 64 years, Ann, among other family members and many friends.

Bonsey served as a Maine municipal manager for 40 years. He became active within the Maine Municipal Association starting in 1952, serving as MMA president in 1972, as well as 17 years of service as a Maine Municipal Employees Health Trust board member from 1992 to 2009.

A Navy veteran and graduate of the University of Maine, Bonsey was highly respected by his peers in Maine and nationally. He retired in 1991 to Surry, the beloved hometown of both he and his wife.

He was awarded the International City Management Association's (ICMA) Distinguished Service Award in 1996, the highest award presented by the international group. He also served as president of the ICMA from 1987 to 1988. He was the first ICMA president from a city with a population of fewer than 20,000. He served as an ICMA Range Rider after his retirement.

His myriad awards also included the Maine Town, City and County Management Association Linc Stackpole Manager of the Year Award in 1983. Bonsey served as president of MTCMA from 1965 to 1966. Bonsey was known for his dedication and integrity, and for mentoring many other Maine managers.

His career began as an intern in Ellsworth in 1951. He was hired the following year to manage the Town of Corinth at the age of 23. In 1953, he accepted the manager's job in Mars Hill in Aroostook County, where he served for two years before being hired to manage Freeport from 1955 to 1962. Bonsey served as the first town manager of Falmouth, from 1962 through 1973, establishing a manager-council form of government.

He served as executive director of the Greater Portland Council of Governments from 1974 to 1979 before taking his final manager's job in Yarmouth, where he served 12 years before retiring in 1991.

According to published reports, Bonsey suffered from Parkinson's disease. In 2003, he penned the book *Surry, Maine: An Informal History*.

Longtime firefighter **Neal Kimball** received the Chief **Bob Maxcy** Lifetime Achievement Award from the Lincoln County Fire Chiefs Association in a surprise presentation on Aug. 17. Kimball began his career in 1989 as a Waldoboro fireman under the leadership of the late Bob Maxcy, Waldoboro fire chief from 1964 to 2006 and for whom the award is named. Kimball also has worked for the Bremen Fire Department before joining the Bristol department. He retired as Bristol's third assistant fire chief in June, a position he held since January 2012. He will remain active in training and communications for the Bristol department and left open the possibility of returning to active firefighting.

Suzanne Knight was named Westbrook finance director after serving eight years as deputy finance director for the City of Portland, where she performed numerous duties before taking the Westbrook position. She replaces **Alicia Gardiner**, former chief financial officer, after the position was restructured.



John Simko

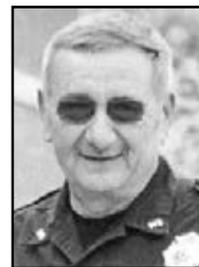
John Simko resigned as Greenville town manager to take the position of municipal loan officer for Androscoggin Bank. Simko served as manager from 2000 through 2010, then returned in September 2013 after the aerospace company he worked for closed. Simko, who also has served as a Greenville volunteer firefighter since 2000, will continue in that role. He served as fire chief from 2011 to 2013. Code Enforcement Officer **Jack Hart** has been named interim manager, as selectmen search for a permanent replacement.

Wayne Vetre was hired as Wells fire chief, replacing **Daniel Moore**, who retired in June. Vetre, of Guilford, Conn., began his new job on Nov. 1. He presently works as Guilford assistant fire chief, but was attracted to the Wells job after vacationing in the area over many years.

Saying Wells offers "a different way of life," Vetre said he and his wife are very happy and excited to make the move to Maine. He joined the Guilford department in 1994 and has served as assistant chief since 2005.

In a run-off election in early August, **Peter Lacy** defeated incumbent North Yarmouth Selectman **Jim Moulton** by a vote of 385 to 216. The first vote was a tie at 409 and a recount confirmed the first tally. Another election was held on Aug. 3. Moulton served a total of 13 years on the board, as well as stints on the Cumberland County Budget Committee and several years on the zoning board. Moulton also served on the town's school board. Lacy, a lawyer for the state, served on the town's zoning board before running for higher office.

