



**VIRTUAL**

# WORKSHOP



# 2021 Local Officials Workshop

Presented by:

- ▶ Stephen Buckley, Legal Services Counsel
- ▶ Natch Greyes, Municipal Services Counsel

April 6, 2021

# Today's Presenters



*Stephen Buckley*  
*Legal Services Counsel*



*Natch Greyes*  
*Municipal Services Counsel*

# How Do I Ask a Question?



To ask a question:

1. Type your question into the Q&A box. Click **Send**.

**Note:** Check **Send Anonymously** if you do not want your name attached to your question in the Q&A.

2. If the host replies via the Q&A, you will see a reply in the Q&A window.

A screenshot of a web-based Q&A interface. The window title is "Q&A". It shows a question and an answer. The question is "What happens when I raise my hand?" asked at 18:03. The answer is "I can take you off of mute." by Molly Parker, answered at 18:04. Below the answer is a text input field with the placeholder "Please input your question". At the bottom left is a checkbox labeled "Send Anonymously" which is currently unchecked. At the bottom right is a blue "Send" button.

The chat function for this workshop has been disabled.

In order to ask a question of our host or a panelist, please refer to graphic.

Once your question has been answered, it will then appear under the *Answered* tab.

# NHMA's Legal Advisory Service

Open 8:30 a.m. - 4:30 p.m.

- Email: [legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org)
- Phone: 603-224-7447

Provide general legal advice

- Not comprehensive legal review of documents,
- Not drafting individualized ordinances or charters,
- Not reviewing specific applications before local boards,
- Not settle intra-municipal disputes.

Goal: Response w/in 48 hours.

# Today's Agenda

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9:00 am	Welcome, Program Overview - Steve Buckley
9:05 am	HealthTrust - David Salois
9:10 am	Review of electronic <i>Knowing the Territory</i> - Steve Buckley
9:15 am	Governance & Select Board Authority - Steve Buckley
10:00 am	Hot Land Use Topics - Steve Buckley
10:30 am	Break
10:40 am	Right-to-Know Law Meetings/Nonpublic Sessions/Returning to in-person meetings - Natch Greyes
11:45 am	Lunch
12:15 pm	Budgeting Essentials - Steve Buckley
1:00 pm	Governmental Records - Steve Buckley
2:00 pm	Break
2:15 pm	Effective Meetings - Natch Greyes
3:00 pm	Ethics - Natch Greyes
3:45 pm	Final Questions - Upcoming Workshop Info.
4:00 pm	Finish

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*Benefits You Can Trust*



*This presentation contains summary information as of April 2021 for Open Enrollment Plan Years beginning 2021*

# Get to know HealthTrust!

## Who is HealthTrust?

A nonprofit, public risk pool dedicated to serving our Members – New Hampshire’s schools, towns, cities, counties and other public entities.

- *Exceptional service with a personal touch*
- *More than 70,000 NH public sector workers and their family members choose HealthTrust for their coverage*

## Our Board of Directors Represents You



**CATHY ANN STACEY**  
Board Chair  
Register of Deeds,  
Rockingham County



**DANIEL ROSSNER**  
Vice Chair  
Business Administrator,  
SAU #48

**K. JEANNE BEAUDIN**



Town Administrator,  
Town of Belmont

**RUSSELL DEAN**



Town Manager,  
Town of Exeter

**SCOTT DUNN**



Town Administrator,  
Town of Gilford

**JAMES FENN**



Chief Financial Officer,  
SAU #60

**SUSAN HILCHEY**



Director of Human Resources,  
SAU #25 - Bedford Schools

**BRIAN RAPP**



Lieutenant,  
Claremont Fire Department

**JILL SHEING**



HR Payroll Coordinator,  
Strafford County

**ADAM STEEL**



Superintendent,  
SAU #39

**SARAH TRAHAN**



Social Studies Teacher,  
SAU #21

# Why HealthTrust?

*Our focus is YOU!*

- Quality, cost-effective, comprehensive benefit plans
- Innovative programs
- Enrollee Services Center
- Slice of Life
- HealthTrust 360
- Secure Enrollee Portal - [www.healthtrustnh.org](http://www.healthtrustnh.org)
- Transition Care & Survivor Care
- Vision and Hearing Discount Programs



**53,915**

TOTAL MEDICAL COVERED LIVES



**26,231**

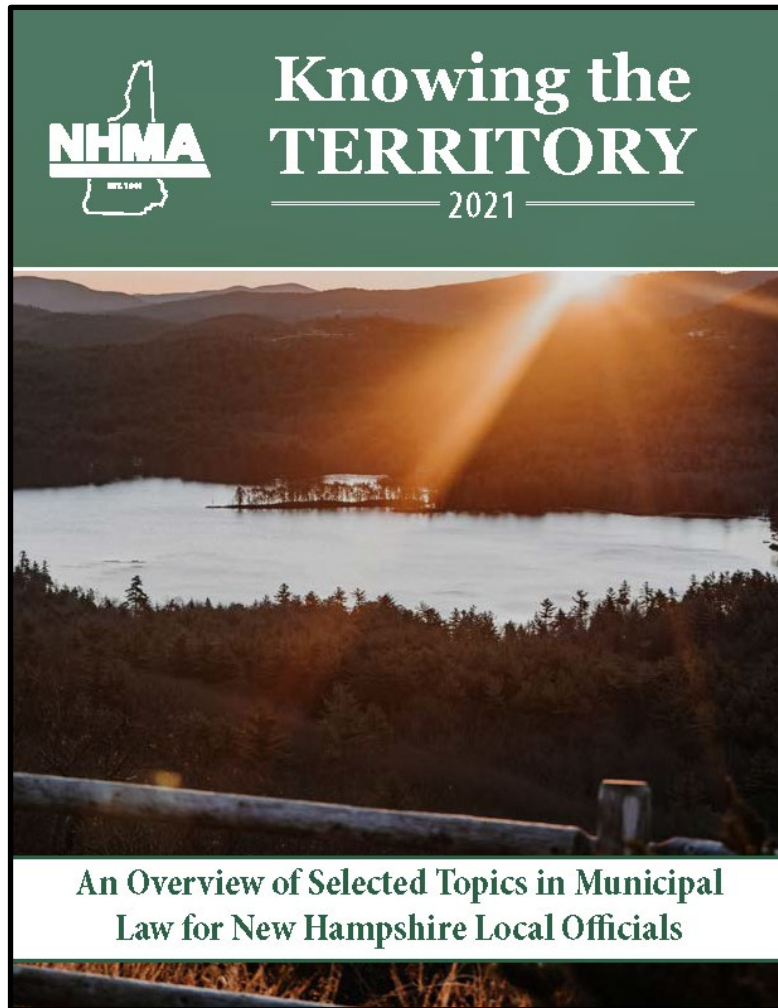
TOTAL MEDICAL ENROLLEES

*As of January 1, 2021*





# Knowing the Territory - *Electronic*



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# Governance & Select Board Authority



