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NEW HAMPSHIRE MUNICIPAL ASSOCIATION



Ensuring a "Clean Vote" In Your Municipality

Stephen Buckley, Legal Services Counsel
Lynn Christensen, Moderator, Town of Merrimack

February 3, 2016



How to Participate Today

- Open and close your Panel
- Submit text questions
- Q&A addressed at the end of today's session
- Raise your hand in *response* to a question



What is Electioneering?



What is “electioneering”?

The term electioneering is defined in RSA 659:43, RSA 659:44 and RSA 659:44-a as any act that is specifically designed to influence the vote of a voter on any question or office.



Where is electioneering activity prohibited?

Under RSA 659:43, no candidate for office, or those working on behalf of a candidate, shall distribute or post any campaign material within the building where the election is being held. In addition, no person shall distribute any campaign materials or perform any electioneering activities, or any activity which affects the safety, welfare and rights of voters, within a corridor 10 feet wide and extending a distance from the entrance door of the building where the election is being held as determined by the moderator.

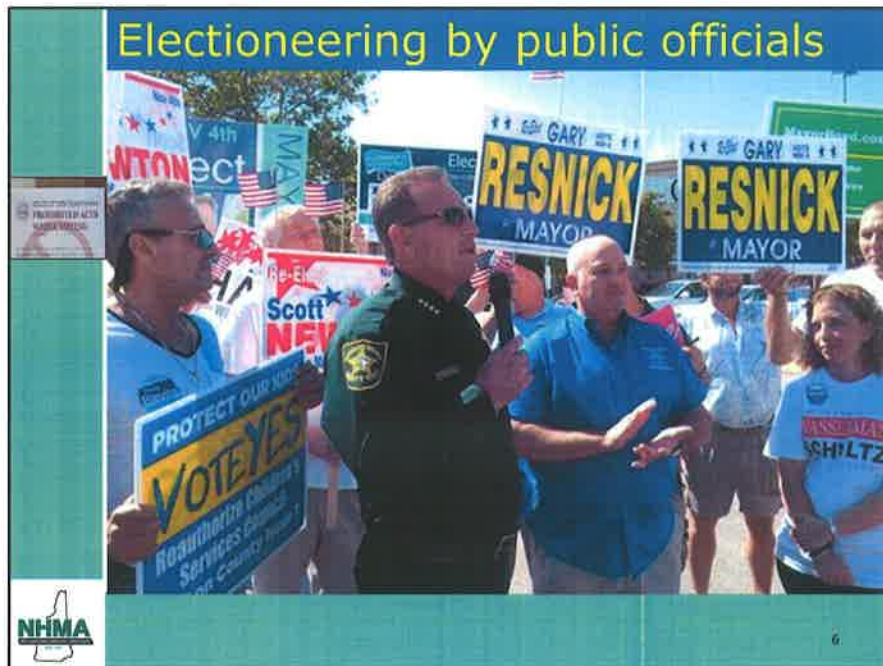
Campaign Signs At Polling Places



Have election officials ensured that there are no unattended campaign signs present on the property of the polling place, outside the no electioneering zone? RSA 664:17 (Law prohibits affixing signs to public property) Some moderators create electioneering zones where signs may be left unattended.