Deer Isle selectmen hired **Deborah Martel** as administrative assistant and **Heather Cormier** as town clerk last August. Both women replace **Rebekah "Becky" Knowlton**, who accepted a job with the Hancock County commissioner's office in Ellsworth. Both Martel and Cormier live in Deer Isle and were chosen for their qualifications and experience. Martel is a restaurant owner with her husband, while Cormier served as administrative assistant at Deer Isle-Stonington High School for five years before moving to the town office.



Steven Emery

Pittsfield municipal staff and community residents are mourning the sudden death of Police Chief **Steven Emery**, who died Oct. 29 at the age of 61. Town Manager Kathryn Ruth told the Bangor Daily News that Emery was "one of my favorite employees and the best police chief I've ever had." Ruth said Emery's death was a "huge loss" to the town of 4,200. Emery was hired by the town as a sergeant in 1982 and held the position until 1987, when he left the department to run his own business. He returned to law enforcement in 1991 as a patrol sergeant for Somerset County. He was hired as Pittsfield police chief when the job opened in 1993. ■

STATEWIDE

A new report published in October concluded that Maine's bad roads and bridges cost the state and municipalities more than \$1 billion a year. Also, the study from the national research group called TRIP reported that vehicle traffic in Maine had been steady for years, but increased significantly in 2016. Traffic has increased across the nation, according to the study. The annual cost includes damage to vehicles and traffic congestion.

AUGUSTA

A group of providers, veterans' organizations and municipal and state officials met in October to brainstorm for ideas to eliminate veterans' homelessness by the end of 2017. The director of the Maine Bureau of Veterans Services believes the goal can be achieved because the number of homeless veterans in Maine has dropped by 46 percent. The goal is even more ambitious considering the difference between how the federal and state governments define veterans' homelessness: The feds consider a veteran homeless if he or she has absolutely no place to stay, while the state definition, expanded by the Legislature, includes veterans who live in cars or "couch surf" at friends' homes.

BELFAST

The city's Front Street Shipyard hopes to expand again in 2017 by constructing its tallest building to accommodate larger projects, such as building carbon-fiber ferries for New York City. If the shipyard wins the NYC job, it would need a taller building to accommodate the new work. The shipyard presently consists of five buildings. A sixth building would be the tallest – 11 feet higher than Building 5. If the firm wins the contract for the ferry work, it does not have a facility big enough for the project, which would add 30 to 40 employees to its present staff of 100. If successful, the shipyard would build two 84-foot ferries as part of a new 18-ferry fleet for the Big Apple. In an ongoing city effort to prepare the Front Street property, the city and water district are replacing old sewer and water lines and strengthening the road to support loads that could reach 200 tons.

NEW ON THE WEB www.memun.org

Highlights of what's been added at www.memun.org since the last edition of the Maine Townsman.

Cyber Security. The Maine Emergency Management Association and Thomas College in Waterville are teaming up to offer a free session on "Cyber Security for Municipalities" on Nov. 28.

Convention Presentations. It's not even close to as good as being there, but presentations from many workshops that were part of MMA's 2016 Annual Convention (held Oct. 5-6) are available to be read.

Plumbing Code Training. The Maine Plumbers' Examining Board continues to offer training on the Uniform Plumbing Code in a series of free workshops that run through Dec. 13.

BRISTOL

The town Parks and Recreation Commission has asked selectmen to create a director's position to manage the day-to-day work of the department. Earlier this year, selectmen asked the commission to develop a draft job description, which it presented to the board in late October. Among many proposed recommendations, the commission suggested that the director would work full-time from spring to fall and part-time in the remaining months. The director would manage the town's recreation programs, write grants and develop new programs and activities. The commission will continue working on its proposal and, if approved, officials hope it will be included in the new fiscal-year budget.

