

2022 Webinar Series

THE RIGHT-TO-KNOW LAW AND PUBLIC MEETINGS



Stephen C. Buckley, Legal Services Counsel
Jonathan Cowal, Municipal Services Counsel

September 14, 2022



Today's Presenters



Stephen Buckley
Legal Services Counsel



Jonathan Cowal
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 asked by the user at 18:03: "What happens when I raise my hand?". Below it is an answer from "Molly Parker" at 18:04: "I can take you off of mute." At the bottom of the window, there is a text input field with the placeholder "Please input your question", a checkbox labeled "Send Anonymously", and 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 Services



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

- Email: 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


Agenda



The Right-to-Know Law:

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

- Governmental Meetings
- Nonpublic sessions



Governmental Meetings & The Right-to-Know Law



Overview of How RTK Governs Meetings Content



- I. What is a “meeting”?
- II. What is not a meeting, i.e., a “nonmeeting”?
- III. What are the requirements for holding a proper “meeting”?
- IV. How to hold meetings virtually.

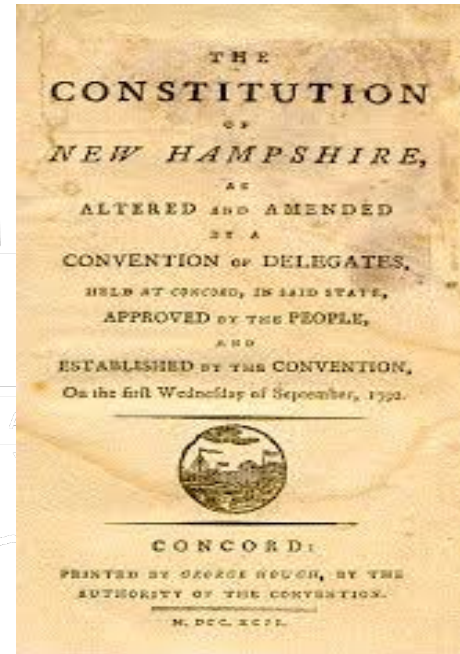
The Right-to-Know Law RSA Chapter 91-A



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.



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

“Quorum”



Majority of
membership



Can't define as more
than majority to
circumvent law



Another statute may
apply

“Public Body”



RSA 91-A:1-a, VI:

- Any legislative body, governing body, board, commission, committee of any county, town, municipal corporation, school district, SAU or other political subdivision
- Any committee, subcommittee, advisory committee thereto
- New Case: But a committee of city employees providing advice to planning board applicants is not a public body. *Martin v. Rochester*



Meetings In Ordinary Circumstances

Convenes such that all participating members are able to communicate with each other contemporaneously

- In-person
- Email?
- Phone?

To discuss or act upon matters which the Public Body has Supervision, Control, Jurisdiction, or Advisory Power

- Any “business” the body deals with
- Construe broadly

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!

What are the Requirements of a Public Meeting?