# Types of Governmental Entities

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Cities - 13, Operate via a Charter

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Towns - 221, Traditional, SB2 or Charter

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Village Districts - 105, special purposes

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School Districts

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Counties

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Intergovernmental Agreements - RSA 53-A

# Authority of Towns & Cities

- ✓ No Home Rule: The Legislature grants the power act in particular fields of law, and silence in the law does not imply authority.
- ✓ Statutory Law: Revised Statutes Annotated published by Thomson Reuters, available online:  
<http://www.gencourt.state.nh.us/rsa/html/indexes/default.html>
- ✓ Administrative Rules:  
[http://www.gencourt.state.nh.us/rules/about\\_rules/listagencies.htm](http://www.gencourt.state.nh.us/rules/about_rules/listagencies.htm)
- ✓ NH Supreme Court Decisions:  
<https://www.courts.state.nh.us/supreme/opinions/index.htm>
- ✓ Preemption: Article VI of the U.S. Constitution = Supreme Law of the Land. State statute can occupy a field of law with the intent to supersede local regulation.



# Separation of Powers

“Governing body” means the select board or town/city council, or aldermen; manage prudential affairs - RSA 21:48

“Town” or “legislative body” means the town meeting, town/city council, or aldermen - RSA 21:47

# Town Meeting is Legislative Body



## ▶ Traditional:

1. Ballot vote: Vote by ballot to elect officers and zoning ordinance (official ballot)
2. Deliberative session; discuss and amend warrant article and vote on whether to adopt the article

## ▶ SB2:

1. Divides town meeting into two parts
2. First session - (“Deliberative Session”), for debate and amendments of article language
3. Second session - Official Ballot voting on everything
4. If operating budget rejected by voters, SB 2 towns have default budget option



# Town Meeting Authority



- ▶ Elects town officials
- ▶ Adopts ordinances & budget
- ▶ Petitioned warrant articles

# Checklist for Adopting Ordinances



Authority - Derived from statute, explicit or inherent



Preemption? - Does ordinance conflict with Federal or State Statute?



Who votes/adopts? - Is ordinance one the meeting can adopt or is the ordinance enactment delegated to another board or body?



Procedure - Does the ordinance require notice or hearings before the meeting?



Enforcement - Pattern of non-enforcement may = policy of non-enforcement



# Select Board is Governing Body

- Select Board must act as a Board

- May have a 5 - member Board



# Select Board Essential Authority

Executive,  
managerial,  
administrative  
body

Calls annual  
meeting and  
posts warrant,  
RSA Chapter 39

Manages  
prudential  
affairs, RSA  
41:8

Has financial  
responsibilities/duties

- Presents budget
- Expenditures, RSA 41:9
- Financial duties, RSA 41:9

Manages public  
property, RSA  
41:11-a/41:14-  
a

Regulates town  
highways, RSA  
41:11

Manages  
employment



# Town Administrator



# EST. 1941 Town Manager

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# Supervisory Authority Over Certain Key Officials



## ➤ Road Agent - RSA 231:65

The selectmen may supervise the methods and manner of performance of such agents.

## ➤ Appointed Police Chief - RSA 105:2-a

Direct and control all employees in their normal course of duty and shall be responsible for the efficient and economical use of all department equipment.

## ➤ Appointed Fire Chief - RSA 154:5

Direct and control all employees in their normal course of duty and shall be responsible for the efficient and economical use of all department equipment

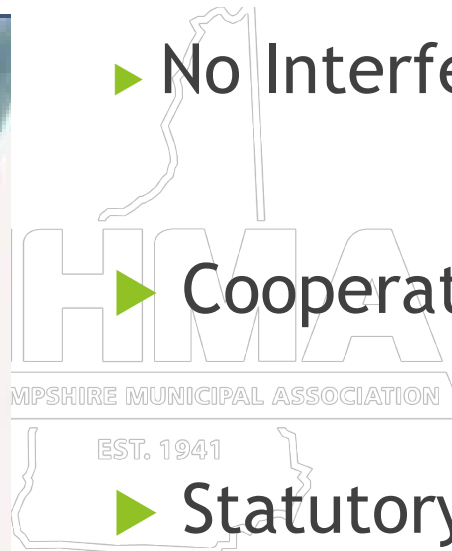
# Select Board Relationship with Other Elected Officials, Generally



▶ No Interference

▶ Cooperation

▶ Statutory Term and Duties





# Hot Land Use Board Topics

# Planning Board Membership

- ▶ No more than one appointed or elected member of the planning board can serve on the conservation commission, the local governing body, or a local land use board and this applies to alternate members
- ▶ Must have ex-officio select board member or an administrative official - ex-officio is a full voting member
- ▶ Vacancy on elected planning board, filled by the other elected members until next election; vacancy on appointed planning board by select board for the full unexpired term.

# Planning Board - Completed Application - Private Covenants - Class VI/Private Roads



- ▶ RSA 676:4, I (b) a plat or site plan application would not be deemed to be incomplete for plan acceptance purposes because “it is dependent upon the submission of an application to or the issuance of permits or approvals from other state or federal governmental bodies.”
- ▶ A plat or plan needing zoning relief could not be approved by the planning board until that relief were granted. *Cesere v. Windham*, 121 N.H. 522, 523 (1981).
- ▶ Land use restrictions imposed by private covenants are private agreements among landowners that are not enforced by land use boards. Zoning and planning ordinances imposed by the municipality are for the public welfare, private covenants are for private benefit.
- ▶ Planning Board cannot approve a subdivision on a Class VI or Private Road unless a variance is granted from any zoning frontage requirement and subject to the condition the select board approves issuance of building permits under RSA 674:41



# Regulation of Signs



- ▶ In *Reed v. Town of Gilbert, Arizona*, 135 S. Ct. 2218 (2015) the U.S. Supreme Court struck down a municipal sign ordinance because it imposed different levels of restrictions on signs based on their content.
- ▶ Municipal officials must take exercise caution when implementing the regulation of political signs under RSA 664:17.
- ▶ That statute imposes a mandatory limitation on the period of time a political sign can be displayed, and mandates when political signs may be erected and when they must be removed. These limitations single out political signs for these limitations.
- ▶ Unless similarly situated signs receive similar treatment, such as real estate sales signs or contractor's signs, using RSA 664:17 to regulate political signs in this manner could be deemed unconstitutional content-based regulation of free speech.

