

2019 Webinar Series



The Right-to-Know Law and Governmental Meetings

Margaret Byrnes, Executive Director
Stephen C. Buckley, Legal Services Counsel

March 13, 2019

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Our Presenters



MARGARET BYRNES
EXECUTIVE DIRECTOR



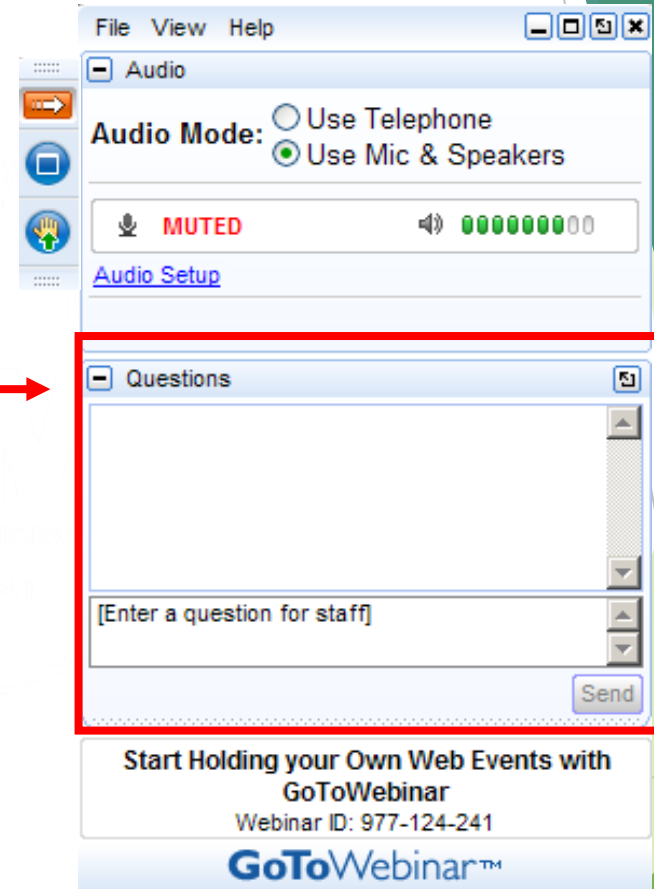
STEPHEN BUCKLEY
LEGAL SERVICES COUNSEL



How to Participate Today



- Open and close your panel
- Submit text questions
- Q&A addressed during the webinar session
- Poll questions for your entertainment

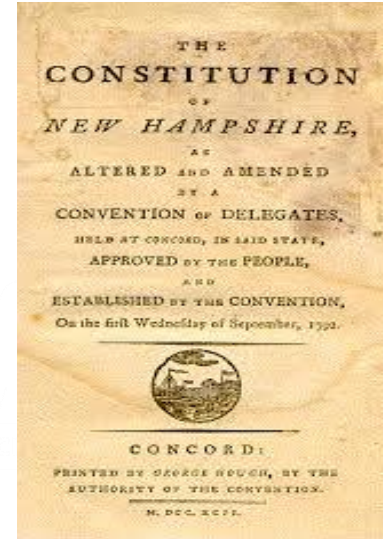


The Right-to-Know Law RSA Chapter 91-A

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 Chapter 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.



Part One: Public Meetings



- 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”?



What is a Public Meeting?

RSA 91-A:2



1. Quorum
2. Public body
3. Convenes so that they can communicate contemporaneously
4. 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



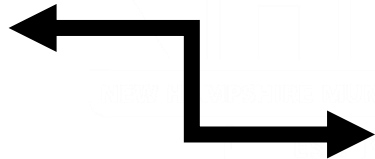
“Public Body”

