

# Legal Q AND A

By Stephen C. Buckley, Legal Services Counsel with the  
New Hampshire Municipal Association

## Guide to NHMA Legal Services – An FAQ

The New Hampshire Municipal Association's Legal Services Department employs two (2) lawyers: Legal Services Counsel Stephen C. Buckley and Staff Attorney II Margaret M. L. Byrnes. The main job of the Legal Services Department is giving general legal assistance to NHMA's member towns, cities, and village districts. We prepare articles, handbooks, seminars, and other educational programs and publications. We will also answer your specific legal inquiries. **But there are limits.** After all, we aren't your regular lawyers, and our services are always more in demand than supply (same as municipal services are!). The purpose of this "Guide" is to make clear what we **can** do for you, versus what we **can't**.

### Q: When can I call and speak to an NHMA lawyer and get legal advice?

**A:** Our goal is to have a lawyer on telephone duty at 1-800-852-3358 each business day between 8:30 and 4:30. But there are unavoidable exceptions, such as when we are both presenting workshops or other speaking engagements. And often you won't be put through immediately to a lawyer, because s/he is already on the phone, or researching earlier inquiries. We will make every effort to return calls the same or following day, **but you must** leave a return telephone number. **We recommend that you do not call just before a deadline, such as a meeting or hearing.**

### Q: Will I always be able to immediately speak to someone about my legal question?

**A:** If we aren't immediately available, our receptionist (a real, live, caring human being) will give you the option of leaving a voice mail message for us, briefly describing your inquiry. Hearing your question directly helps us give a better answer when we return the call. Be sure to tell us your municipality and what position you hold there, **and be sure to leave your telephone number.**

### Q: Can I submit my legal inquiry via email or regular mail?

**A:** We are also glad to answer your **written** inquiries in writing, whether by regular mail or by email, and we try to do so in a timely fashion. Email inquiries should be sent to [legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org). Written inquiries can be mailed to NHMA-Legal Services at 25 Triangle Park Drive, Concord, NH, 03301. **We answer these in the order received, and response time depends on our volume of work.** However, with 232 communities to work for, and with publication deadlines to meet, we can't promise any firm response time. We do our best, but if you have a quick deadline for a written response, it's probably better to contact your municipality's regular legal counsel.

### Q: Are there any limitations on the subject matters we make ask about?

**A:** We play our best role as NHMA lawyers when we're answering questions of general municipal law—issues of interest to more than just a few communities—especially questions which can be answered by reference to state statutes or court opinions. If an answer hinges on complex local facts, documents, or the peculiarities of local ordinances or charters, we may well recommend that you contact your regular legal counsel. NHMA's legal services do not include such matters as comprehensive legal review of contracts or other documents, drafting individualized ordinances or charters, or complete review of specific applications before local boards. We can, of course, answer specific generic questions you may have about any of these matters. But we do not directly represent municipalities in court, or negotiate on your behalf with third parties.

### Q: Will NHMA provide its opinion about the meaning of language in our local ordinances?

**A:** We are often asked: "What does word X mean, as it appears in our ordinance?" Although we can offer suggestions, we can't give definitive interpretations of terms in an ordinance because that meaning often hinges on the context and his-

tory of the ordinance as a whole. Also, courts give some deference to local administrative interpretations. A lawyer's interpretation gets no such deference.

### Q: Can NHMA provide technical assistance with zoning and planning questions?

A: For technical assistance with developing zoning ordinances, subdivision, site plan, and other land use regulations, the first place to go is your regional planning commission or the State Office of Energy and Planning. But there's no hard line between "technical" and "legal" assistance. A substantial number of our inquiries come from the land use field, so don't hesitate to call.

### Q: Does NHMA assist with appeals to the NH Supreme Court?

A: Although we don't file lawsuits, we do assist members with appeals to the New Hampshire Supreme Court by submitting an *amicus curiae* ("friend of the court") brief on a municipality's behalf. If you have a case involving an issue of municipal law which has statewide significance, and you think the Court ought to have our input, please let us know.

### Q: Are there ethical limitations and rules that govern the legal advice provided by NHMA?

A: This is a question addressed constantly by us and our colleagues in other states, other New Hampshire municipal lawyers, and local officials themselves. In 1995, we asked the Ethics Committee of the New Hampshire Bar Association for a formal opinion. The rest of this Guide is grounded in that opinion, most of which reaffirmed our prior practice.

### Q: When NHMA provides legal advice, who is the client?

A: First and foremost, when one of us in the Legal Services Department is answering an inquiry from a local official, our client is *the municipality as*

*a corporate entity*. The client isn't you personally, or even you in your official capacity. Nor is it NHMA itself, as an organization. This fact has some crucial ethical consequences, explained further below.

### Q: Who from our municipality can utilize NHMA's Legal Services?

A: It would be a clearly unethical conflict of interest for us to give opinions on municipal law to private citizens (including newspaper reporters). Likewise, even if you are a public official, we can only advise you on matters *on which you represent your town or city*, and not on your own private concerns, or on the duties of other officials. Unless otherwise instructed by the local governing body, we will answer inquiries from all local officials, including board or committee members, who call about *issues within their own official responsibilities*. For instance, we would decline to answer an inquiry from a Budget Committee member who was asking about a subdivision approval granted by the Planning Board. Please don't give our toll-free number to private citizens, since we must refuse to answer them. It's awkward, and ties up time otherwise available to municipal officials.

### Q: Is the advice I am provided confidential?

A: Since our lawyer/client relationship is with your municipality, not the caller personally, the right to keep legal advice confidential also belongs to the town or city, and not the caller. This means that, while we don't share that advice with the public, we *will* share it with other affected officials. In fact, since telephone advice is, by its very nature, subject to misunderstanding, we are always glad to explain to one member of a board or body the advice we gave another member. We will also provide copies of any written opinions to the governing body, manager, administrator, or legal counsel, if requested.

### Q: I am embroiled in a dispute with other local officials, will NHMA assist me?

A: If it comes out in the course of a call that we're being asked to resolve a "local dispute" between differing officials, we cannot ethically take sides, and we may ask that the inquiry be put in writing so that we're responding to all sides jointly. Lastly, we can't advise one NHMA member community on a matter involving a dispute with another community, since that would also be a clear conflict of interest.

### Q: What is municipal legal advice?

A: Please don't think we're being evasive if we can't give you "a simple yes-or-no answer." Legal advice demands give-and-take on the facts. Our job is only to try to predict what a court might say in a specific case. Judges are *never* 100% predictable, and the law's often unclear. But even beyond that, governmental actions have moral and political dimensions that transcend any legal fallout, and those are issues *you* must weigh. We'll help evaluate legal risks. But it's you, not we, who were chosen by your community to make the final decision.

This Guide isn't meant to discourage you. On the contrary, we hope understanding the scope of our legal services will help you make better use of them. When in doubt, don't hesitate to call. You are also welcome to come see us at our offices at 25 Triangle Park Drive in Concord. Please call in advance and make an appointment so that a lawyer will be prepared to meet with you. We are also happy to come to your city or town to speak with boards on general legal matters, if we have enough advanced notice, and can pick a good time.

*Stephen C. Buckley is Legal Services Counsel with the New Hampshire Municipal Association. He may be reached at 800.852.3358 ext. 3408 or at [legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org).*