# Expiration of Variances & Special Exceptions



- ▶ All *unexercised* variances & special exceptions granted on or after 8/19/13 automatically void. RSA 674:33, I-a (a), IV (b)
- ▶ The municipality may amend zoning ordinance to provide for the termination of unexercised variances & special exceptions that were approved *prior* to 8/19/13.
- ▶ The ZBA may grant an extension of time for approved variances and special exceptions for good cause after the date of approval and not at the time of initial approval.
- ▶ When the ZBA acts to extend the term of a variance or special exception it is recommended this be done at a public hearing with notice to abutters.

**TAKE A 10-MINUTE BREAK**

**COFFEE**



**BREAK**



Thank you to  
our sponsor:





# Governmental Meetings & The Right-to-Know Law

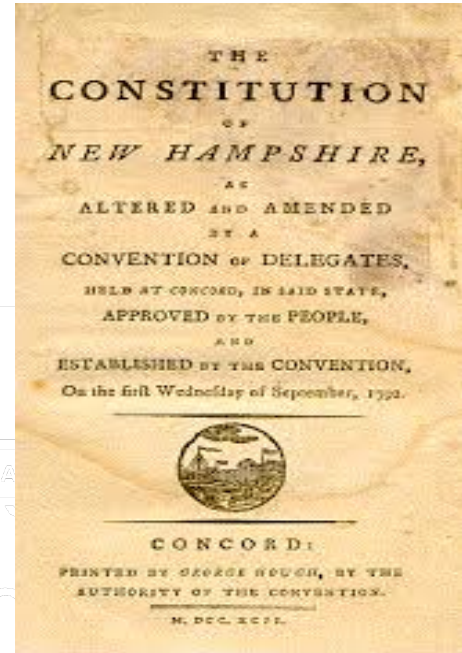
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# The Right-to-Know Law RSA Chapter 91-A

PART I, ARTICLE 8 OF THE NH  
Constitution: Government ...  
should be open, ....

SECTION 1 OF RSA 91-A:

The purpose of this chapter is to  
ensure both the greatest possible  
public access to the **actions**,  
**discussions** and **records** of all  
public bodies, and their  
accountability to the people.





# RSA chapter 91-A is just the floor

- ▶ If the rules of procedure of any public body require a broader public access to official meetings or records then those provisions will govern.
- ▶ RSA 91-A:2, II

# What is a Public Meeting?

RSA 91-A:2



Quorum



Public body



Convenes so that they can communicate contemporaneously



To discuss or act upon a something over which the public body has supervision, control, jurisdiction, or advisory power

# What is *not* a “Meeting”? (i.e. “non- meeting”)



Social or other encounter, no decisions



Collective bargaining



Consultation with legal counsel



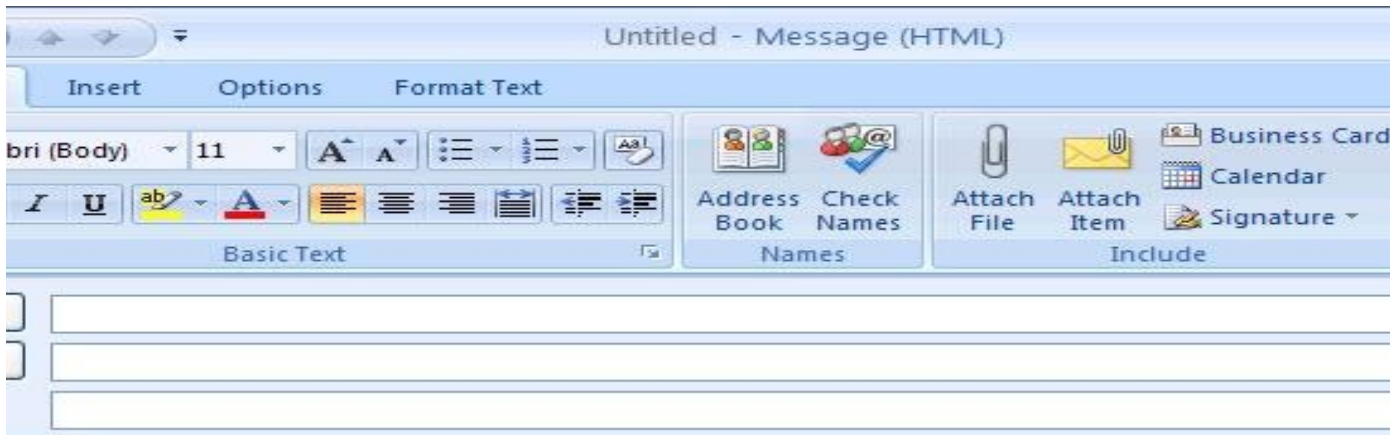
Circulation of draft documents



*Different than nonpublic session!*



# Electronic Communication



- ▶ Avoid substantive discussions via email
- ▶ Circumventing spirit and intent of 91-A
- ▶ “Reply All”
- ▶ Administrative person/BCC line
- ▶ Emails are governmental records

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# What are the requirements of a public meeting?