Public notice

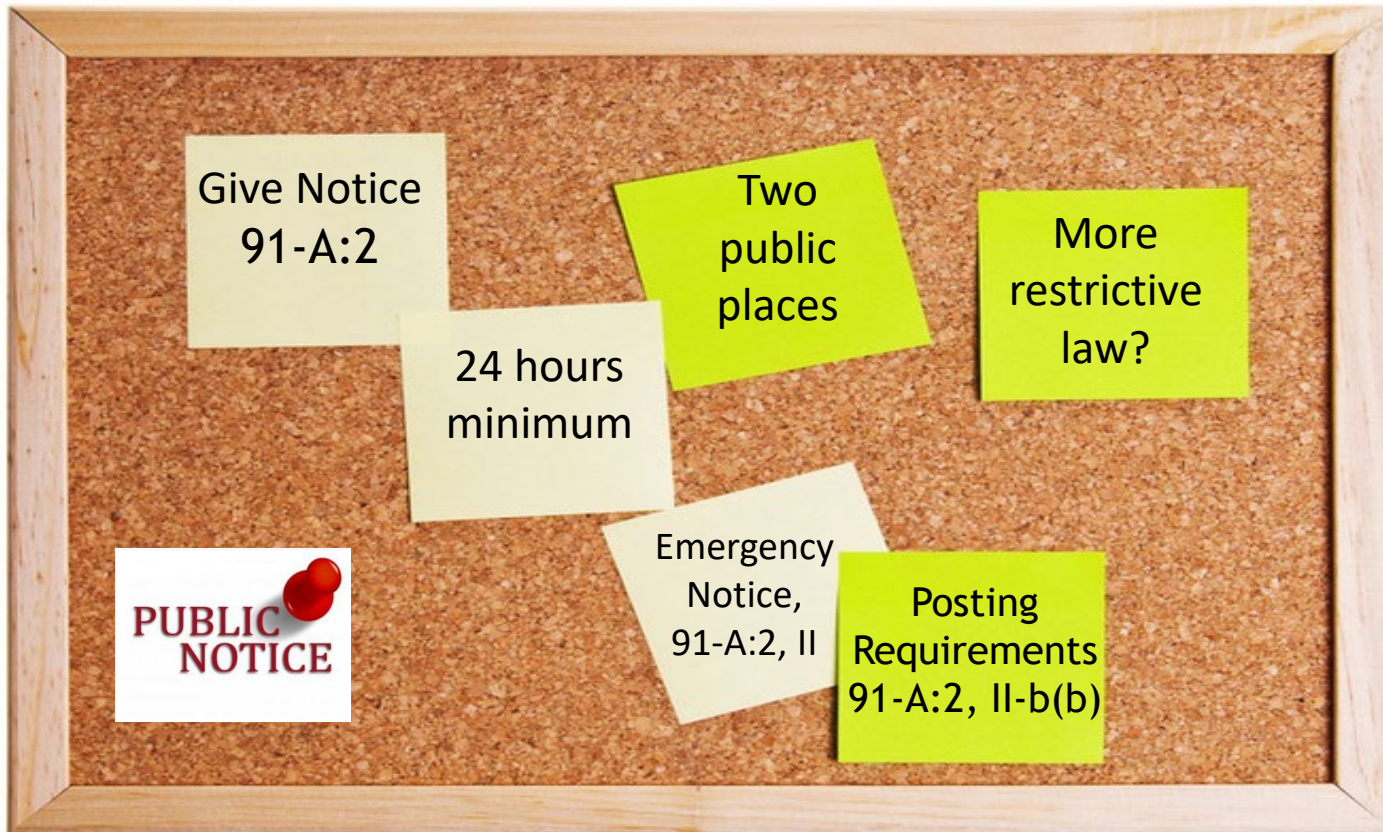


Open to the public



Meeting minutes

“Posting Requirements”



A large, faint watermark of the NHMA logo is centered in the background. Overlaid on this watermark is the word 'Questions?' in a large, bold, green, sans-serif font. The 'Q' is significantly larger than the other letters.

Switching Back to In-Person Meetings

- ▶ Emergency Order #12, allowed virtual meetings during the State of Emergency
- ▶ Since State of Emergency expired on June 11, 2021, 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.