CARIBOU

The city council in October put the kibosh on a local effort to study the possibility of bringing high-speed internet to every resident and business. City officials estimated the effort would cost \$2.2 million to cover the entire city. The effort was not started with the idea of helping or recruiting businesses, but more to attract families living in the Boston and New York regions who could work from home if the service were available. The council was split on whether to proceed with the study, by a vote of 4-2.

GARDINER

The city has won the distinction of being a state-designated "Business Friendly" community, an accomplishment that will play an important role for future financial

help to the city and its businesses. In particular, the designation will give city economic development efforts an extra boost when it applies for Community Development Block Grants (CDBG) and other state funding programs. Mayor Thomas Harnett credited city staff, volunteers who serve on city committees, the Gardiner Board of Trade and Gardiner Main Street, among others, for the achievement. Harnett, according to published reports, noted that any successful project funding in the future will help hold down or mitigate property tax increases. Since 2011, Gardiner has won \$3.6 million in CDBG funds for various business ventures and to reimburse companies for employee training, among other business efforts. The new sign that hangs at a downtown intersection indicates that Gardiner has been deemed a good community in which to open, relocate or expand a business.

SOUTH PORTLAND

City officials in October approved a pilot program to use Maine-made biodiesel fuel in certain municipal vehicles. The fuel would be purchased from Maine Standard Biofuels in Portland, which takes used cooking oil to dilute diesel fuel into biodiesel. The pilot program is intended to test the effectiveness of the blended fuel in all conditions, including during the coldest months. If successful, the city would use biodiesel in all of its cars and trucks. Maine Standard uses cooking oil from all of New England, including more than 30 South Portland businesses. ■

MUNICIPAL BULLETIN BOARD

NOV. 29

Grant Writing for Municipalities: Augusta

This is a new session and expert speaker from Maine Municipal Association. Jack Smith, a consultant with The Smith Group in Freeport, will present a day-long workshop about Grant Writing for Municipal Programs and Projects at MMA's Christopher G. Lockwood Conference Center in Augusta.

The class is designed to meet the needs of participants who: are completely new to grant writing and need a basic understanding of the process; are currently working on a grant writing project and have specific questions and issues; and, staff who are successful practitioners of the grant process and seek specialized information.

Registration will begin at 8 a.m. The program runs until 4 p.m. Cost is \$70 for MMA members and \$140 for non-members.

DEC. 6

Elected Officials Workshop: Lewiston

Attorneys and staff from MMA's Legal Services and Communication & Educational Services departments will lead a workshop for Elected Officials on Dec. 6 at the Ramada Inn, 490 Pleasant St., in Lewiston. The evening workshop begins with registration at 4 p.m. and ends at 8:30 p.m., including a light dinner.

The workshop is designed for newly elected officials, but veteran councilors and select board members may benefit from the refresher and legal updates as well. Topics include: open meeting and records; roles and responsibilities; effective communication; media relations; and, conflicts of interest, among others. Cost for the workshop is \$55 for MMA members and \$110 for non-members.

DEC. 8

Planning Boards/BOA: Portland

MMA's Legal Services Department will host a session for local Planning Board and land use Boards of Appeal members from 4 p.m. to 8:30 p.m. on Dec. 8 at the Fireside Inn & Suites in Portland.

The workshop is designed as an introduction for new or less experienced members, but veterans may find an update useful as well. Among the topics

to be covered: jurisdictional issues; conflicts of interest and bias; public notice requirements; site visits; procedure for decisions; and, variances. The cost is \$55 for MMA members and \$110 for non-members.

DEC. 9

MWDA Winter Issues: Augusta

The Maine Welfare Directors Association will hold a one-day workshop on "winter issues" on Dec. 9 at the MMA

Conference Center in Augusta. Four speakers are on the agenda, as is a holiday "Yankee swap."