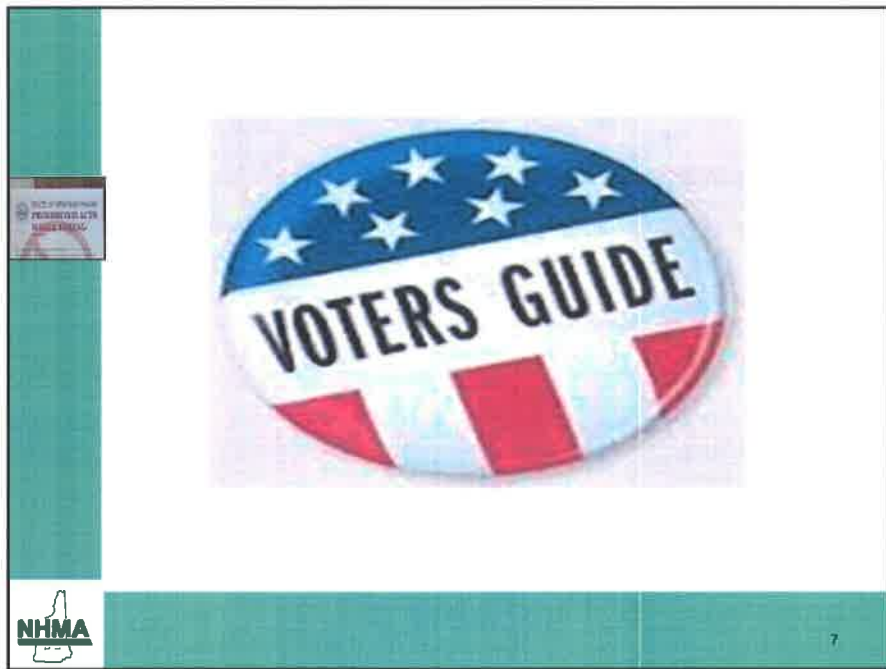
664:17 Placement and Removal of Political Advertising. – No political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner's consent. . . . Signs shall not be placed on or affixed to utility poles or highway signs. Political advertising may be placed within state-owned rights-of-way as long as the advertising does not obstruct the safe flow of traffic and the advertising is placed with the consent of the owner of the land over which the right-of-way passes. No person shall remove, deface, or knowingly destroy any political advertising which is placed on or affixed to public property or any private property except for removal by the owner of the property, persons authorized by the owner of the property, or a law enforcement officer removing improper advertising. Political advertising placed on or affixed to any public property may be removed by state, city, or town maintenance or law enforcement personnel. Political advertising removed prior to election day by state, city, or town maintenance or law enforcement personnel shall be kept until one week after the election at a place designated by the state, city, or

town so that the candidate may retrieve the items.



Are public officials prohibited from engaging in electioneering activities?

- RSA 659:44 prohibits electioneering at a polling place by any election officer. The term “election officer” is defined as “any moderator, deputy moderator, assistant moderator, town clerk, deputy town clerk, city clerk, deputy city clerk, ward clerk, selectman, supervisor of the checklist, registrar, or deputy registrar.” RSA 652:14.
- Although the heading of the statute would seemingly limit the prohibited electioneering by election officials to activities at a polling place, the NH Attorney General’s Office has interpreted RSA 659:44 as prohibiting any official action by an election official to endorse a candidate for office.
- According to the Attorney General’s Office it is a violation of RSA 659:44 for a select board to endorse a candidate for office while acting in their official capacity. However, an individual select board member could endorse a candidate in her individual capacity.



Voter Guides

- Governing bodies can and do advocate for the adoption, or defeat of specific warrant articles. Nevertheless, there have been instances where the NH Attorney General's Office has ordered a municipality to rescind or revise a voter guide claiming the information provided exceeded the permissible boundaries of simply informing the voters on an issue and straying into impermissible electioneering.
- NHMA would recommend that voter guides educate the voters on the issues presented by any proposed budget or warrant article and state the position of the governing body and budget committee through their respective recommendations.


Warrant Article Recommendations

Selectmen 's Articles

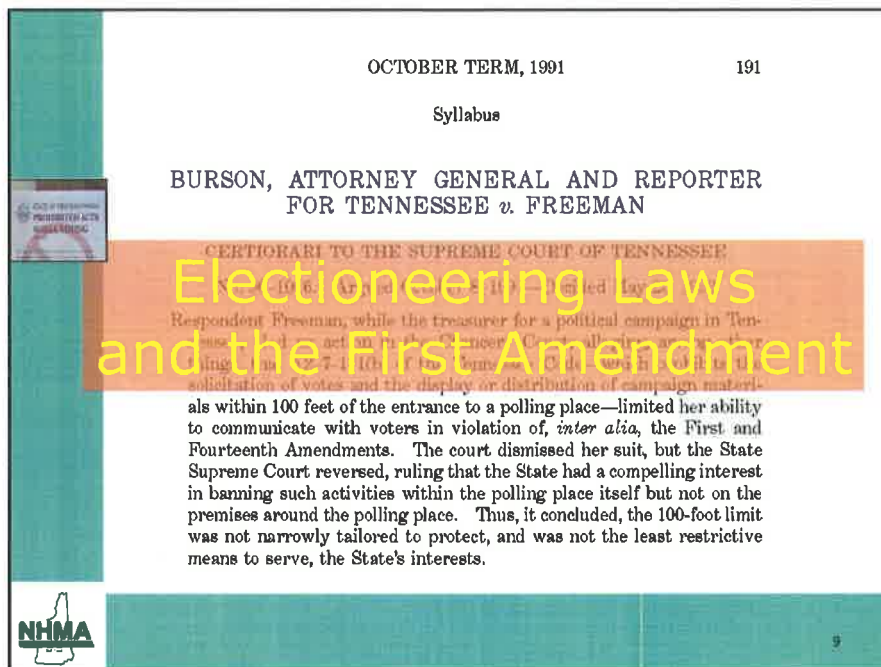
Article 2 Construction of a New Fire Station