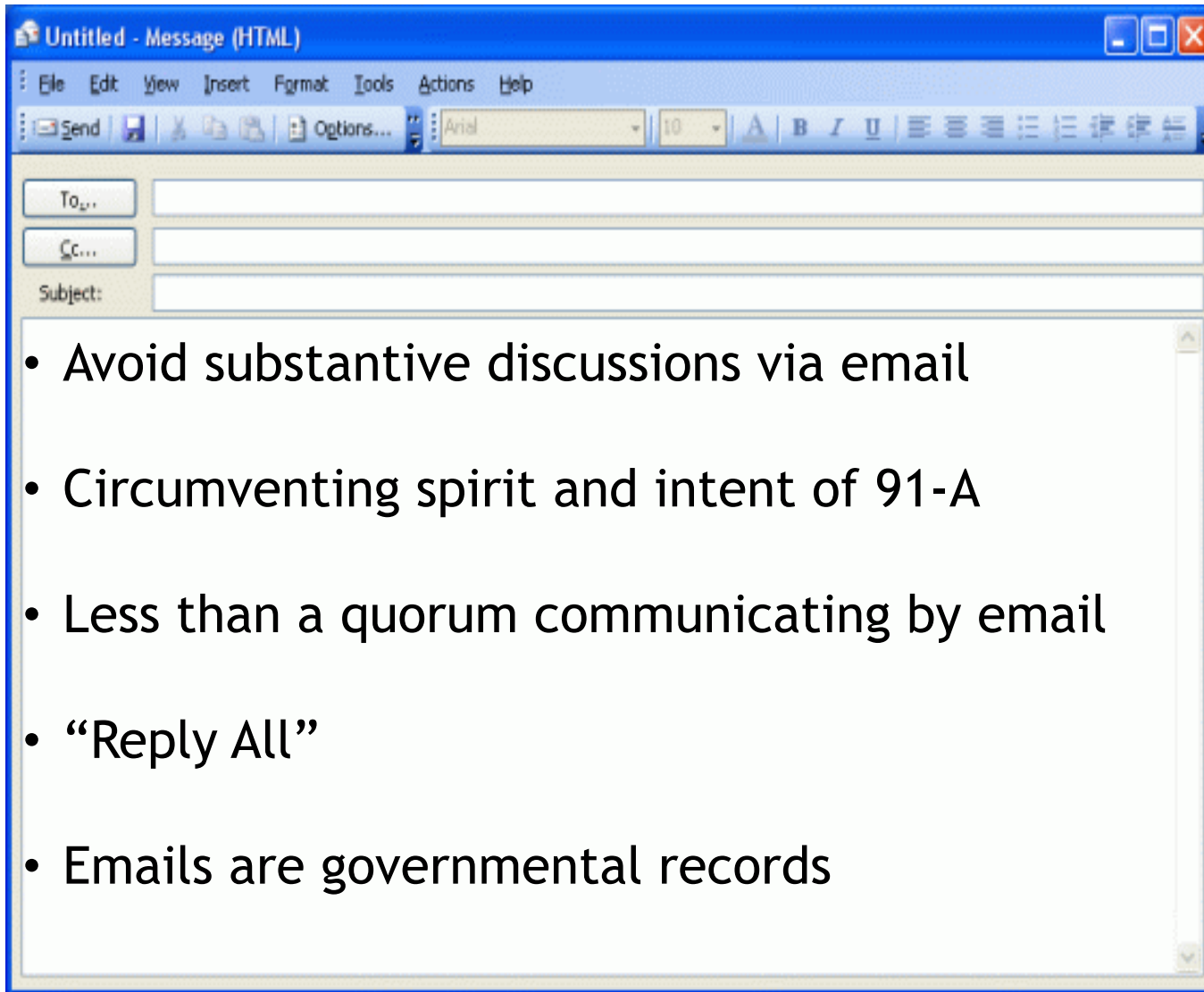




Meetings “Open to the Public”

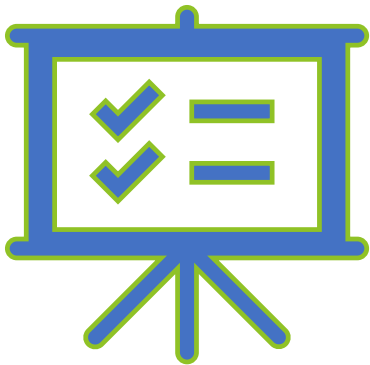
- ▶ “All meetings . . . shall be open to the public.” RSA 91-A:2, II.
- ▶ “Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting.”
- ▶ Public has right to record,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

“Electronic Communications”



Public Meeting Minutes

RSA 91-A:2



- ▶ 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)
- ▶ If the software used to conduct a remote meeting allows for recording, use it to aid the minute taker, but remember that 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).

Minutes of Nonpublic Sessions



Minutes must be kept—same as for public session.



Must “record all actions in such a manner that the vote of each member is ascertained and recorded.”