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



Select Board



Public Safety Building Advisory Committee

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

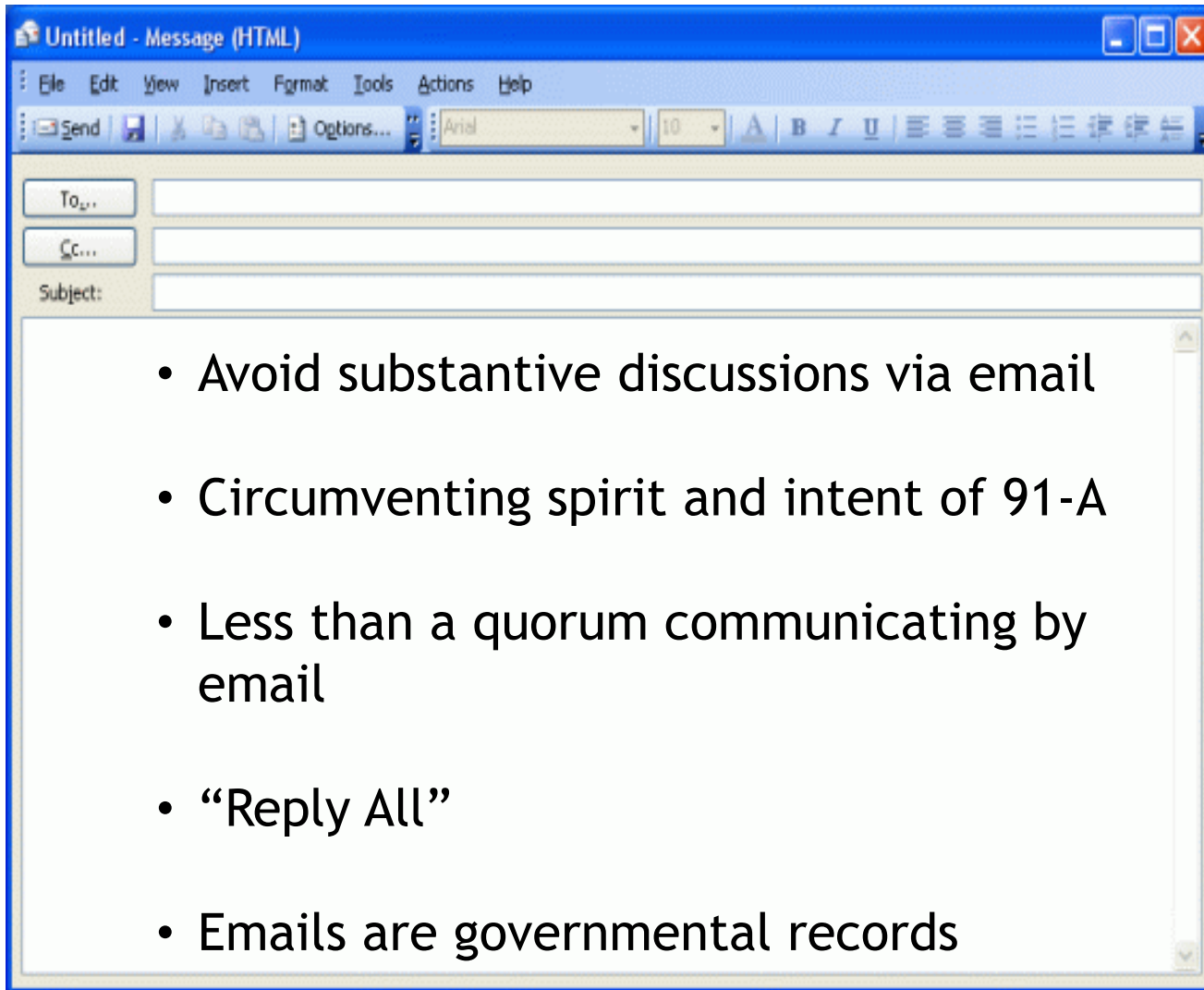
- In-person
- Email?
- Phone?

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



“Electronic Communications”





Quiz
Time

Poll Question



**Which New Hampshire town houses
Chases Grove, Collette's Grove, and
Howards Grove?**

- A. Deering**
- B. Derry**
- C. Dorchester**
- D. Deerfield**
- E. Ellsworth**

Remote (Electronic) Meeting Participation RSA 91-A:2, III

- ▶ Public body *may* allow
- ▶ Personal attendance “not practical” (in minutes)
- ▶ Quorum *present*
- ▶ Everyone can hear and be heard
- ▶ Identify persons present in remote location
- ▶ All votes by roll call



II. What is not a “Meeting”? (So-called “non-meeting”)

- Social or other encounter, no decisions
- Collective bargaining
- Consultation with legal counsel
- Circulation of draft documents
- **Different than nonpublic session!**