The session is designed for selectmen, GA administrators, town managers and other people responsible for administering General Assistance. It will provide an overview of the fundamental principles of GA administration and compliance. The cost is \$40 for MWDA members and \$65 for non-members. The session begins with registration at 8:15 a.m. and will end at 3 p.m. ■

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LEGAL NOTES

Holiday Displays on Municipal Property

(Reprinted from the November 2009 *Maine Townsman* Legal Notes)

Question: With the holidays approaching, what's the law on permitting religious displays such as a nativity scene on municipal property?

Answer: This is a complicated and continually evolving question of constitutional law, but here's a quick summary of current law (sans citations).

The key is that the First Amendment prohibits Congress (and by extension state and local government) from either promoting religion (the "Establishment Clause") or interfering with the free exercise of religion (the "Free Exercise Clause").

Thus, if a nativity scene or other religious display is *publicly* sponsored (i.e., sponsored by a governmental entity or erected at governmental expense), it is probably an unconstitutional endorsement or "establishment" of religion unless accompanied by traditional secular symbols of the holiday, such as a snowman, Santa Claus, or a banner reading "Season's Greetings." These secular symbols of the holidays should be positioned in close proximity to the religious display so that they are all in the same viewshed. This combination of publicly sponsored religious and secular symbols renders the scene a constitutional public celebration of a traditional holiday, not an unconstitutional government endorsement of a particular faith.

On the other hand, if a nativity scene or other religious display is *privately* sponsored (i.e., sponsored by a private entity or erected at private expense), it must be allowed on public property if that property is a "traditional public forum," such as a park or commons, and the property is made available for secular displays. It is unconstitutional to limit the "free exercise" of religious expression in a public place where secular expression is permitted (again, such as a park or commons).

For a privately sponsored religious display on public property, there is no constitutional requirement that it be balanced with traditional secular symbols – it is not publicly sponsored, so it does not constitute government endorsement of religion. A privately sponsored display should include a prominent sign or banner identifying its sponsor, however. Also,

MUNICIPAL CALENDAR

ON OR BEFORE DECEMBER 15 — Monthly/Quarterly expenditure statement and claim for General Assistance reimbursement to be sent to Department of Human Services, General Assistance Unit, 11 State House Station, Augusta, ME 04333-0011 [22 MRSA §4311].

DECEMBER 25 — Christmas Day - a legal holiday (4 MRSA §1051, 20-A MRSA §4802) which may be observed Monday, December 26 since Christmas falls on a Sunday this year.

DURING DECEMBER — Towns that elect officials by secret ballot under 30-A MRSA § 2528 must make nomination papers available 40 days before the filing deadline. The filing deadline is 45 days before the election date. For most towns with March elections, papers must be made available beginning sometime in December, depending on the date of the election.

BY JANUARY 1 — Each owner or keeper of a dog or wolf hybrid at the age of 6 months or more shall obtain a license for that animal from the municipal clerk (7 MRSA § 3922). ■

any other sponsor of either a religious or secular display must be allowed to use the property on the same terms.

The foregoing is a general, un-nuanced overview of the law in a field more complex than this note lets on. Specific questions and circumstances should be reviewed by legal counsel.

For more on the First Amendment and the relationship between government and religion, see the feature article "Church and State," *Maine Townsman*, October 2001. (By R.P.F.)

May a Municipal Officer Buy Tax-Acquired Property?

Question: May a municipal officer (selectman or councilor) purchase tax-acquired property from the municipality?

Answer: Yes, but only if the sale is conducted in compliance with applicable law.

According to 36 M.R.S.A. § 946, third paragraph, a municipal officer, while holding office, may not acquire any interest in tax-acquired property unless the sale is conducted by sealed bid after it has been advertised at least twice during a seven-day period prior to the acceptance of bids. (We recommend that the sale be advertised in a newspaper of general circulation in the area.) Moreover, any municipal officer who submits a bid is barred from participating in the bid acceptance process.

