



NEW HAMPSHIRE MUNICIPAL ASSOCIATION



Nonpublic Sessions and the Right-to-Know Law

Chris Dwyer, City Councilor, Portsmouth

Margaret Byrnes, Staff Attorney

April 11, 2018

Our Presenters



Margaret Byrnes
Staff Attorney

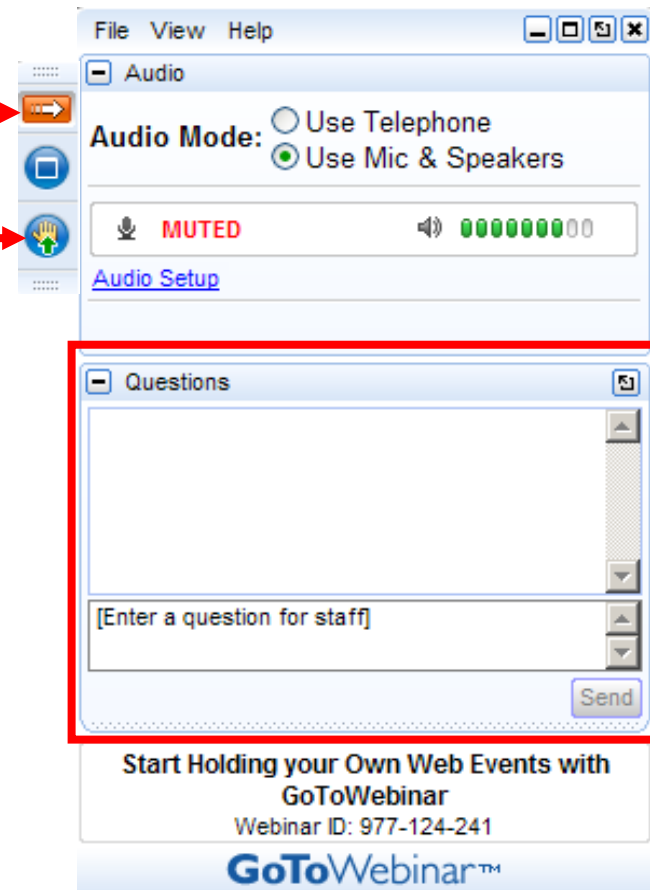


Chris Dwyer
Councilor
City of Portsmouth



How to Participate Today

- Open and close your Panel
- Submit text questions
- Q&A addressed at the end of today's session
- Raise your hand in *response* to a question