Shall the Town of Hudson vote to raise and appropriate the sum of \$2,174,600 for the design and construction of a new fire station on town-owned land located on Lowell Road, and to authorize the issuance of not more than \$2,000,000 of bonds or notes in accordance with the provisions of Municipal Finance Act (RSA Chapter 209) and to authorize the Board of Selectmen to issue and negotiate such bonds or notes and to determine the rate of interest thereon and further raise and appropriate the sum of \$174,600 for the purpose of paying (1) fees on issuance of such bonds or notes, (2) general obligation bonds or notes (35 ballot vote required) (This appropriation is in addition to Article 3, the Operating Budget)

(Recommended by the Board of Selectmen 5-0) (Recommended by the Budget Committee 6-5)



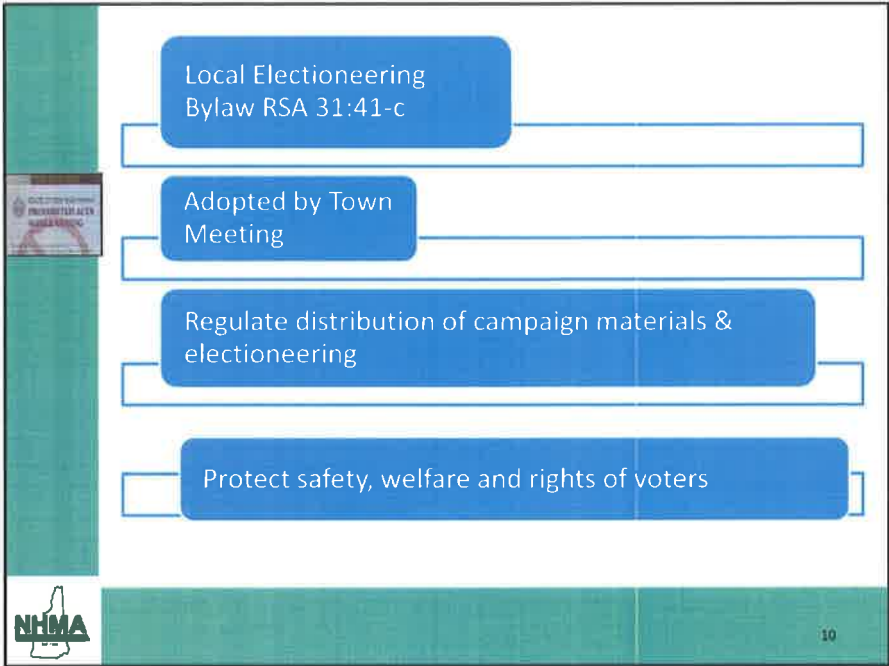
Keep in mind the recommendations of the budget committee are limited to articles containing an appropriation, but, at least according to one superior court judge, the select board can express their recommendations on any article, including non-budgetary articles. See, *Jeremy Olson v. Town of Grafton*, Grafton County Superior Court, Docket No. 215-2015-CV-00057, 3/9/15.