Public notice

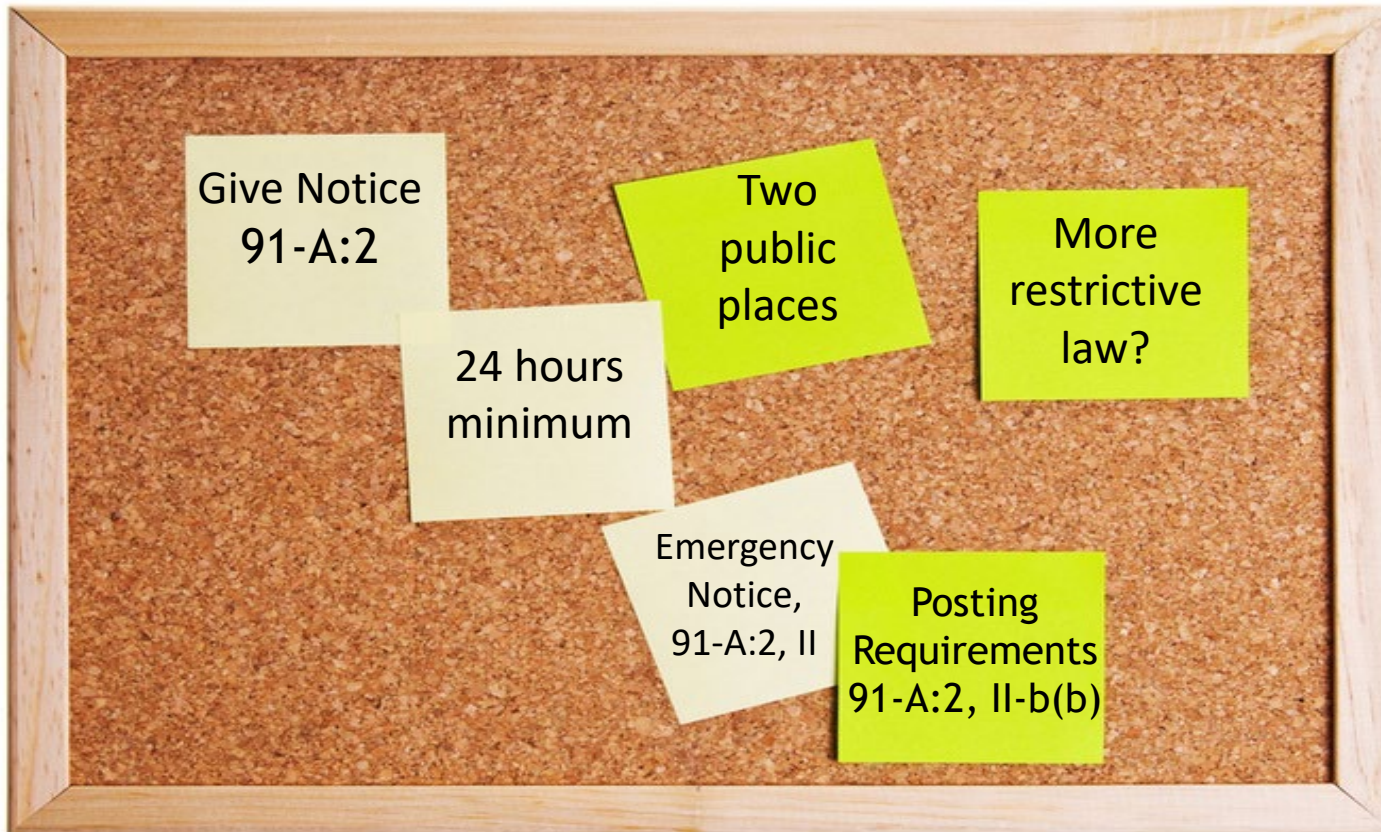


Open to the public



Meeting minutes

# “Public Notice”

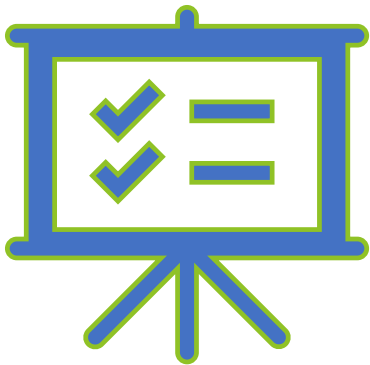


- ▶ “All meetings . . . shall be open to the public.” RSA 91-A:2, II.
- ▶ “Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting.”
- ▶ Public has right to record, etc.
- ▶ No secret ballot voting
- ▶ Public Comment?



# “Open to the Public”

# “Meeting Minutes”



- ▶ Minimum required contents:
  - ▶ (1) the names of members, (2) persons appearing before the public bodies, (3) a brief description of the subject matter discussed , (4) state final decisions made, and, (5) state the names of the members who made or seconded each motion shall be recorded in the minutes.
- ▶ Made available within 5 business days
- ▶ Posting requirements-
  - ▶ RSA 91-A:2, II-b(a)
- ▶ Recordings are not a substitute for written minutes.

# Nonpublic Sessions RSA 91-A:3

It's a nonpublic session,  
not a nonpublic meeting

A nonpublic session is  
different from a “non-  
meeting”

Nonpublic session is the  
exception, not the rule

Nonpublic sessions are  
permitted, not required

(Boards meeting  
remotely should consider  
technological options for  
holding nonpublic  
sessions: e.g. starting a  
separate call)

# When May a Public Body Enter Nonpublic Session?\* RSA 91-A:3, II



- Public employee (specific employee)
- Hiring
- Reputation
- Real or personal property
- Lawsuits
- Emergency preparation
- Discuss legal advice
- Discuss student tuition contract

\*Most common, but not complete list

# How Does a Public Body Enter Nonpublic Session?

RSA 91-A:3, I



Motion to enter nonpublic session must be made and seconded.



Motion must state on its face the specific exemption relied upon.



Vote must be by roll call; simple majority is sufficient. RSA 91-A:3, I(b).



# Disclose or Seal?



- ▶ Minutes must be kept,
- ▶ Minutes must allow public to ascertain who votes in what manner.
- ▶ Minutes must be publicly disclosed within 72 hours unless board determines, by 2/3 vote taken in public session, that:
  - Disclosure would have adverse effect on reputation;
  - Disclosure would “render the proposed action ineffective”; or
  - Discussion in nonpublic session pertained to terrorism.

# Switching Back to In-Person Meetings

- ▶ Emergency Order #12, allowing remote meetings, only lasts as long as the State of Emergency
- ▶ After expiration of State of Emergency, boards can still have partially remote meetings
  - ▶ There must be a physical location for the public to attend, and, in most cases,
  - ▶ A quorum of the board must be present at that location.
- ▶ Nothing prohibits boards from continuing to offer electronic access (telephonic, Zoom, etc.) to the public.



# Option 1: Remote Board Member Participation - RSA 91-A:2, III(a)



- ▶ Public body *may* allow
- ▶ Personal attendance “not practical” (in minutes)
- ▶ Quorum *present at physical location*
- ▶ All board members can hear and be heard
- ▶ Identify board members in remote location
- ▶ All votes by roll call

# Option 2: “Emergency” - RSA 91-A:2, III(b)



- ▶ Chair must declare that “emergency” exists sufficient to satisfy requirements of RSA 91-A:2, III.
- ▶ Still requires physical location.
- ▶ However, a quorum of the board need not be present at the physical location.
- ▶ Everyone can hear and be heard
- ▶ Identify persons in remote location
- ▶ All votes by roll call

# What is an “Emergency?” & Notice Requirements

- ▶ “Emergency”: a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body.
- ▶ That presiding officer shall post a notice of the time and place of such meeting as soon as practicable.
- ▶ Further, the presiding officer shall employ whatever further means are reasonably available to inform the public that a meeting is to be held.
- ▶ “Emergency” meetings do not require 24-hour notice posted in 2 public places but should provide as much notice as practical.





**LUNCH  
BREAK!**

**30:00**

Thank you to  
our sponsor:





# Budgeting Essentials

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# The Town Meeting

- ▶ Approves all appropriations
- ▶ Votes to create and fund common municipal funds
- ▶ Citizen authority to propose appropriations by petition
- ▶ May amend separate articles to reduce or zero out appropriations
- ▶ May amend budget to reduce (or increase) total bottom line appropriation
- ▶ Can zero out line item appropriations in DRA budget form

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# Governing Body

- ▶ Prepares warrant, drafts separate warrant articles
- ▶ Pay all sums of money received to the town treasurer
- ▶ Prepare manifest to pay all town expenses
- ▶ Maintain records of all town financial transactions
- ▶ Publish in annual report, the general fund balance sheet based upon audited financial statements
- ▶ Establish and maintain appropriate internal control procedures
- ▶ Annually review and adopt an investment policy
- ▶ Ensure all funds totaling \$500 or more are remitted by departments, town clerk and tax collection to the treasurer
- ▶ Submit proposed budget to the Budget Committee or Town Meeting.

