

**Report of the President # 10**  
**by Judy St. Croix**

**An Important Message From Your President:**

As Charles Dickens said in "A Tale of Two Cities," these are the "best of times" - these are the "worst of times." Those words spoken many years ago are reflective today on a budget crisis that has befallen our organization and one that will require understanding, planning and coordinated action to resolve. Let me explain the situation.

The Executive Board voted at a meeting on March 29 to institute several strict spending measures based on recommendations by the Budget Committee due to recent budget concerns. Our two main budget drivers are costs for our Legislative Agent and the Public Recorder. These two major expense line items, along with all other costs have escalated each year; our income, mainly from the membership dues structure and conference registration fees, has remained flat. These two factors have placed us in a financially precarious position - a crisis.

The greatest fear in a time of crisis is what one cannot see or understand. What has happened? How can we fix it? What is the plan? The past three fiscal years' approved budgets have had deficits of \$16,000, \$18,775, and \$18,529. (This last figure was for our one-time six-month fiscal year as we transition to a municipal fiscal year of July 1 to June 30. It reflects the portion of the year when we have the majority of our expenses and almost none of our income, and is of necessity unbalanced).

In situations like this "doing something" begins with saying the right words, transmitting the effective message. All crises require planning and coordinated action to resolve and we must replace negative emotions with positive feelings in order to create the kind of attitude required for the clear thinking necessary to resolve our crisis.

Our choices for the future are to increase revenues, to spend less, and/or to spend differently. The Executive Board and the Budget Committee voted unanimously in favor of utilizing a combination of all three measures.

On the revenue side, the standard conference registration fee will be increased to \$50 for timely registration and \$60 for late registration and we will vote at the June Conference to amend our Bylaws by substantially increasing the annual dues structure.

We propose to spend less for printing and mailing costs of the Public Recorder by e-mailing issues beginning July 1. We will also give thoughtful consideration to combining issues as we did last summer for the July and August issues. We will spend less for printing and mailing costs of the conference brochures by e-mailing issues starting with the June 2006 Conference. We will continue to mail to those communities who do not have an e-mail address aside from the CVR. You will also be able to download issues of the Public Recorder and the conference brochures from our website.

On the contract of the Lobbyist, the Executive Board voted to have the President appoint a committee of not more than two to 1) review the current budget situation; (2) possibly re-negotiate the contract of the Legislative Agent; and (3) meet with the city clerks to discuss a possible shared contract with the lobbyist. Appointed to the Committee are Patrick Ward, Brookline representing the Legislative Committee, Andrew Dowd, Northborough, representing the Budget Committee, and your President. Our first meeting is scheduled for April 10.

The Treasurer has been requested to prepare the books for a financial audit to be conducted as soon as possible. A report will follow.

Lastly, we propose to spend differently by budgeting the media stipends from election reporting over four years. These funds are received in state election years, with the larger amount being in the presidential election year. If we spread these funds evenly over four years rather than two uneven amounts every four years, we will be able to better budget our expenditures.

Make no mistake, we are in a tight spot. The time has now come for us to rely on one another and to work effectively as a team. I am confident that, together, we will overcome this setback but it requires the combined effort of all members. One of the greatest features of this association is that we tend to not think alike. We are founded on diversity so I don't expect universal agreement on what we should do to reverse the present trend. What I do expect is that we will find answers and that we will unite to keep our association active and healthy. You should be pleased and proud to be members of this organization and it deserves everything we can do to preserve it and make it prosper again.

By implementing these and other similar measures, we hope to not only be able to balance future budgets but to also begin to replenish our capital reserves. The mission\* of the Massachusetts Town Clerks' Association is too important to jeopardize by operating on a financial shoestring. I will be working with your officers, e-board members, committee members, and you, the members at large, as together we work through this economic restructuring. We ask for your support.