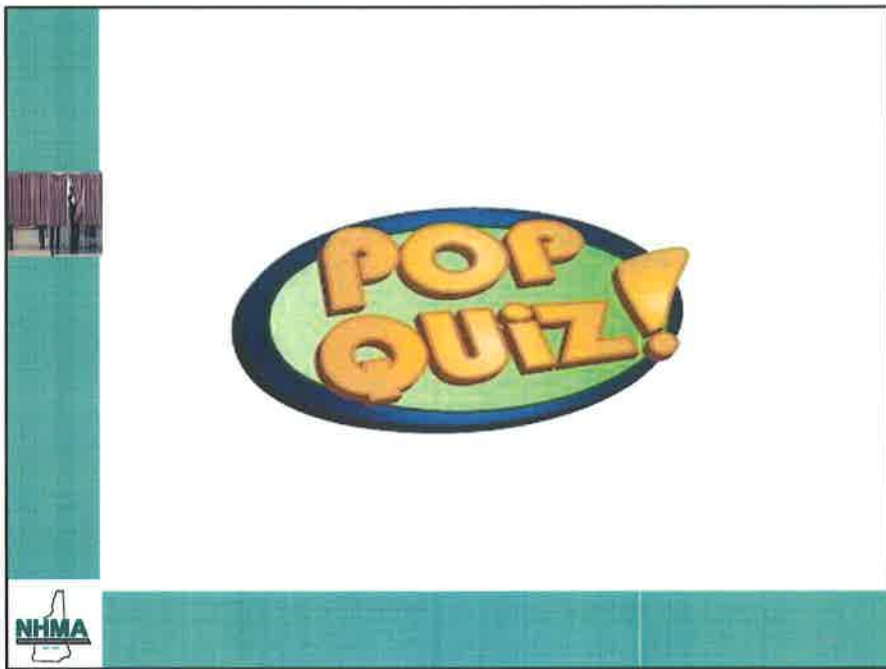


Burson v. Freeman, 504 U.S. 191 (1992)

- In sum, an examination of the history of election regulation in this country reveals a persistent battle against two evils: voter intimidation and election fraud.
- After an unsuccessful experiment with an unofficial ballot system, all 50 States, together with numerous other Western democracies, settled on the same solution: a secret ballot secured in part by a restricted zone around the voting compartments.
- We find that this widespread and time-tested consensus demonstrates that some restricted zone is necessary in order to serve the States' compelling interest in preventing voter intimidation and election fraud.
- Here, the State, as recognized administrator of elections, has asserted that the exercise of free speech rights conflicts with another fundamental right, the right to cast a ballot in an election free from the taint of intimidation and fraud.
- A long history, a substantial consensus, and simple common sense show that some restricted zone around polling places is necessary to protect that fundamental right.
- Given the conflict between these two rights, we hold that requiring solicitors to stand 100 feet from the entrances to polling places does not constitute an unconstitutional compromise. ***This is language from the US Supreme Court decision meaning, that it is perfectly constitutional to limit electioneering within 100 feet of***

a polling place even though this limits the right of free speech protected by the First Amendment, because an equally important or more important right, the right to vote could be compromised



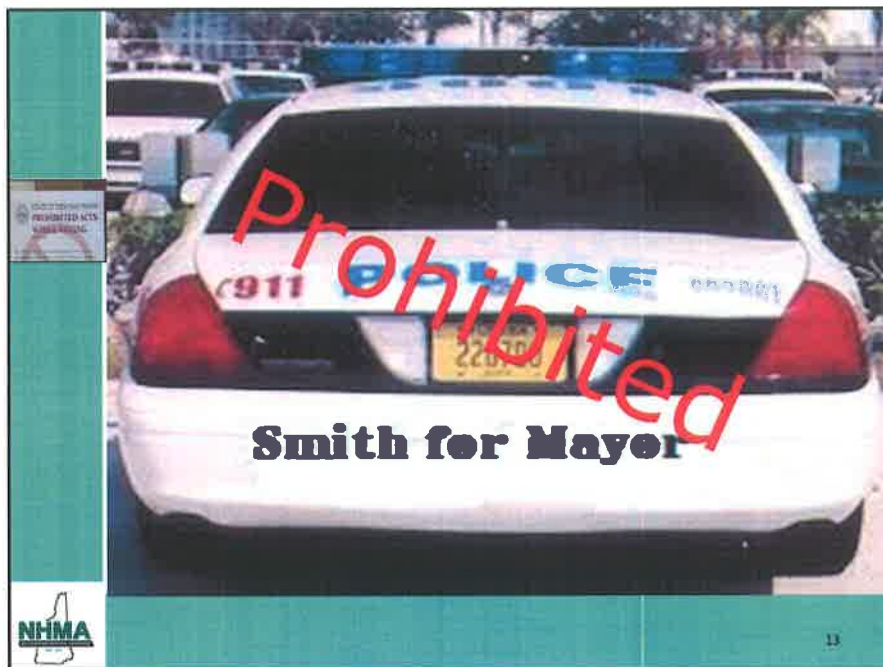


Who was the last New Hampshire governor born in New Hampshire?



