

Municipal Trustees Training Workshop

Trustees 101- Governance and Right-to-Know

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New Hampshire Municipal Association



Today's Presenters



Stephen Buckley
Legal Services Counsel



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Municipal Services Counsel

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

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Governmental Meetings & The Right-to-Know Law



COVID-19 & Public Meetings

- ▶ Governor declared State of Emergency on March 13, 2020.
- ▶ That State of Emergency is likely to end very soon, and, with it, the ability to conduct meetings remotely.
- ▶ Boards that have not already decided what, if any, public remote access will continue to be available in the future should make that decision as-soon-as-possible, working with other town officials as appropriate (e.g. understanding what, if any, Zoom licenses the town has and until when, etc.).

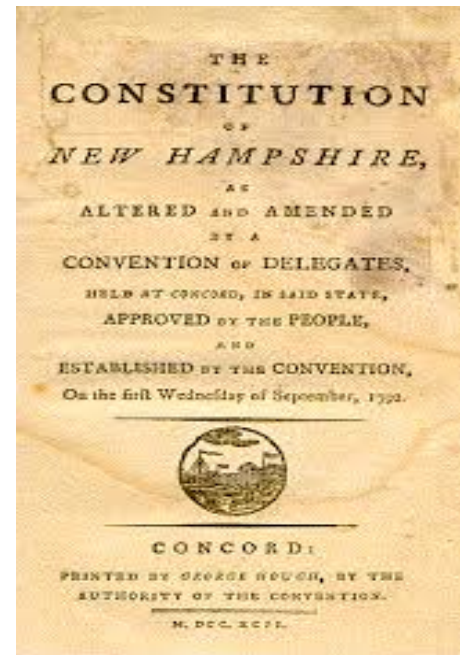
The Right-to-Know Law

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 91-A is
just the
floor**

RSA 91-A:2, II:

**If the rules of procedure of
any public body require a
broader public access to
official meetings or records
then those provisions will
govern.**

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.

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!

Meeting v. Hearing



Meeting

To conduct body's
business

RSA 91-A

Open to public

No right to speak



Hearing

To hear public/certain
people on issue

91-A "plus"

Open to public

Right to speak

What are the public meeting requirements under RSA 91-A?