# Budget Committee

- ▶ Review current year's expenditures
- ▶ Review proposals, request information
- ▶ Prepare budget
- ▶ Schedule and hold budget hearings
- ▶ Forward final proposed budget to governing body
- ▶ **Does not control spending**
- ▶ 10% Rule in towns with official budget committee

## Procedural Requirements for Valid Appropriations (Budget Creation)

- ✓ Public budget hearing
- ✓ Disclosure of purpose and amounts at hearing
- ✓ Disclosure of default budget at first budget hearing
- ✓ Budgeting on gross basis
- ✓ Recommendations
- ✓ Warrant Notice
- ✓ Listing of all appropriations and separate warrant articles on posted budget



# Other Forms of Spending

- ▶ Transfers, RSA 32:10
- ▶ Legal judgments, RSA 32:9
- ▶ DRA permission, RSA 32:11
- ▶ Spending prior to town meeting, RSA 32:13
- ▶ Unanticipated revenue, RSA 31:95-b
- ▶ Capital reserve/trust funds
- ▶ Other statutory funds
- ▶ Certain multi-year appropriations

# Lapse of Appropriations

## RSA 32:7



- ▶ All appropriations lapse at the end of the fiscal year and any unexpended portion thereof shall not be expended without further appropriation, **UNLESS**:
  - Encumbered by legally-enforceable obligation;
  - Placed in nonlapsing fund: e.g., conservation fund;
  - Appropriated to a capital reserve fund;
  - Amount is raised through bonds or notes (then lapses upon completion of purpose);
  - Money received from state, federal, or private grant (then nonlapsing for as long as program rules)
  - Special warrant article:
    - Governing body can vote to encumber for one year; OR
    - Article was labeled as nonlapsing by meeting (specifies lapse, up to 5 years).

▶ Reserve Funds

▶ Special Revenue Funds

▶ Revolving Funds

▶ (Private) Trust Funds

# Common Municipal Funds

# SB 2 & The Default Budget: RSA 40:13



- Governing body calculates, unless delegated to budget committee
- As long as statutory formula is used, default budget may be higher or lower than last year's budget\*
- Default budget is amount of the same appropriations as contained in the operating budget authorized for the previous year . . .
  - reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and
  - reduced by one-time expenditures contained in the operating budget and by *salaries and benefits of positions that have been eliminated in the proposed budget.*
  - RSA 40:13, IX(b).



# Governmental Records & The Right-to-Know Law

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

EST. 1941



# Is it a governmental record?

## RSA 91-A:1-a



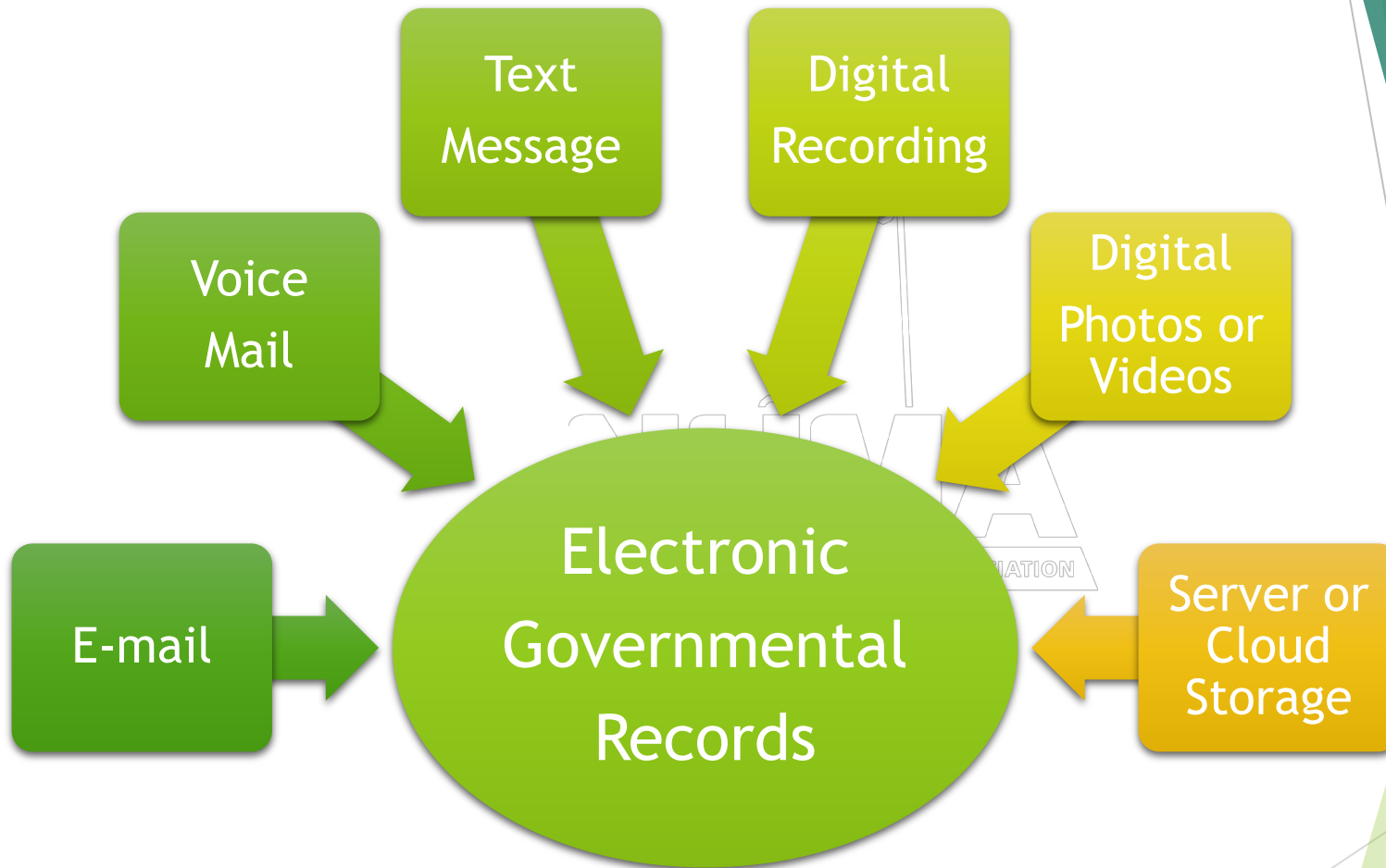
Any information  
created, accepted  
or obtained



By, or on behalf of,  
any public body, or a  
quorum or majority  
thereof or any public  
agency



in furtherance of its  
official function



# ACCESS TO GOVERNMENTAL RECORDS



An individual's motives in seeking disclosure of public records are irrelevant to the question of access under the Right-to-Know Law.