1. Walter Peterson
2. John Winant
3. Steve Merrill
4. Craig Benson



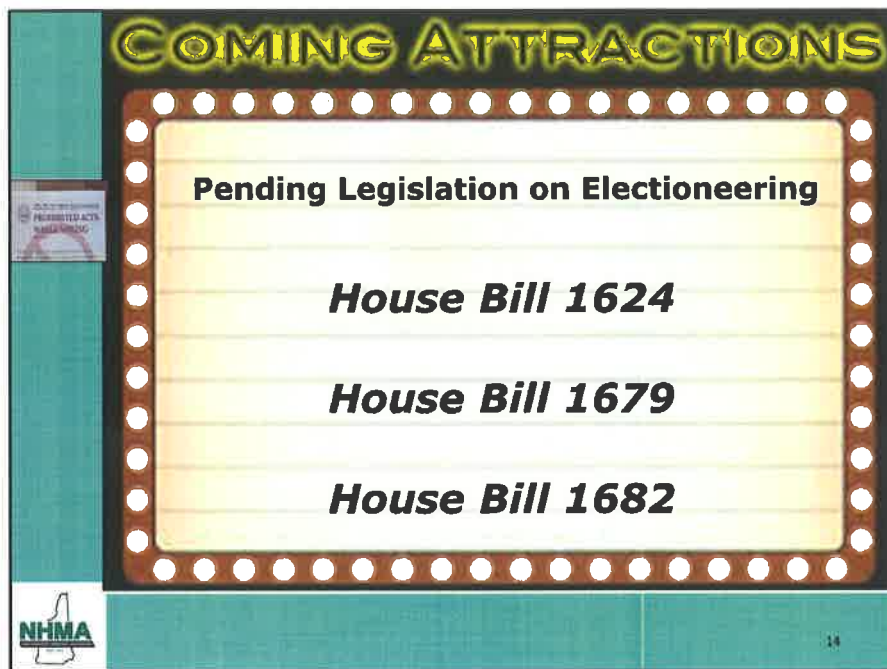


What about political advertising on government vehicles?

RSA 664:17-a prohibits the display of political advertising on any motor vehicle that:

Is used by a police officer authorized to make arrests or serve process; or

Which displays government license plates and is registered in the name of the state or of a political subdivision of the state.

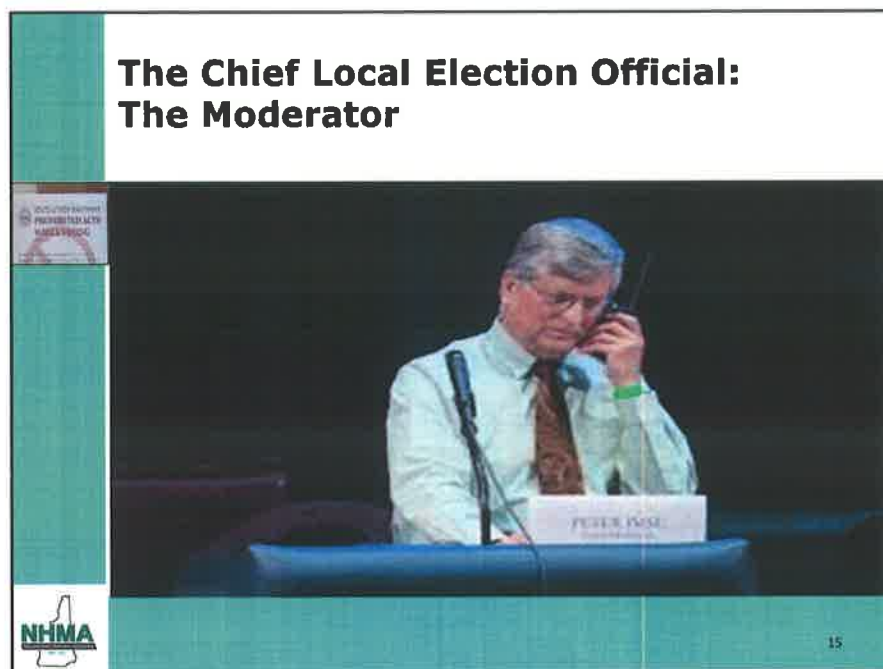


HB 1624: Amend RSA 659:44-a to provide that no person, not just public employees, shall use government property for electioneering.

HB 1679: Amend RSA 659:44-a to provide:

- That the definition of public employee prohibited from electioneering in the performance of official duties would include any classified or non-classified employees or volunteers, who conducts state business on behalf of the governor, any executive branch official, agency, or the general court.
- The following additional elected public officials would be prohibited from electioneering while in their official capacity or use government property or taxpayer funding for electioneering; the governor, members of the executive council, members of the general court, county commissioners, county sheriffs, county treasurers, county attorneys, registers of deeds, and registers of probate, the secretary of state, the state treasurer, their deputies, assistants, and all employees of their departments, and any person elected to a town, village district or school district position

HB 1682: Amend RSA 659:44-a to also prohibit “public servants” from electioneering in the performance of their official duties. A public servant is “any officer or employee of the state or any political subdivision thereof, including judges, legislators, consultants, jurors, and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position. A person is a candidate for electoral office upon his public announcement of his candidacy.” RSA 640:2 (II) (a)



Who presides over local elections?