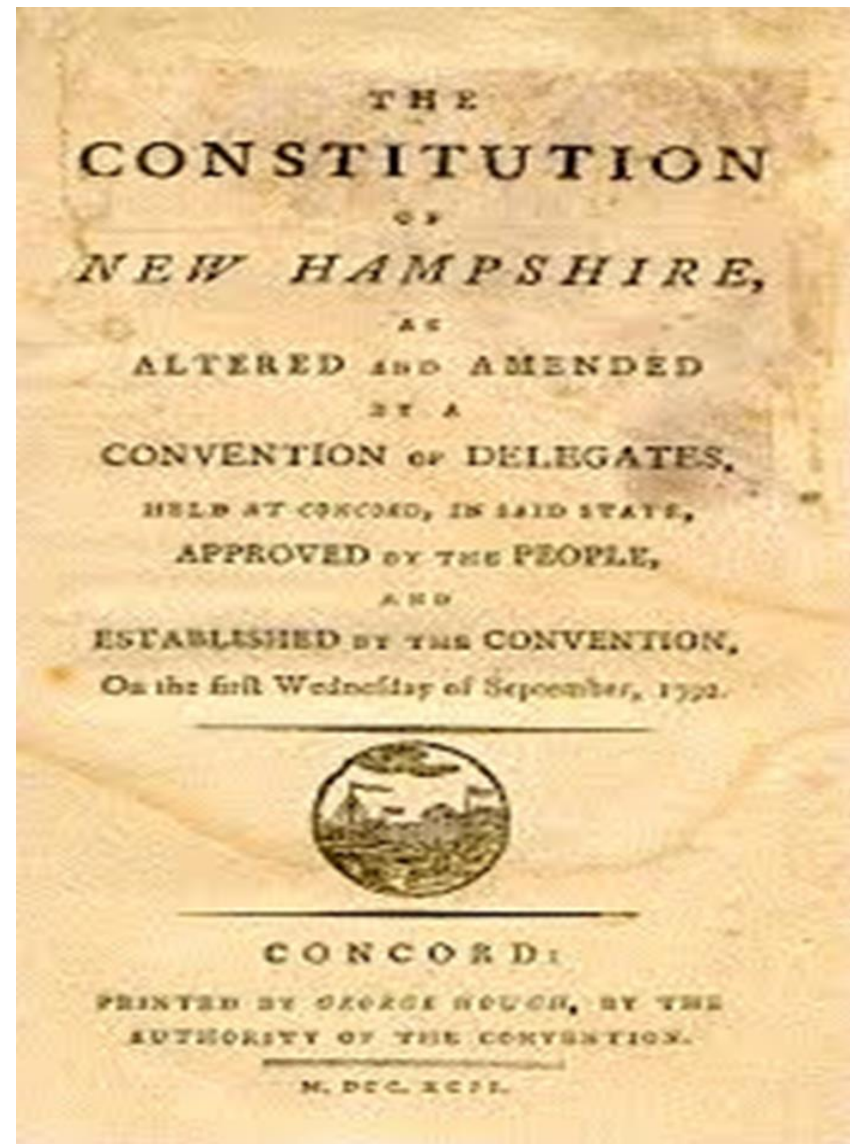


The screenshot displays the GoToWebinar interface. The top panel is titled 'Audio' and includes a 'File View Help' menu. It features a 'Panel' icon (a right-pointing arrow) and a 'Hand' icon (a hand with a raised index finger), both highlighted with red arrows. The 'Audio Mode' section has two radio buttons: 'Use Telephone' (unselected) and 'Use Mic & Speakers' (selected). Below this is a 'MUTED' indicator with a microphone icon and a volume level bar. A link for 'Audio Setup' is visible. The bottom panel is titled 'Questions' and is highlighted with a red border. It contains a large text input area with a placeholder '[Enter a question for staff]' and a 'Send' button. At the bottom of the interface, there is a promotional banner for GoToWebinar with the text 'Start Holding your Own Web Events with GoToWebinar' and 'Webinar ID: 977-124-241'.



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.



Nonmeeting (91-A:2, I) v. Nonpublic Session (91-A:3)

- Social or other encounter, no decisions
- Collective bargaining
- Consultation with legal counsel
- Political caucuses
- Circulation of draft documents



Nonpublic Session is *part* of a public meeting.

It's a nonpublic session, not a nonpublic meeting.

- By definition, a “meeting” is open to the public. Nonpublic session occurs within a meeting.



Every nonpublic session requires notice.

- Every nonpublic session is part of a public meeting
- Public meeting notice always required
- Must every nonpublic be *specifically* noticed?
 - RSA 91-A:2, II



Not Required.

- Nonpublic session is the *exception*, not the rule.
- Nonpublic sessions are *permitted*, not required.



Permitted purposes* for nonpublic session, 91-A:3, II

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

(*Most common, but not complete)

list)



Dismissal, promotion, compensation, disciplining, or investigation of charges against a public employee.

- Unless: (1) employee has a right to a meeting; and (2) employee requests open meeting.
- *Does this include performance reviews?*



Hiring of a public employee.

- Not board appointments.
- Not appointments to fill vacancies in elected office.



“Matters which, if discussed in public, would likely adversely affect the reputation of any person” . . .

- Other than a member of the body itself.
- Unless such person requests an open meeting.
- Includes application for assistance, abatement, or waiver of fees or fines based on poverty or inability to pay.





According to the Center for Public Integrity,
New Hampshire received what letter grade
score in its 2015 State Integrity Investigation?

1. A-
2. B
3. C+
4. D-
5. F



Consideration of purchase, sale, lease of real or personal property if public discussion would benefit party with adverse interests.

- Does not allow *negotiation* with adverse party in nonpublic session.



Consideration or negotiation of pending claims or litigation.

- Only if already filed or threatened in writing.
- Does not include application for tax abatement.
- Legal counsel does not need to be present.



Consideration of legal advice provided by legal counsel, either orally or in writing, even if legal counsel is not present.

- Do not confuse with consultation with legal counsel!



91-A:3, I: Process

- entering nonpublic session.

- 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).



We're in Nonpublic—*Now What?*

- Stay on topic
- Attendance by nonmembers
- Making decisions in nonpublic (recorded vote required)
- Objections to nonpublic, RSA 91-A:2, II-a
- Returning to public session



91-A:3, III: Process—minutes.