The provisions of RSA Chapter 91-A are construed in a manner favoring disclosure and interpreting the exemptions to disclosure restrictively.

# EXEMPTIONS TO DISCLOSURE OF GOVERNMENTAL RECORDS



## General Standards Governing Exemptions - RSA 91-A:5



- ▶ RSA 91-A:5 provides a list of records categorically exempt from disclosure; master jury list or teacher certification records.
- ▶ Some statutory exemptions require detailed analysis, such as records whose disclosure would constitute invasion of privacy.
- ▶ The Right-to-Know Law's purpose is to provide the utmost information to the public about what its government is up to. If disclosing the information does not serve this purpose, disclosure may not be required.
- ▶ When a public body or agency seeks to avoid disclosure of material under the Right-to-Know Law, that entity bears a heavy burden to avoid nondisclosure.

# OTHER EXEMPTIONS TO DISCLOSURE



Governmental records are subject to disclosure “except as otherwise prohibited by statute or RSA 91-A:5.” RSA 91-A:4, I.

Scattered throughout the RSAs are other provisions that involve the disclose/non-disclosure of governmental records not directly addressed in 91-A.

# “Internal Personnel Practices” RSA 91-A:5, IV



- ▶ Applies to governmental records that pertain to rules and practices dealing with employee relations or human resources, including hiring and firing, personnel rules, discipline, compensation and benefits.
- ▶ Recent Reinterpretation of Law by N.H. Supreme Court
- ▶ Formerly: “Internal Personnel Practices” was a fairly broad category separate and apart from any privacy balancing test.
  - ▶ Includes: Evaluation sheets for potential employees and answers; investigation reports of investigators hired by employers to investigate employees.
- ▶ Now: “Internal Personnel Practices” is another privacy balancing test.

## Preliminary Drafts - RSA 91-A:5, IX -

- “[N]ot in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body.”

## Personal Notes - RSA 91-A:5, VIII -

- “Any notes or other materials made for personal use that do not have an official purpose are exempt from disclosure.”

# Drafts & Notes

# MANDATED ACCESS TO CERTAIN RECORDS



Employee separation payments if in addition to regular salary, or accrued vacation or sick time - 91-A:4, I-a



Meeting minute raw materials available after completion of public meeting - 91-A:4, II



All lawsuit settlements on file with town clerk and available for public inspection for 10 years - 91-A4, VI



# Responding to Governmental Records Request

- ✓ The record request must be “reasonably described.” RSA 91-A:4, IV.
- ✓ Any search for records must be reasonably calculated to uncover relevant documents.
- ✓ There is no obligation to compile, cross reference or assemble records.
- ✓ Requiring a citizen make an appointment to review records is permitted.
- ✓ When denying access provide written reasons.

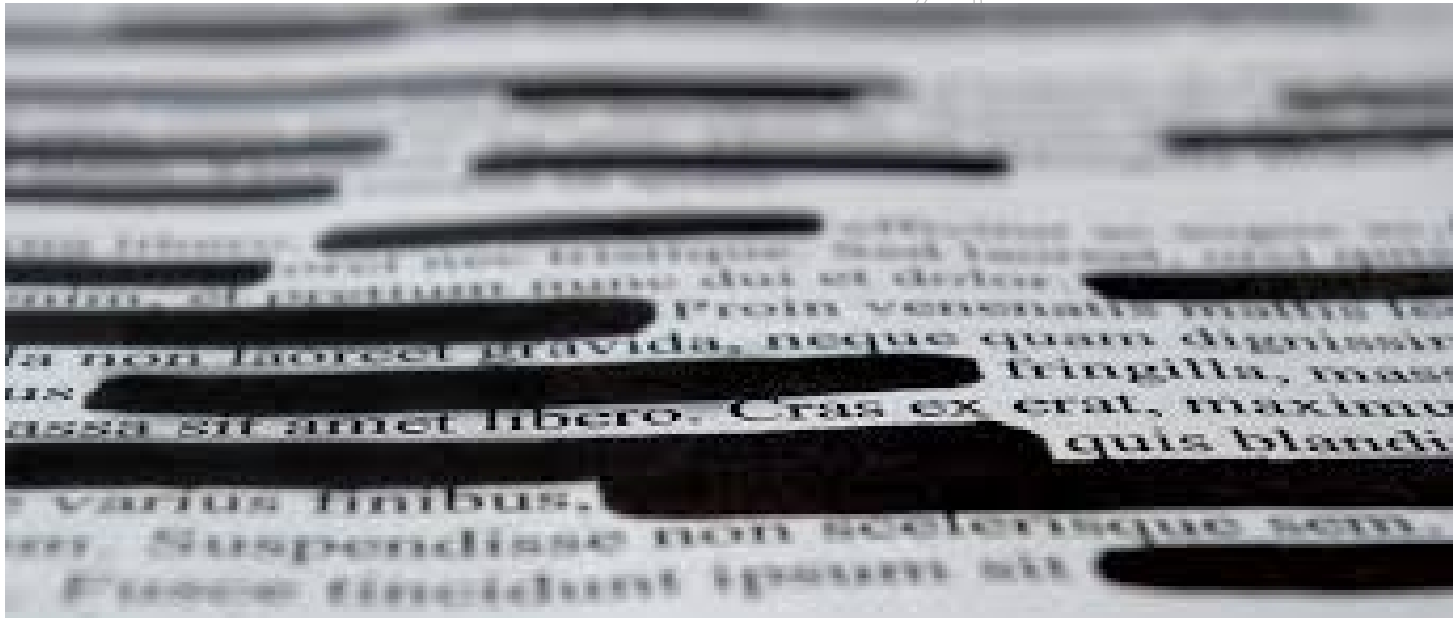
# Production of Electronic Records

- ▶ *Green v. SAU #55*: If the records exist electronically, and the requester wants them electronically, and it is reasonably practical to do so, then they must be provided electronically.
- ▶ 91-A:4, IV: . . . . No fee shall be charged for the inspection or delivery, without copying, of governmental records, whether in paper, electronic, or other form.
- ▶ *Taylor v. SAU #55*: “there is no provision of RSA chapter 91-A that requires a governmental body to ‘deliver’ records to any location other than its regular place of business.”

# “Something” w/in 5 Days

- ▶ As of Jan. 1, 2020, municipalities must:
  - ▶ Provide a written statement of time necessary to determine whether request granted or denied;  
AND
  - ▶ *Provide a reason for the delay!*
  - ▶ Amendment to RSA 91-A:4, IV - HB 396 - 2019 NH Laws Chapter 107
- ▶ NHMA Suggestion for Reason for Delay -
  - ▶ Need time to determine whether or not record exists;
  - ▶ Need time to determine whether it is disclosable;
  - ▶ If disclosable, need time to determine how much time it will take to make the requested records ready for review or copying

# REDACT EXEMPTED INFORMATION



# No flat fees!



▶ ONLY REASONABLE FEES ARE ALLOWED!