\*The Massachusetts Town Clerks' Association shall be dedicated to the purposes of increasing the proficiency of town clerks and other local government officials, of strengthening the quality of local government through professionalism, and of promoting recognition of the importance of the office of the town clerk.

## **A MUTUALLY SHARED JUNE CONFERENCE**

Everyone has it in them to achieve great things.

When we work together, we can travel farther and climb even higher!

The Massachusetts Town Clerks' Association and the Massachusetts City Clerks' Association have joined forces for the June Conference to be held at the Sea Crest Resort and Conference Center in June.

MTCA President Judith L. St. Croix and MCCA President William C. Campbell, have been working together to bring this event to you and we welcome the opportunity for both associations to meet as one to share the conference experience.

One brochure will be sent to members of both associations, so please pay careful attention to the instructions when you receive your conference packet the middle of April. Please note:

- One conference registration page (Form 1) for all town/city members to complete. Thursday and Friday breakfast and the Thursday banquet will be shared events and the Wednesday dinner and Thursday lunch will be separate association events.
- Two hotel pages (Form 3) – one for town clerks and one for city clerks – required because of the individual hotel contracts.
- One education course page (Form 2) for all town/city members to complete.
- One Friday morning session with state officials for both associations.

Sea Crest will be "An Ocean of Opportunities," a time to bring two associations together for the purpose of networking, sharing ideas, and providing opportunities for professional development. We look forward to seeing our members at the conference.

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## **MTCA BYLAW AMENDMENTS**

**MTCA membership will be asked to vote on the following amendments to the Bylaws at the annual business meeting on June 15, 2006 at Seacrest.**

### **Amendment No. 1:**

Article III, “Dues Structure” be deleted in its entirety and replaced with the following:

#### **\*Active Members:**

\$ 20.00	Towns under 1,000
\$ 50.00	Towns 1,001 to 5,000
\$ 100.00	Towns 5,001-10,000
\$ 150.00	Towns 10,001 to 25,000
\$ 200.00	Towns over 25,000

#### **\*Retired Members:**

\$20.00

#### **\*Affiliate Members:**

\$ 100.00

#### **\*Honorary Members:**

No fee

\*Includes subscription to the “Public Recorder”

### **Amendment No. 2:**

Article III, “Membership” 3. Affiliate Member be deleted in its entirety and replaced with:

#### 3. Affiliate Members:

Shall be available only to City Clerks, Election Commissioners and Registrars of Vital Records for Cities, who are not eligible for active or retired membership.

## **MTCA LOBBYIST REPORT – MARCH 2006**

**By Stephen Roche**

### *SJC DECISION ON GAY MARRIAGE*

No doubt by now you have hear of the decision by the Massachusetts Supreme Judicial Court (SJC) on March 30, 2006 to uphold the Romney Administration’s orders to municipal clerks not to issue marriage licenses to out-of-state gay couples. As you know, 13 of the plaintiffs in the case were town clerks who wish to issue licenses to these couples, claiming that the Romney Administration had enforced the 1913 law “selectively.”

I have reviewed this lengthy decision – 42 pages with 11 pages of footnotes alone – and found some interesting aspects that I want to share with you, including:

- It was far from a unanimous decision – Justice Spina wrote the decision (two other justices signed onto this decision) but there were also: one concurring opinion signed by three justices; one concurring opinion signed by a single justice; and one dissenting opinion signed by one justice.
- The Court remanded (sent back to Superior Court) part of the case to determine if the states of New York and Rhode Island actually prohibit same-sex marriages
- There was much discussion of the role of the municipal clerk
- The major candidates in this year’s race for Governor all commented with Attorney General Tom Reilly and Lt. Governor Kerry Healey lauding the decision and Deval Patrick criticizing the SJC.
- Legislation filed this session by State Senator Jarrett Barrios to repeal the 1913 law will most likely die in light of the decision.