The advertising and sealed bid requirements do not apply if the property was owned by the municipal officer's son,

daughter, spouse or parent immediately prior to its acquisition by the municipality "and if such purchase is authorized by the municipality." This second condition appears to require that the purchase be authorized directly by the municipality's legislative body (town meeting or town or city council).

There is no analogous statute restricting tax-acquired property sales to other municipal officials or employees, although a local charter, ordinance or policy could do so. In the absence of any local restrictions, we nevertheless recommend that a sale to other officials or employees be conducted in the same manner as sales to municipal officers, that is, by advertised sealed bid and with no participation by the official or employee in the bid acceptance process.

For much more on the sale of tax-acquired property, see our "Information Packet" on the subject, available free to members at www.memun.org. (By R.P.F.)

Minor Changes Made to Annual Audit Law

We weren't aware of it until recently, but the last session of the Legislature made some minor but still notable changes to the law requiring municipalities to have an annual audit (see PL 2015, c. 44, eff. Oct. 14, 2015).

The audit must now be performed by a certified public accountant or CPA, not merely a "qualified" accountant (see 30-A M.R.S.A. § 5823).

LEGAL NOTES

Also, the audit must now be conducted in accordance with government auditing standards promulgated by the United States Government Accountability Office, not the State Auditor.

Finally, it is now more difficult to engage the State Auditor to perform a new or second audit. Formerly, the voters, by a 10% petition, could effectively require the State Auditor to do another audit (at municipal expense). But now, a voter petition is dependent on the municipal officers (selectmen or councilors) first determining that "unusual circumstances" warrant a new audit by the State Auditor. Even if a petition is then submitted, the State Auditor may but is not required to perform an audit. If dissatisfied with the first audit, however, the municipal officers are authorized to engage a CPA in private practice to perform another one.

Apart from these changes, the municipal audit law remains as it has been. To recap, an annual audit ("postaudit") of the last complete fiscal year is required, at municipal expense, and it is the municipal officers who must engage the auditor. Within 30 days of doing so, they must notify the State Auditor of their auditor's name and address. And since a municipality's annual report must be available to voters at least three days before the annual meeting and must include certain excerpts from the audit, the municipal officers should engage an auditor well before then.

For more on audits and annual reports, see "Annual Audit Required," *Maine Townsman*, Legal Notes, March 2010 and "What Should/Shouldn't Be in the Annual Report," *Maine Townsman*, Legal Notes, December 2010. (By R.P.F.)

Agendas for Workshops?

Question: Our board intends to hold a workshop. Must we post an agenda?

Answer: No, but public notice is still required.

As we've noted here before, Maine's Freedom of Access Act (FOAA) or "Right to Know" law draws no distinction between "workshops," which are usually for discussion only, and "official business meetings." Regardless of how a board meeting is characterized (e.g., regular meeting, special meeting, workshop, work session, site visit, etc.), if it involves the transaction of any board function, including discussion only, it constitutes a public proceeding requiring prior public notice and permitting public attendance (see "Workshops' Are Public Proceedings Under FOAA," *Maine Townsman*, Legal Notes, June 2007).

But as we've also noted before, the Right to Know law does not require that public notice include an agenda, although local charters, ordinances or board bylaws may (see "Board Meeting Agendas," *Maine Townsman*, January 2014). Nevertheless, we recommend an agenda, or at least a general description of the purpose of the meeting, in order to promote transpar-

ency and as an aid to the fair and orderly conduct of business.

We also recommend that agendas, besides listing anticipated items of business, include a catch-all item for "other business." This is because there is a common (but generally incorrect) belief that a board may not act on a matter unless it is identified on the agenda. This is true for town meetings and town meeting warrants, of course, but not for municipal boards unless barred by charter, ordinance or bylaws. Adding "other business" to the agenda may mollify those who claim (again, generally incorrectly) that the board's business is legally confined to the agenda.

For more on when and how notice of board meetings must be given, see our "Information Packet" on the Right to Know law, available free to members at www.memun.org. (By R.P.F.) ■

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