▶ RSA 91-A:4, IV

▶ New Case!

- *Paul Martin v. Rochester* - Court rules that the city's public records copying fee of fifty cents per page for the first ten pages and then ten cents per page did reflect the "actual cost."



# REMEDIES FOR VIOLATIONS



▶ 91-A:7



▶ 91-A:8

▶ No agency enforces 91-A

# Records Retention

*RSA 33-A:3-a*

*RSA 91-A:4*



# Archive Paper Records in PDF/A?



Let's take a break!



Thank you to  
our sponsor:





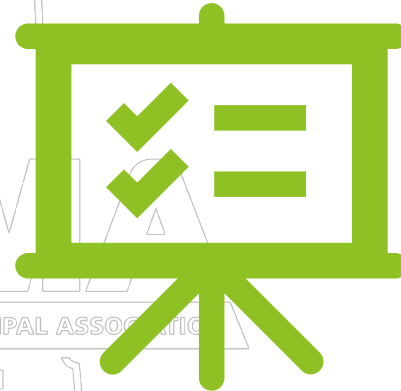
# EFFECTIVE MEETINGS



# Preparation for Meeting



- ▶ Do you have rules of procedure?
- ▶ Chair's role
- ▶ Agenda
- ▶ Circulate materials in advance
- ▶ Read packet, think about comments and questions in advance
- ▶ No discussions prior to/outside meeting!



# Rules of Procedure: Basic Content

Regular Meeting Day, Time & Location

Annual Election of Officers

Authority of Presiding Officer/Chair

Duties & Privileges of Board Members

Quorum & Voting

Agenda for Board Meetings

# Rules of Procedure: Basic Content (cont.)

Order of Business at Board Meetings

Meeting Procedure and Decorum

Procedures for Public Hearing, Public Comment

Right-to-Know Law

Committees/Liaisons/Appointments

Enactment of Ordinances, Resolutions & Motions

# Conducting the Meeting



**BE AND START  
ON TIME**



**CHAIR'S  
RESPONSIBILITIES**



**APPLY RULES  
OF DECORUM  
EVENLY**

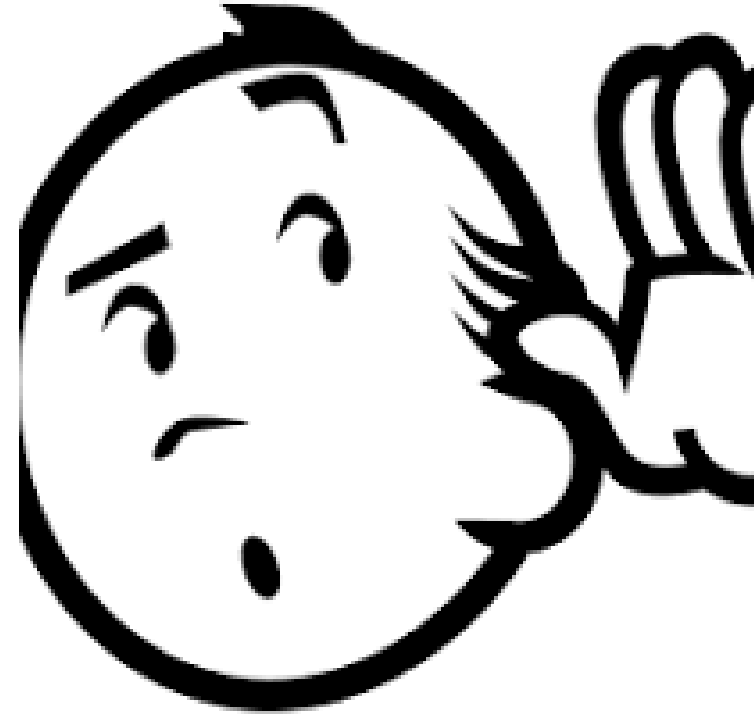


**ELECTRONIC  
MEDIA DURING  
MEETING**



**DON'T FORGET  
THE MINUTE-  
TAKER**

- ▶ Paraphrase what the person says.
- ▶ “What I heard you says was . . . .”
- ▶ Listening actively can be hard work.



ACTIVE  
STEN

# Effective Meeting: Respect and Decorum



▶ All eyes are on you

▶ Pay attention!

▶ Electronic media use during meetings

# Riggins Rules

▶ Don't mingle with friends, acquaintances, unknown applicants before the meeting.

▶ Don't indicate how you intend to vote during hearings & presentations.

▶ Do rotate the seating in some regular manner to prevent a "strong" member from gradually dominating a "weak" member.

▶ Don't interrupt a presentation until the question period.

▶ Don't use first names in addressing *anyone at all* during the course of the hearing.

▶ Don't make anyone appearing before you look like a fool by the nature of your questions or remarks.





# Riggins Rules (Con't)

▶ Do not permit people to leave the podium and approach closer to the hearing body except in unusual circumstances.

▶ Don't become involved in neighborhood quarrels.

▶ Do not take staff recommendations lightly.

▶ Don't try to ease your conscience and toss the applicant a bone.

▶ Don't show any displeasure or elation, by word or action, over the outcome of a vote.

▶ Do sit down and have a long soul searching session with yourself if you find you are consistently "out in left field."



# Public Comment

- No right to speak in meeting, unless you give it to them (remember hearings are different)
- Establish & explain rules, apply consistently
- First Amendment: Many restrictions are not acceptable!
- Maintain control & order
  - Removal?



# Ethical Issues, Incompatibility of Offices & Conflicts of Interest



[legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org)/603.224.7447/[www.nhmunicipal.org](http://www.nhmunicipal.org)

# It All Begins with “Ethics”

“Ethics” are hard to pin down and mean different things to different people, but generally:

- Avoiding conflicts of interest
- Disclosing financial interests
- Avoiding criminal behavior, following state & local law
- Respecting confidentiality
- Not abusing authority
- Treating people fairly and equally
- Honesty, integrity, and trustworthiness
- Avoiding the appearance of impropriety



# Few Statutory Rules

- ▶ Incompatibility statutes contain clear rules, but they're not the *only* ethical rules.
- ▶ Case law does provide a number of examples not contained in statute, but even that isn't complete.
- ▶ Ethical Golden Rule:
  - ▶ If you were to read about the same scenario occurring somewhere else in a newspaper, would you feel good about everyone who participated?
    - ▶ If the answer is “no,” then take steps to correct the problem.