*ELECTION DAY REGISTRATION (EDR)*

The House and Senate chairs of the Election Laws (EL) Committee held a meeting at the State House on March 8<sup>th</sup> to kick off the study effort. I was joined at the meeting by MTCA President Judy St. Croix and the MTCA Legislative Chair Mary Lou Murzyn. Several EL Committee members attended the meeting along with representatives of various interested groups, including city clerks, the League of Women Voters, and MASSVOTE.

The chairmen plan to establish three subcommittees to study major election laws issues as follows and recently named the three EL Committee members who will lead those working groups; they are:

- |                                       |                         |
|---------------------------------------|-------------------------|
| * Rep. Steven Walsh (Lynn)            | Early Voting            |
| * Rep. Jamie Eldridge ( Acton)        | EDR                     |
| * Rep. Demetrius Atsalis (Barnstable) | Absentee Voting at Will |

These subcommittees will conduct detailed research on all aspects of the issue that has been assigned – from fiscal impact to administrative hurdles – and report back to the larger group. No firm deadlines have been established for concluding the work of the Task Force but some at the meeting felt that any report should be issued by the end of this year, especially if it includes recommendations for legislative changes.

Interested groups are welcome to assign a representative to each subcommittee and Judy and Mary Lou have been discussing who would best represent the MTCA on the working groups.

Subsequent to this State House meeting, Judy, Mary Lou, and I met in Waltham with City Clerks Russ Malone and Bill Sullivan to informally discuss the best way to work together on this important project. At this point, it is my understanding that the Massachusetts City Clerks Association will be appointing representatives to the Task Force subcommittees.

The good news here is that all parties have agreed that no significant changes to state election laws issues will take place in 2006.

We will keep you posted on the Task Force as it moves ahead.

*HOUSE 1680 – CPA MONEY FOR RESTORING HISTORIC DOCUMENTS & ARTIFACTS*

As expected, Governor Romney signed House 1680 into law on March 15<sup>th</sup>. The legal reference is Chapter 38 of the Acts of 2006.

The MTCA Legislative Committee submitted a letter of support to the Governor, urging his swift approval of House 1680. The letter included a request that he attach an “Emergency Letter”, making the law effective immediately, rather than waiting the usual 90 days for the law to become effective. The Governor opted not to do so.

I recently spoke with the Governor’s Legislative Director to emphasize how helpful it would be for communities to have this statute effective as we head into Town Meeting season. He is researching the issue now – an Emergency Letter can be attached at any time after the Governor signs a bill into law.

*UPDATES ON OTHER LEGISLATIVE ISSUES OF NOTE TO CLERKS*

Below you will find a list of several bills, the action taken by the legislative committee, and a summary for each bill.

**HOUSE 3642, HOUSE 3643 & HOUSE 3644 – MTCA VITALS BILLS**

LAST ACTION – All three bills reported favorably from the Public Health Committee on March 22<sup>nd</sup> and sent to the House budget committee thanks in large part to our chief bill sponsor, Rep. Tom O'Brien.

**HOUSE 3483 – AN ACT RELATIVE TO THE SUPERVISION OF PUBLIC RECORDS**

By Angelo M. Scaccia: Amends provisions relative to the supervision of public records; authorizes the supervisor of public records to undertake the articulated activities, including, but not limited to investigating violations, aiding in enforcement of public records provisions, and requiring persons to file statements in writing, under oath; grants said supervisor of public records the articulated powers during investigations, including, but not limited to administration of oaths and affirmations, issuance of subpoenas for witnesses, and requiring production of any documents or records deemed relevant; regulates enforcement procedures; regulates applications to the superior court for said enforcement; directs said courts to order said persons to appear before the state secretary to produce documentary evidence; classifies persons as in contempt of court for failure to obey said orders; prohibits persons from excusing themselves from testifying or producing any document or records before the supervisor of records on grounds of self incrimination, or potential imposition of penalties or forfeiture; prohibits prosecution or imposition of penalties or forfeitures on persons claiming privilege of self-incrimination; directs the supervisor of public records to enforce laws relative to public records and prosecute violations.