Conducting the Nonpublic Session

May make decisions in nonpublic session

Member objecting to violations—note objection. If board persists, objecting member may continue to participate without being subject to penalties

RSA 91-A:2, II-a

Returning to public session

Other Considerations

Include nonpublic session on posted agenda.

Timing—beginning or end of meeting?

Attendance by non-members

- Legally, there is no limit on who may be permitted to attend a nonpublic session. However, it is best to exclude anyone whose presence is not essential. This may mean excusing the administrator and/or the recording secretary and instead having one of the board members take minutes. Whether to do this is a judgment call to be made by the board.

Disclose or Seal?



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.

New Law: HB 108 - Maintain List of Nonpublic meeting minutes



- Effective January 1, 2022 (assuming bill is signed by Governor)
- List of sealed nonpublic meeting minutes must:
 - Identify the public body
 - State the date & time of the nonpublic session
 - State the exemption for the nonpublic session
 - State the date of the decision to seal the minutes
 - State the date of any subsequent decision to unseal minutes
- Minutes sealed under RSA 91-A:3, II (d) (sale or acquisition of real or personal property) “shall be made available to the public as soon as practicable after the transaction has closed or the public body has decided not to proceed with the transaction.”



Questions?



Join us for 2022 Budget & Finance Workshop

9:00 am - 4:45 pm, Tuesday, September 20, 2022. Registration to attend in person is closed, however, virtual option is still open. \$70 for virtual attendance.

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[REGISTRATION NOW OPEN!](#)

REGISTRATION OPEN: The Right-to-Know Law and Governmental Records Webinar

12:00 noon - 1:30 pm, Wednesday, September 28, 2022. Join NHMA's Stephen Buckley and Jonathan Cowal who will provide guidance on handling governmental record matters arising under the state's Right-to-Know Law.

REGISTRATION NOW OPEN!

[REGISTRATION NOW OPEN!](#)

Principles of Employment Law Virtual Seminar

9:00 am - 4:00 pm, Tuesday, October 4, 2022. Join Drummond Woodsum's attorneys in this full day virtual seminar providing municipal officials with practical knowledge and skills to handle the unique employment challenges facing public employers. Cost: \$90.

REGISTER NOW!

DrummondWoodsum
ATTORNEYS AT LAW

[REGISTRATION NOW OPEN!](#)

2022 Hard Road to Travel Workshop

9:00 am - 12:30 pm, Thursday, October 6, 2022. Join NHMA's Stephen Buckley and Jonathan Cowal who will help local officials understand some of the more complicated areas of highway law.
\$65: In-person attendance; \$55: virtual.

REGISTRATION NOW OPEN!

**A HARD
ROAD TO
TRAVEL
Workshop**

[REGISTRATION NOW OPEN!](#)



2022 Municipal Land Use Law Virtual Conference

9:00 am - 3:00 pm, Saturday, October 15, 2022. Full day virtual event with multiple sessions on land use-related topics.

REGISTRATION OPEN!

The Ulhova logo is located in the bottom left corner of the map area. It consists of the word "Ulhova" written in a stylized, blue, cursive font. The logo is set against a white rectangular background.

[REGISTRATION NOW OPEN!](#)

SAVE THE DATES



NHMA's 81st Annual Conference and Exhibition



GETTING USED TO DIFFERENT

NHMA's 81st Annual Conference and Exhibition

November 16-17, 2022

Please save the dates of Wednesday, November 16 and Thursday, November 17 for NHMA's *81st Annual Conference and Exhibition* at the DoubleTree by Hilton Downtown Manchester. Our theme this year is "*Getting Used to Different*."

It's been nearly two years and New Hampshire municipalities are still "getting used to different" and adapting to the extraordinary events of the pandemic. Elected and appointed officials have been faced with tough challenges and opportunities to create new programs and services that best meet the changing needs of their residents.

This year's conference will be held as a live, in person event in Manchester both days with simultaneous live-streaming for virtual attendees. Please join us in November!



for joining
us today!



NHMA'S MISSION

Through the collective power of cities and towns, NHMA promotes effective municipal government by providing education, training, advocacy and legal services.



legalinquiries@nhmunicipal.org /603.224.7447/www.nhmunicipal.org