III. What are requirements of a public meeting?



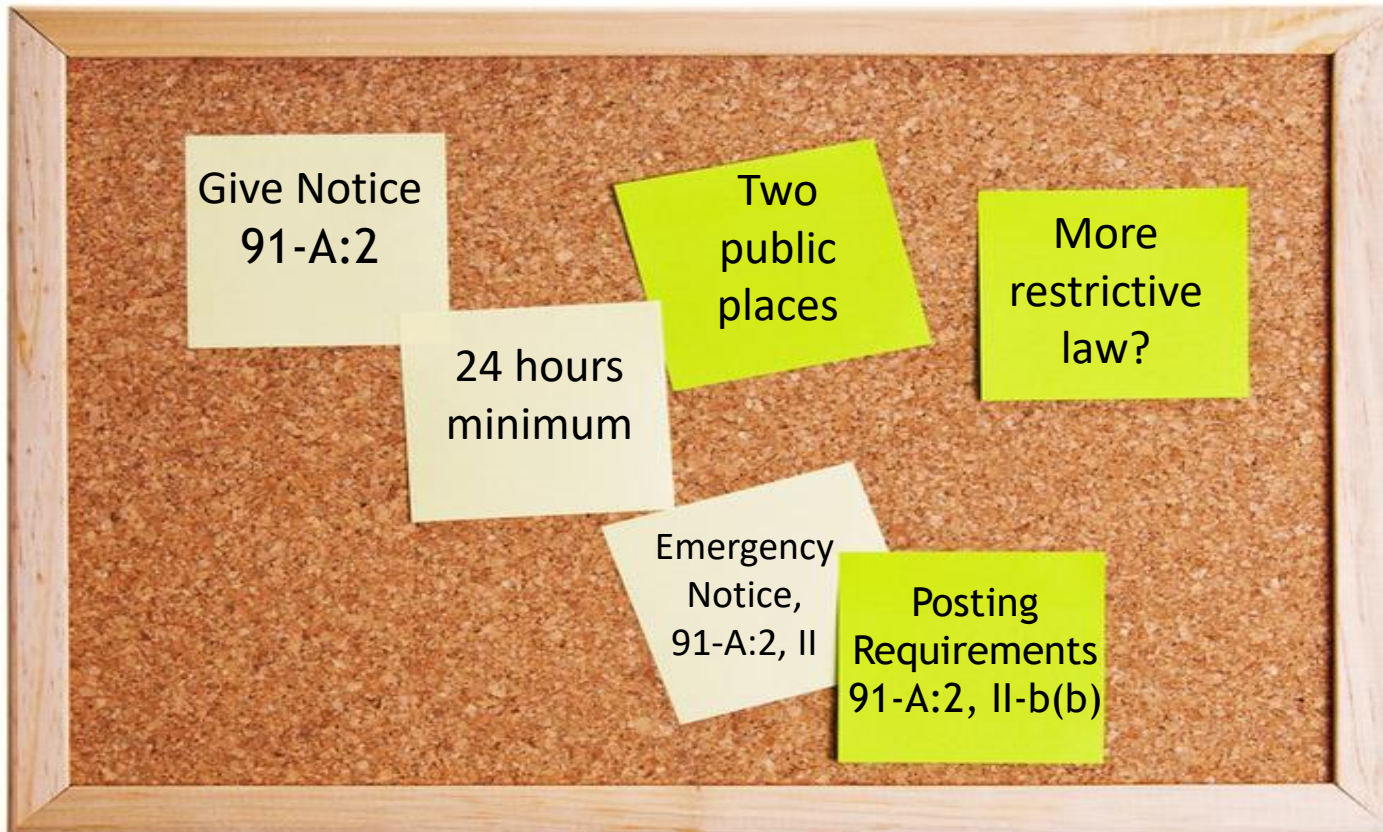
✓ Public notice

✓ Open to the public

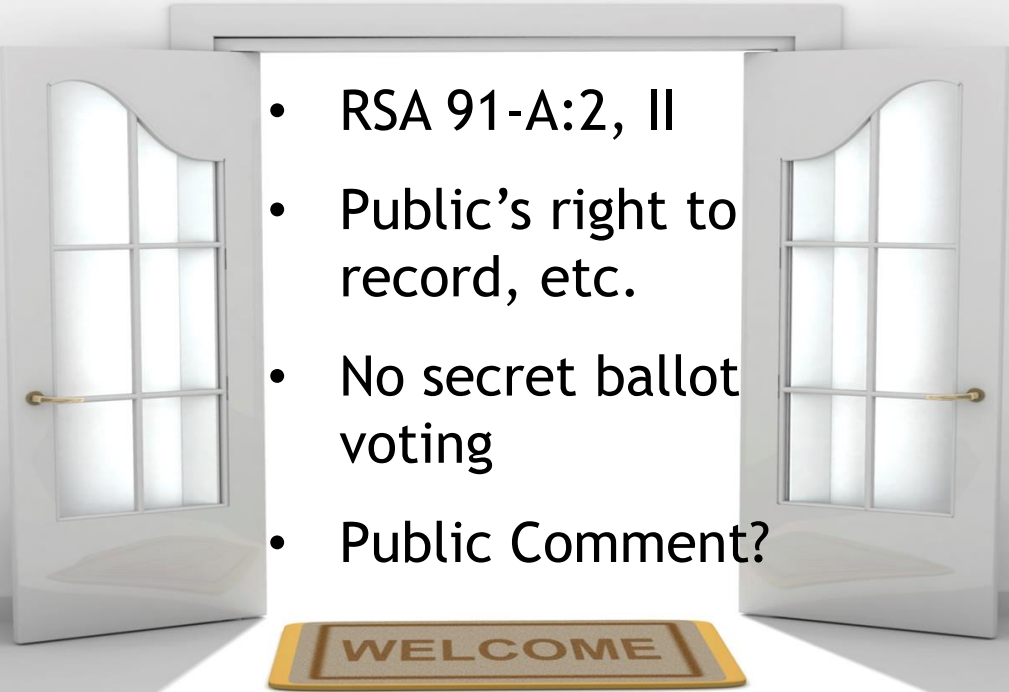
✓ Meeting minutes



“Posting Requirements”



“Open to the Public”

- 
- RSA 91-A:2, II
- Public’s right to record, etc.
- No secret ballot voting
- Public Comment?

Public Meeting Minutes RSA 91-A:2



- Minimum required contents
- Made available within 5 business days
- Posting requirements-
RSA 91-A:2, II-b(a)



Nonpublic Sessions - 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



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).





Quiz
Time

Poll Question



Name the New Hampshire town or city which was originally known as Maynesborough Plantation?

- A. Alton**
- B. Somersworth**
- C. Littleton**
- D. Berlin**
- E. Benton**

“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”



- Making 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



“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.



“Other Considerations”

- Include nonpublic session on posted agenda
- Timing—beginning or end of meeting?
- Attendance by non-members



“Recent Developments”



Green v. SAU #55

Electronic Records Must be Produced Electronically



“Taylor v. SAU #55”



- ▶ Electronic records must be produced electronically if requested, and if feasible.
- ▶ But no requirement to send records by e-mail; policy of requiring copying to thumb drive was valid.
- ▶ Future legislation?

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Upcoming Webinars & Workshops



Public Meeti



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Upcoming Webinars & Workshops

Public Meeti



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Regional Right-to-Know Workshops

\$35 without publication or \$55 with publication

A Guide to Open Government: New Hampshire's Right-to-Know Law