LAST ACTION – The State Administration & Regulatory Affairs Committee sent the bill to a “study” – not quite dead but close! MTCA had strongly opposed this bill to expand the powers of the Supervisor of Public Records.

**SENATE 2107 – AN ACT RELATIVE TO THE ANNUAL MUNICIPAL CENSUS**

By Stanley C. Rosenberg and Stephen Kulik: Directs the jury commissioner to establish an administrative records list of the commonwealth's residents 17 years and older for the purpose of testing the feasibility of using such a list for the creation of jury pools; directs the articulated state agencies to provide electronic lists of residents 17 years and older contained in their respective databases; directs cities and towns that perform annual censuses to provide said data to the jury commissioner; requires all public and private commonwealth colleges and universities shall provide such data from enrollment records; regulates the content of said lists; regulates the use of same.

LAST ACTION – There was a public hearing on the bill before the Judiciary Committee on 3/7/2006. Only two attending the hearing who spoke in favor: the sponsor, Senator Rosenberg, and Senator Jarrett Barrios. The Committee has yet to act on Senate 2107.

**SENATE 464 - AN ACT TO ENSURE ELECTORAL ACCESS**

By Dianne Wilkerson, Frank I. Smizik, et al: Amends provisions relative to the participation of citizens of language minorities in the electoral process; requires that all voting materials be made available in the language of the applicable language minority group if said minority group represents greater than 5 per cent of the total population of the municipality.

LAST ACTION – Election Laws Committee reported bill “Ought Not To Pass.”

**SENATE 448 – AN ACT TO INCREASE VOTER PARTICIPATION**

By Brian A. Joyce: Entitles persons who vote in municipal elections to a twenty-five dollar credit against the motor vehicle excise tax or the municipal property tax.

LAST ACTION – Election Laws Committee reported bill “Ought Not To Pass.”

*MOST INTERESTING ELECTION OF 2006*

My vote for the most interesting election of 2006 goes to the race for Mayor of New Orleans. For this election, candidates and elections activists must reach out to voters in several states who were displaced by Hurricane Katrina. There are over 150,000 evacuees in Houston, Texas, alone. Reaching out to voters means going door-to-door in Houston and broadcasting a mayoral candidates' forum to several cities outside of Louisiana, including Houston, Austin, and Memphis. It will be interesting to see how many displaced New Orleans voters participate in the April 22<sup>nd</sup> election.

**SUPREME JUDICIAL COURT DECISION**

**Out of State Same Sex Couples**

**Explanation is a combined effort by Laurence Pizer, Plymouth Town Clerk & Kevin Batt, Attorney for the Plaintiffs**

A Supreme Judicial Court decision released on March 30, 2006 in two consolidated lawsuits concerning out of state same-sex couples is another small step toward resolving questions raised in the wake of the historic implementation of same-sex marriage in Massachusetts. If only the decision was as clear as the news reports have suggested.

The plaintiffs, several non-resident, same-sex couples and thirteen municipal clerks, sought a preliminary injunction on the basis that the 1913 law used by the governor to exclude out of state same-sex couples from receiving Massachusetts marriage certificates is unconstitutional. The clerks were represented pro bono by Kevin Batt, of Anderson & Kreiger, cooperating with the ACLU and its attorney Sarah Wunsch. The SJC upheld the denial of the preliminary injunction.

The decision consisted of three concurring opinions and one dissent, which will lead to continuing litigation and complications. Three justices declared the 1913 statute is constitutional. Three other justices concurred that the 1913 statute is constitutional, but that the statute only excluded couples whose home state expressly prohibited their marriage and the administration's overbroad application to exclude same-sex couples from all states was discriminatory. The court as a whole allowed couples from Rhode Island and New York, but not Connecticut, Maine, New Hampshire and Vermont, to proceed in the trial court to show that their home states do not expressly prohibit their marriage. In dissent, one justice came down on the side of the out-of-state couples and municipal clerks entirely.

