

## AGENT

### *Roles and Responsibilities*

**The town agent plays a limited role in town government. Although statute provides that an agent to prosecute and defend suits shall be elected, no statute provides the agent with any independent authority to act. In fact, case law makes it clear that the town agent has no authority to originate suits in favor of the town or to settle or compromise suits in which the town has an interest. Instead, the agent's duty consists merely of assisting when litigation is in progress. *Cabot v. Britt*, 36 Vt. 349 (1863); *Clay v. Wright*, 44 Vt. 538 (1872).**

**The fact that a town agent is elected does not remove the authority of the selectboard to hire an attorney to represent the town, to conduct litigation and to settle suits on behalf of the town. Accordingly, many towns do not have active town agents, and those that do often limit the agent's activities to picking an attorney for the town or acting as a liaison between the selectboard and the town attorney in particular matters.**

- The town agent to prosecute and defend suits is elected each year at annual town meeting. 17 V.S.A. § 2646(11).
- The town agent may become involved with suits in which the town or the town school district is interested. 17 V.S.A. § 2646(11).

At its annual meeting, a town chooses a town agent who serves until the next annual meeting and until a successor is chosen. 17 V.S.A. § 2646(11). The town agent is elected to prosecute and defend suits in which the town or town school district has an interest. 17 V.S.A. § 2646(11). Note that cities and villages elect municipal agents only if required by their charter.

In many communities, the town agent is an attorney. However, since there is no statutory provision providing for payment to the town agent for his or her service, there must be a clear understanding with the selectboard with respect to payment before a town agent who is also an attorney does any legal work on behalf of the municipality. See *Langdon v. Castleton*, 30 Vt. 285 (1858). For the same reason, the town agent who is a layperson and who helps to arrange legal services on behalf of the town has no authority to bind the town to pay for legal services. Accordingly, the town agent must work closely with the selectboard in the conduct of these responsibilities.

Not only does the town agent not have the authority to expend town funds by hiring an attorney without the selectboard's permission, the selectboard also retains the independent authority to settle suits brought against the town. *Cabot v. Britt*, 36 Vt. 349 (1863). Moreover, the Vermont Supreme Court has held that an agent who agrees prematurely to settle a suit, without the authority of the selectboard, may well become personally liable. *Clay v. Wright*, 44 Vt. 538 (1872).

Accordingly, the town agent's primary function is to act as an assistant to the selectboard in matters involving litigation. He or she may hire an attorney on behalf of the town, with the selectboard's permission, and may act as a go between, reporting to the selectboard on the course of litigation, and providing assistance to the attorney when appropriate. As noted by the Vermont Supreme Court, "it has never been supposed that such town agent had any authority to originate suits in favor of the town, or to settle or compromise suits in which the town was interested, but that his duty consisted merely in conducting the litigation in its progress." *Cabot v. Britt*, 36 Vt. 349 (1863).

Finally, the agent is bound, so long as he or she acts within his or her agency, to defend the interest of the principal, the town, above his or her own interest, which itself must give way if a conflict arises. *Judevine v. Town of Hardwick*, 49 Vt. 180 (1876). This means that the town agent must act in the interest of the town, and will not be permitted to personally benefit from his or her official duties (aside from reimbursement for services rendered to the town).

✓ *Note that the town grand juror also has authority to prosecute suits on behalf of the town. The difference between the duties of the grand juror and the town agent in providing legal assistance to the town is that the grand juror is involved in criminal cases while the town agent may be involved in civil disputes. 13 V.S.A. § 5504.*