The Right-to-Know Law (RSA Chapter 91-A) affects every aspect of local government in our state. Every board, committee, commission, and advisory committee in every town, city, and village district in New Hampshire must comply with this law, which requires that discussions and actions of these bodies take place in a public meeting, subject to exceptions.



The Right-to-Know Law and Governmental Meetings

6:30 pm—8:30 pm
Tuesday, March 26, 2019

Derry Municipal Center
14 Manning Street
Derry, NH 03038

Join Executive Director Margaret Byrnes and Legal Services Counsel Stephen Buckley who will discuss the requirements for holding a proper public meeting, as well the exceptions to the meeting requirement (the so-called "non-meeting"). Then the attorneys will discuss the purposes for which public bodies may hold a nonpublic session, as well as the procedural requirements for a proper nonpublic session. This workshop will also address difficult "meeting" issues, such as communications outside a meeting and electronic means of communicating, and penalties and remedies provided in RSA Chapter 91-A.

There will be ample time for questions and answers.

Governmental Meetings

6:30 pm—8:30 pm
Tuesday, July 23, 2019

County Hall
12 Court Street
Keene, NH 03431

Governmental Records

11:30 pm—4:00 pm
Tuesday, August 6, 2019

Moultonborough Safety Complex
1035 Whittier Highway
Moultonborough, NH 03254

CHECK OUT NHMA'S PUBLICATION!

A Guide to Open Government: New Hampshire's Right-to-Know Law



- Includes Top Ten Compliance Tips
- Public Meeting & Governmental Records Posters
- Is it a Meeting Flow Chart
- Remote Participation Checklist
- And More!

Who Should Attend?

Everyone in Municipal Government

For registration information, visit www.nhmunipal.org under Calendar of Events.

Questions? Call 800.852.3358 or email NHMAregistrations@nhmunipal.org.



Public Meeti



For joining us today!



The New Hampshire Municipal Association is a nonprofit, 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.