**PUBLIC
NOTICE**

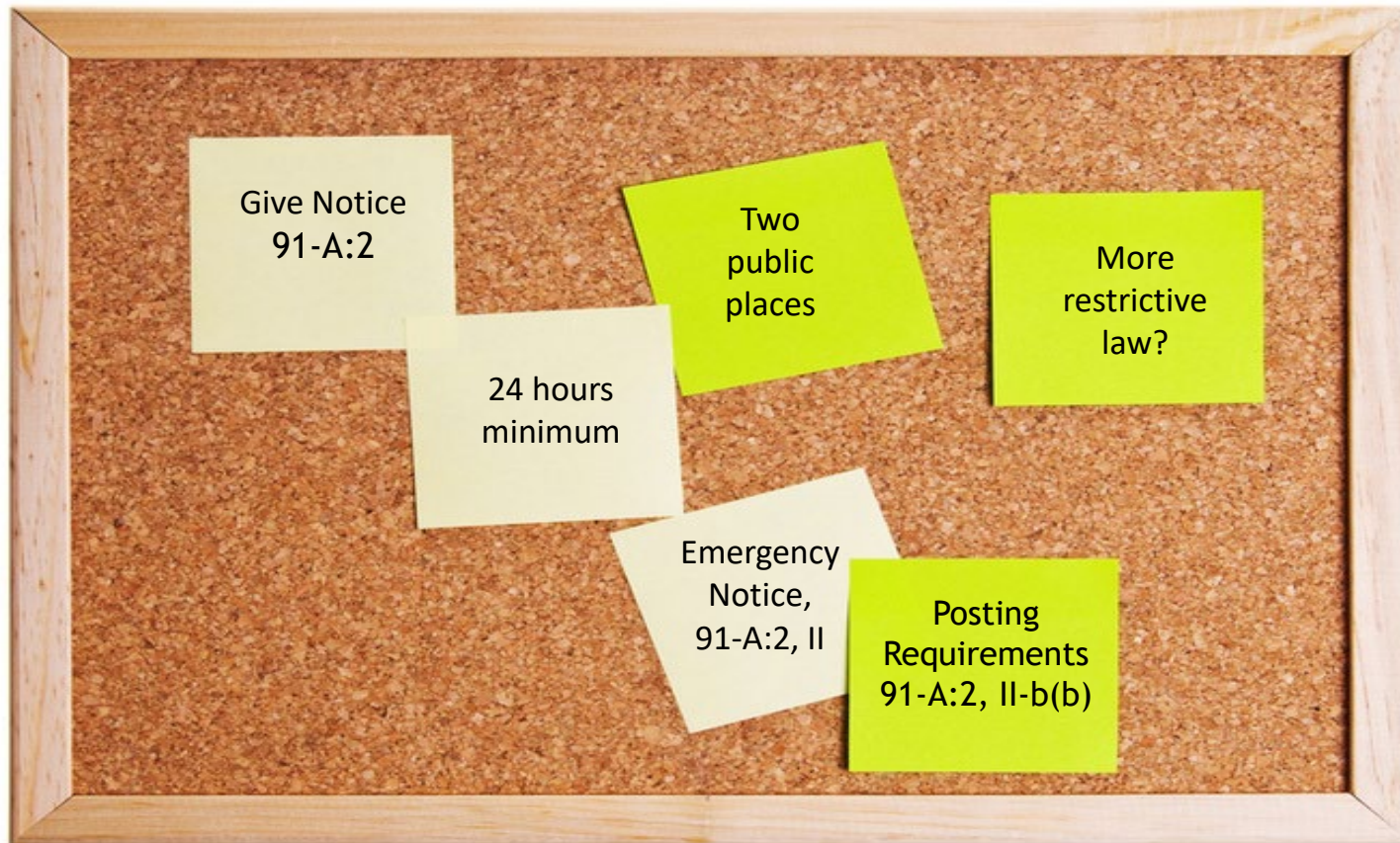


**OPEN TO THE
PUBLIC**



**MEETING
MINUTES**

Public Notice





Public's Right of Access

- ▶ Open to the public, RSA 91-A:2, II
- ▶ Public's right to record, etc.
- ▶ No secret ballot voting

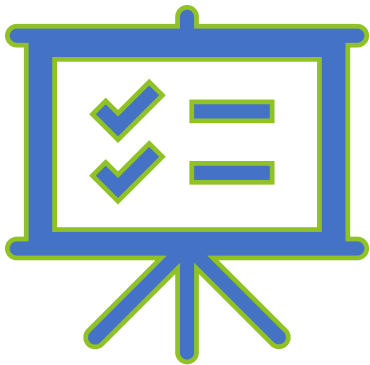
Switching Back to In-Person Meetings

- ▶ 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.



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.

Remote (Electronic) Meeting Participation,

RSA 91-A:2, III

 Public body *may* allow (adopt a policy!)

 Personal attendance “not practical” (in minutes)

 Quorum *present*

 Everyone can hear and be heard

 Identify anyone else present

 All votes by roll call

Availability of Governmental Records

- ▶ Governmental records must be available during the regular business hours of the public body or agency.
- ▶ “Each public body or agency shall keep and maintain all governmental records in its custody at its regular office or place of business in an accessible place.” RSA 91-A:4, III
- ▶ RSA 41:58 – Public records must be stored at office of the political subdivision.
- ▶ RSA 41:61 – Public records may not be loaned or removed except when discharging public duties.

Archive Paper Records in PDF/A?

Any municipal records in paper form listed in RSA 33-A:3-a may be transferred to electronic form (PDF/A Format ONLY), and the original paper records may be disposed of as the municipality chooses. RSA 33-A:5-a

Beyond RSA 91-A

- ▶ Preparation = more effective meetings
- ▶ Do you have rules of procedure?
- ▶ 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'd)



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

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?

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**



Meeting Decorum



All eyes are on you



Pay attention!



Electronic media use during meetings

Electronic Communication



- Avoid substantive discussions via email
- Circumventing spirit and intent of RSA 91-A
- Less than a quorum communicating outside meeting
- “Reply All”
- Emails are governmental records

Riggins' "Don'ts"



Don't mingle with friends, acquaintances, unknown applicants or objectors in the audience before the meeting & during a recess period.



Don't indicate by word or action how you intend to vote during the portion of the hearing devoted to presentations.



Don't interrupt a presentation until the question period, except for very short and *necessary* clarifying remarks or queries.



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



Don't try to make the applicant or any other person appearing before you look like a fool by the nature of your questions or remarks.

Riggins' "Do's"

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

Do sit down and have a long soul-searching session with yourself if you find you are consistently "out in left field," that no one seems inclined to second your profound motions, and that you are quite often a minority of one.

Dealing with “Difficult” People



Roll Call vs. Recorded Vote



Roll Call Vote Example



“Byrnes: yes; Buckley: yes;
Johnston: no. Motion passes.”

Roll Call vs. Recorded Vote



Recorded Vote Examples

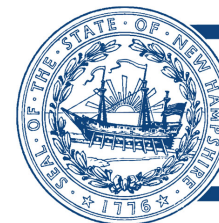


“Motion passes 2-1, with Johnston voting in the negative.”



“Motion passes unanimously.”

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