In a second part of the decision the Court ruled in favor of the clerks and found that the lower court had erred in concluding that the clerk plaintiffs were ineligible to participate. In an important recognition of the clerks' dilemma in being ordered by the registrar and attorney general to discriminate against same-sex couples or risk other sanctions, the Court ruled that the clerks as individuals had the right to sue.

At some future point when the current litigation runs its course, Rhode Islanders and New Yorkers may be added to the list of applicants eligible to marry here, whether same-sex or opposite-sex. The administrative burden of continuing to enforce the 1913 law may be a good reason for the Legislature to consider repealing it.

**MEMORANDUM**

**Marriage Licensure**

**From: Stanley E. Nyberg, Ph.D, Registrar of Vital Records and Statistics**

On Thursday March 30 the Supreme Judicial Court issued its ruling in the Cote –Whitacre v. DPH. The Court upheld Sections 11 and 12 of Massachusetts marriage laws. The Superior Court has been directed to conduct further proceedings with respect to G.L. c.207 s.12 as that section applies to plaintiff couples from New York and Rhode Island. We will keep you updated as to the outcome of further proceedings.

In the meantime, our job is to continue to administer the law even-handedly and uniformly throughout the Commonwealth. I trust that the professional integrity that has guided us to date will enhance the public's confidence in our system of law. Although the Court did not grant any relief in the companion case styled Johnstone v. Reilly, the 13 clerks who initiated that action acted professionally and followed the Registry's instructions and guidance while the judicial appeals were pending. As public officials who collectively administer the Massachusetts marriage laws, our professional responsibility is to maintain the *status quo* until the judicial branch concludes its proceedings and issues a definitive interpretation of outstanding issues. To that end, I seek your continued cooperation.

Specifically, please be advised:

1. You should continue to use the Notice of Intention of Marriage Form R-202 and the Fact book and instructions that the Registry provided to you in May 2004.
2. You should continue to use the Guide of legal impediments marriage for the 57 registration jurisdictions in the National Association of Public Health Statistics and Information Systems. The Guide that was mailed to you June 22, 2005 is still current. The Registry will continue to update the list of legal impediments to ensure that the list is accurate and up to date. The Guide is posted on the Registry's website: [http://www.mass.gov/dph/bhsre/rvr/impediment\\_20050622.pdf](http://www.mass.gov/dph/bhsre/rvr/impediment_20050622.pdf).
3. At the present time, the State of New York is not issuing marriage licenses to applicants of the same sex. The Court of Appeals for New York is scheduled to hear oral argument on May 31, 2006 in four cases where same sex couples are seeking the right to marry under New York law. We will notify you when New York's highest court issues its ruling in those cases, and/or when Massachusetts courts interpret whether existing New York law "prohibits" marriage of persons of the same sex.
4. The State of Rhode Island is not issuing marriage licenses to applicants of the same sex. No court challenges are pending to our knowledge. Attorney General Patrick Lynch has not advised Rhode Island officials who administer existing Rhode Island marriage law to start issuing marriage licenses to same sex couples who seek to marry. Bills to broaden the definition of persons eligible to marry to include persons of the same gender have been introduced, but have not been enacted into law. We will notify you if and when there is a change in Rhode Island law.

We continue to welcome any suggestions or feedback that you have. Thank you for your cooperation.

**Scholarship Reminder – Deadline**

By Sally M. Hayden, 1<sup>st</sup> Vice –President

Deadline for scholarship application for the New England Municipal Clerks Institute & Academy is May 1, 2006.