- Minutes must be kept—same as for public session. RSA 91-A:2, II.
- Must “record all actions in such a manner that the vote of each member is ascertained and recorded.”



Roll call v. Recorded Vote

Roll Call Vote Example

“Byrnes: yes;
Buckley: yes;
Johnston: no.

Motion passes.”

Recorded Vote Examples

- “Motion passes 2-1, with Johnston voting in the negative.”
- And for a unanimous vote:
“Motion passes unanimously.”



Public v. “Sealed”

Minutes must be publicly disclosed within 72 hours unless board determines, by 2/3 recorded 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.



Reviewing and unsealing minutes

- Who may see sealed minutes?
- Review sealed minutes regularly to determine whether circumstances that justified sealing still apply.
- Review if someone asks to see them.



Duty of Confidentiality, RSA 42:1- a

- Disclosing nonpublic session information when minutes were sealed.
- Divulging information known to be exempt from disclosure if certain consequences would result.
- Violation of oath of office.







2018 Local Officials Workshops

9:00 am - 4:00 pm
Registration at 8:30 am

Free workshops for seasoned and new municipal officials and employees of NHMA member municipalities.

**REGISTRATION
IS OFFICIALLY
OPEN**

Presented by NHMA's Legal Services attorneys, these workshops provide municipal officials with tools and information to effectively serve their communities. Topics will include the Right-to-Know Law, ethics and conflicts, town governance, municipal roads, and more. Ample time allowed for questions, answers, and discussion.

DATES AND LOCATIONS

- Monday, April 9**- Grantham Town Hall, Grantham
Monday, April 16-Peterborough Community Center, Peterborough
Tuesday, May 8-Kent Auditorium, Town Hall, Newington
Tuesday, May 15-Moultonborough Safety Complex, Moultonborough
Tuesday, May 22-The Meeting House, Sugar Hill
Saturday, June 2-NHMA Offices, 25 Triangle Park Drive, Concord

Continental breakfast will be provided. Lunch is on your own and time will be provided for attendees to get lunch.

REGISTER TODAY!

Stranger Streets: A *New* Hard Road to Travel Workshop!



If a Class VI road is washed out, can the town really do nothing?

Can public works cut trees on a scenic road?

Do there really need to be summer cottages on a "highway to summer cottages"?

Join NHMA Attorneys Stephen Buckley and Margaret Byrnes for the answers to these questions—and many more! The attorneys will discuss the "stranger" side of municipal road law, including bridges, municipal trails, sidewalk maintenance, scenic roads, highways to summer cottages, and winter roads. Ample time will also be spent on Class VI and private roads, including what municipalities—and residents—can and cannot do on these roads.

Friday, April 27, 2018

9:00 a.m. — 12:30 p.m.

Registration and Breakfast at 8:30 a.m.

NHMA Offices

25 Triangle Park Drive

Concord NH

Cost: \$60.00



Register online at www.nhmunicipal.org under Calendar of Events

Online pre-registration required one week prior. Space is limited.

Questions? Call 800.852.3358, ext. 3350,

or email NHMAregistrations@nhmunicipal.org



NHMA RELEASES NEW PUBLICATION ON NEW HAMPSHIRE'S RIGHT-TO KNOW LAW

Check out our new
"go-to" resource
for public
officials when
confronted with the
numerous legal
issues surrounding
New Hampshire's
Right-to-Know Law.



Order
Today

Only \$55 for Members
\$95 for Non-members

The Right-to-Know Law (RSA Chapter 91-A) affects every aspect of local government in our state. Every board, committee, commission, and sub-committee in every town, city and village district in New Hampshire must comply with this law. As a result, all local officials and employees must understand the law and their responsibilities regarding both public meetings and governmental records.

Join Legal Services Counsel Stephen Buckley, Government Affairs Counsel Cordell Johnston, and Staff Attorney Margaret Byrnes for a full day workshop on Thursday, September 14 on the Right-to-Know Law. They will address some of the most difficult issues under the law, including confidential information, electronic records and communication, procedures for nonpublic sessions, and communications outside a meeting. There will be ample time for questions and answers on all aspects of the law.

Go to NHMA's online store at www.nhmunicipal.org/shop
to order your new book today!



Learn more about the Right-to-Know Law at a full-day
workshop on Thursday, September 14
at NHMA Offices in Concord.
\$90 includes workshop, meals and new book!
Check our website for registration details.





*for attending
our webinar
presentation
today!*

Mission Statement

The New Hampshire Municipal Association is a non-profit, 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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