Whether the person can hold a particular office in the first place:

- ▶ 669:7 (general)
- ▶ 673:7 (land use boards)
- ▶ 32:15 (budget committee members)
- ▶ Other statutes
- ▶ Local ordinances (which we will talk more about later)
- ▶ Common law: positions may be incompatible even if not stated in a statute—whenever two positions bear a special relationship to each other, one being subordinate to and interfering with the other, with inconsistent loyalties or responsibilities, then one person cannot legally hold both positions. *Cotton v. Phillips*, 56 N.H. 220 (1875).

# Incompatibility



# Conflict of Interest

Whether the person should be disqualified/ recuse him or herself from a decision and the decision-making process.

There are many more nuances to conflict issue than incompatibility issues.

# When Do Conflicts of Interest Arise?



- ▶ A conflict of interest exists if “an official has a direct interest in the outcome of a proceeding, *see State ex rel. Thomson v. State Bd. of Parole*, 115 N.H. 414, 422, 342 A.2d 634, 639 (1975), or any “conne[ct]ion with the parties in interest, as would be likely, improperly, to influence [his or her] judgment,” *New Hampshire Milk Dealers' Ass'n v. Milk Control Board*, 107 N.H. 335, 338, 222 A.2d 194, 198 (1966) (quotation omitted). *Appeal of City of Keene*, 141 N.H. 797, 801, 693 A.2d 412, 415 (1997).
- ▶ The direct interest is:
  - personal or financial.
  - immediate, definite and capable of demonstration; not remote, uncertain, contingent or speculative.
- ▶ The idea is that one person cannot serve two masters at the same time.

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

EST. 1941



## Areas That Tend to Present Conflicts:

- ▶ Prejudgment. An abutter to land that is the subject of an application before a land use board.
- ▶ Employment relationship, which is connected to the financial interest in the outcome from the definition of conflict. Just like the financial interest, the employment relationship must create an immediate/definite conflict. The mere existence of the employment relationship is not going to be sufficient.
- ▶ Family relationships: Not necessarily a conflict. *Webster v. Candia*, 146 N.H. 430 (2001).

# What if the Official Participates Anyway?

Whether an official is disqualified, and what the consequences of a disqualified member's participation are depends on whether the decision was legislative or quasi-judicial.

## **“Legislative” decisions**

- Court will only invalidate the action if the person with the conflict cast the deciding vote.

## **“Quasi-Judicial” decisions**

- Court will automatically invalidate the decision and remand the decision to the board with instructions to begin again, without the disqualified person.



Courts resolve “conflict of interest” disputes by examining the type of action taken + the facts.

# Difference Between Legislative vs. Quasi-Judicial



## Legislative

- ▶ Widely felt
- ▶ Policy decisions
- ▶ Must act in public's interest, but don't need to be "indifferent"

## Quasi-Judicial

- ▶ Affect rights of specific petitioner
- ▶ Notify & hear parties
- ▶ Weigh evidence
- ▶ Must be indifferent

# Juror Disqualification

## Standard: RSA 500-A:12

A juror is disqualified if the juror is “not indifferent” because he or she:

- ▶ Expects to gain or lose upon the disposition of the case;
- ▶ Is related to either party;
- ▶ Has advised or assisted either party;
- ▶ Has directly or indirectly given his opinion or has formed an opinion;
- ▶ Is employed by or employs any party in the case;
- ▶ Is prejudiced to any degree regarding the case; or
- ▶ Employs any of the counsel appearing in the case in any action then pending in the court.

# Recusal vs. Abstaining



Recuse: Immediately remove from discussion and voting



Abstain: does not vote



Recusing is the remedy for avoiding conflict, not abstaining

## Upcoming Virtual Workshops and Complimentary Webinar



### Municipal Solid Waste & Recycling in New Hampshire

Join Reagan Bissonette and Heather Herring of the Northeast Resource Recovery Association (NRRRA) for an in-depth workshop on solid waste, recycling, and waste reduction for New Hampshire municipalities.

9:00 am - 12:00 non  
Thursday, April 22, 2021  
COST: \$40.00

**REGISTRATION OPEN!**

### NHMA Webinar: *ZBA Basics*

Join Legal Services Counsel Stephen Buckley, Municipal Services Counsel Natch Greyes, and New Hampshire Office of Strategic Initiative's Principal Planner Michael Klass, who will share their expertise on how to keep your board's affairs in order (including rules of procedure), the do's and don'ts for conducting meetings and hearings, your board's issuance of decisions, and its rehearing procedures.

12:00 noon - 2:00 pm  
Tuesday, April 13, 2021  
FREE FOR MEMBERS

**REGISTRATION OPEN!**

# Upcoming Virtual Workshops and Complimentary Webinar

## ***The Right-to-Know Law: Meetings and Governmental Records***

Join Legal Services Counsel Stephen Buckley and Municipal Services Counsel Natch Greyes who will discuss the requirements for holding a proper public meeting, as well the exceptions to the meeting requirement (the so-called "non-meeting"), along with modified public meeting procedures in light of the COVID-19 pandemic. The attorneys will also provide guidance on handling governmental record matters arising under the Right-to-Know Law.

**1:30 pm - 3:30 pm**

**Thursday, April 15, 2021**

**Cost: \$40.00**

**[REGISTRATION OPEN!](#)**

## **2021 Legislative Half-time Report/Weekly Membership Call**

(1:00 pm, Friday, April 16, 2021)

It's legislative half-time and time for teams to swap ends of the field of play.

Join Executive Director Margaret M.L. Byrnes, Government Affairs Counsel Cordell Johnston, Municipal Services Counsel Natch Greyes, and Government Finance Advisor Becky Benvenuti for a look at the status of legislation affecting municipalities after "Crossover." Crossover is the date by which a bill must pass either the House or the Senate in order to "cross-over" to the other chamber for consideration.

NHMA's advocacy team will discuss the current status of bills at the State House and offer a postmortem on a few that have been killed. The discussion will include, among other items, the state budget, the retirement system, municipal liability and immunity, town meeting and SB 2 legislation, planning and zoning, municipal ordinance authority, the Right-to-Know Law, energy issues, and election law matters.

Join on your computer or mobile app

**[GET TEAMS INVITE HERE!](#)**



## Upcoming Virtual Workshops



### ***2021 Municipal Trustees Introductory Training Virtual Workshop***

Municipal trustees—cemetery trustees, library trustees, trustees of trust funds—have very important and varied duties. This introductory virtual workshop is geared to give you the tools you need to perform your duties le-gally and understandably.

***9:am am - 3:00 pm***

**Thursday, June 10, 2021**

**Cost: \$70.00**

**REGISTRATION TO OPEN IN MAY!**





*THANK YOU for attending our workshop TODAY!*



The New Hampshire Municipal Association is a nonprofit, non-partisan association working to strengthen New Hampshire cities and towns and their ability to serve the public as a member-funded, member-governed and member-driven association since 1941. We serve as a resource for information, education and legal services. NHMA is a strong, clear voice advocating for New Hampshire municipal interests.

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