



New Hampshire  
Department of Justice

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Office of the Attorney General

# **RSA 91-A New Hampshire's Right-to-Know Law**

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# Purpose

Openness in the conduct of public business is essential to a democratic society. 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:1 Preamble*

## General Rule:

**Meetings and agency records are public**

# Overview

- Who?
  - Public Bodies & Agencies
- What?
  - Meetings
  - Government Records
- Where & When?
  - Meeting Requirements – Notice, Minutes, etc.
  - Responding to Right to Know Requests
- How?
  - Remedies

# RSA 91-A

## Who? – Public Bodies

- Boards
- Agencies
- Commissions
- Advisory Committee established by the governor by executive order
- Committees
- Subcommittees
- Subordinate bodies
- Advisory Committees

**What?**

**MEETINGS**

# Meeting

- Public bodies shall not deliberate on matters over which they have supervision, control, jurisdiction, or advisory power outside of a meeting unless exempted from the definition of meeting. RSA 91-A:2-a, I.

# Meeting

- “Meeting” means the convening of a quorum of the membership of a public body, or the majority of the members of such public body if the rules of that body define “quorum” as more than a majority of its members.

# What Constitutes a Meeting?

- Quorum of membership so members may communicate contemporaneously
  - In Person
  - Telephonic\* or electronic\*
- For purpose of acting on or discussing matters within their powers/authority
- Communications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of the Right-to-Know law. RSA 91-A: 2-a, II



# What Does NOT Constitute a Meeting?

- Chance or social meeting neither planned or intended for purpose of discussing official business.
  - ❖ CAUTION – if quorum of members discuss matters over which they have control.
- Strategy or negotiations with respect to collective bargaining.
- Consultation with Legal Counsel
- Circulation of draft documents which, when finalized, are intended only to formalize previously deliberated decisions.
  - ❖ CAUTION – E-mail simultaneously or sequentially sent to quorum discussing official business.

# Meeting Basics

- Public Notice
- Members Physically Present
- Open to the Public
- Minutes

# Meeting Basics: Public Notice

## ❖ Post time and place in two locations

- May include Board's/Commission's internet website
- *24 hours* prior to such meeting excluding Sundays and legal holidays

## ❖ An agenda is not required

# Meeting Basics: Participation

- ❖ Quorum of the public body shall be physically present at the location specified in the notice.
- ❖ If physical participation not reasonably practical, a member may participate electronically, so long as a quorum is physically present.
  - Must be able to simultaneously hear and speak
  - Reason not practical must be stated in minutes
  - Remote member may vote – Roll call is necessary
  - Must identify persons in the location from which remote member is participating

# Meetings Basics: Open to the Public

- ❖ Open to public – unless authorized to hold nonpublic session
- ❖ Minutes must be kept
- ❖ Public may record – audio, video, etc.
- ❖ Openness does not provide public right to speak or participate

# Meetings Open to the Public

- No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.
- RSA 91-A:2, III (c)

# Meeting Basics: Minutes

- ❖ Minutes include names of members/persons appearing, brief description of subject matters discussed and all final actions
- ❖ No requirement for verbatim transcription
- ❖ Available to public in 5 business days
  - Draft is satisfactory
- ❖ Minutes considered permanent record
- ❖ Public has right to inspect and copy notes, tapes or other sources used for compiling minutes. RSA 91-A:4, II

# Remedies for Violation

- Agency liable for costs if Court finds lawsuit necessary to ensure compliance with the statute
- Agency Liable for attorney's fees if Court finds agency knew or should have known conduct was a violation
- Court may invalidate the action taken at a meeting if the circumstances justify invalidation. This is a discretionary decision.
- Court may enjoin future violations
- Court may require officer or employee, to undergo appropriate remedial training, at such person or person's expense
- Civil penalty against officer, employee or other official for “bad faith” violations



**QUESTIONS?**