Send your application to: Sally M. Hayden, Chair-Scholarship Committee

Town of Rutland

250 Main Street

Rutland, MA 01543

**The application was in your February issue of The Public Recorder.**

**CERTIFICATION EXAM (CMMC) IN JULY – Applications received by June 30th**

The MTCA examination for Certified Massachusetts Municipal Clerk designation will be offered in July. Applications must be received by Administrator Diane Casagni by June 30 for the July exam, which will be mailed between July 16<sup>th</sup> and 23<sup>rd</sup>. Applicants must have at least three years experience as Town Clerk and must complete a minimum of six required courses sponsored by the MTCA.

The Administrator will verify the courses through the Education Committee. More information is available in the certification program brochure.

Completed exams must be postmarked no later than August 25th for the July exam. Applicants are strongly urged to return completed answer sheets by certified mail, return receipt requested.

Applicants will be notified by mail of the results of their exams by September 15th. A copy of the notification must be submitted with the application for MTCA certification. The notification of successful completion of the exam will be valid for one year and will have an expiration date printed on it. If an applicant is not certified within one year, the examination must be repeated.

80 is the passing score. Applicants are advised that they will need access to an updated copy of the Massachusetts General Laws to complete the exam successfully.

A non-refundable fee of \$50, payable to MTCA, must be submitted with the application. This examination is offered twice yearly – during the months of January and June. Application forms for the exam are available at all MTCA conferences and from the Administrator, Norton Town Clerk Diane P. Casagni. Anyone with questions about the exam may call Diane either at work (508-285-0230) or at home (508-285-9240).

**JANET ANDRUS LINEHAN, CMC  
TOWN CLERK OF EASTON**

Janet Andrus Linehan, CMC, has been accepted into the Second Level Membership of the IIMC Master Municipal Clerk Academy.

The Master Municipal Clerk Academy was established to further professional education of municipal clerks to enhance their skills as needed to meet the challenges of the office of municipal clerk. Every one to four years, Academy members must demonstrate active educational and professional participation that keep them aware of changing events in the local government scene.



**MAY**

**Law Enforcement Memorial Month - Senior Citizens Month - Keep Massachusetts Beautiful Month**

- 1<sup>st</sup> Loyalty Day. In recognition of the various blessings of freedom & liberty secured to the people of the United States.
- 14<sup>th</sup> Mother's Day & Emergency Responders Memorial Day
- 14<sup>th</sup> -20<sup>th</sup> Police Officers' Week & National Family Week
- 15<sup>th</sup> Police Memorial Day
- 20<sup>th</sup> Armed Forces Day (USA)
- 21<sup>ST</sup> -27<sup>TH</sup> Visiting Nurse Association Week & American Indian Heritage Week
- 19<sup>th</sup> Presidents' Day. In memory of John Adams, John Quincy Adams, Calvin Coolidge and John F. Kennedy.
- 29<sup>th</sup> Memorial Day Observed (30<sup>th</sup> Memorial Day)



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### MTCA & NEACT CONFERENCE SCHEDULES

2006 - 2007

IIMC	60 <sup>th</sup> ANNUAL CONFERENCE MAY 14 - 18, 2006 ANNAHEIM, CA	NEACTC	39 <sup>TH</sup> ANNUAL CONFERENCE NOVEMBER 15, 16, 17, 2006 (Corrected date) THE MARRIOT, NEWPORT, RI
MTCA	SUMMER CONFERENCE JUNE 14, 15, 16, 2006 SEA CREST, FALMOUTH, MA	MTCA	WINTER CONFERENCE FEBRUARY 7, 8, 9, 2007 STURBRIDGE HOST, STURBRIDGE, MA
MTCA	FALL CONFERENCE OCTOBER 4, 5, 6, 2006 JIMINY PEAK, HANCOCK MA		

### MASSACHUSETTS

State Insect (1974) LADYBUG

State Bird (1941) BLACK-CAPPED CHICKADEE

Source: Massachusetts facts 8/1/05

**The Public Recorder**

**Newsletter of the MTCA**

**1009 Main Street  
Tewksbury, MA 01876**



**Massachusetts Town Clerks Association**

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**The Public Recorder**

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