The Moderator is the chief local election official. RSA659:9. The Moderator has the duty ensure compliance with the election procedure statutes set forth in RSA Chapter 659.

What other local officials must be in attendance at local elections?

The Supervisors of the Checklist. RSA 659:10 and the Town Clerk. RSA 41:16.

Conduct of Election: Coordination With Town Election

- Once the school district votes to elect school district officers at the town elections as provided in ***RSA 671:22***, the district is deemed to have adopted the town's checklist. ***RSA 271:24***.
- The school district clerk prepares the official ballots for the school election and delivers them to the town moderator before the opening of the polls. ***RSA 671:25***.
- Town election officials act in like capacity for the school district in conducting elections. But town election officials turn school district ballots over to the school district moderator who conducts the vote count with the assistance of other legal voters of the school district. ***RSA 671:26***

Board of Selectmen



Must the entire select board be in attendance at all elections?

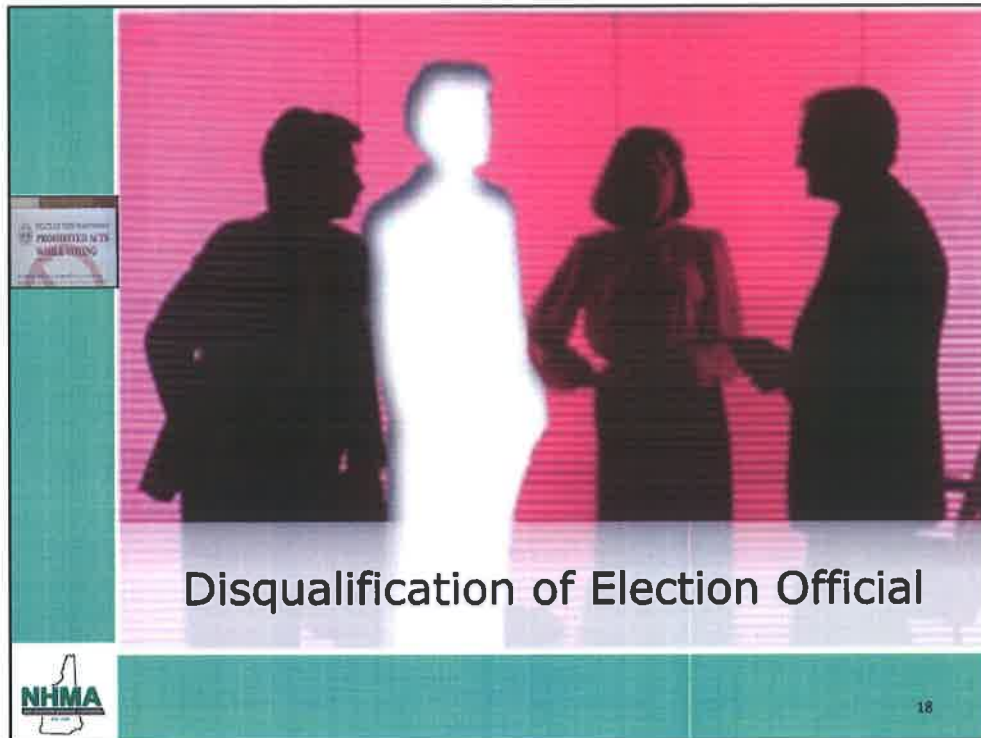
Pt. 2, Art. 32 of the NH Constitution requires the attendance of the Select Board during voting and vote tabulation at a State General Election. For primary elections, the New Hampshire Attorney General's Office takes the position that a quorum of the Select Board of must be present at all times. The New Hampshire Municipal Association (NHMA) does not share that view because NHMA believes that the duty to attend imposed on the Select Board stated in Pt. 2, Art. 32 of the New Hampshire Constitution only applies to the State General Election. Note also that where the presence of a select board member who is on the ballot is necessary to establish a quorum of the Select Board, the select board member may be present at the polling place, provided he or she is not within the guardrail.

Election Officials Who Are on The Ballot



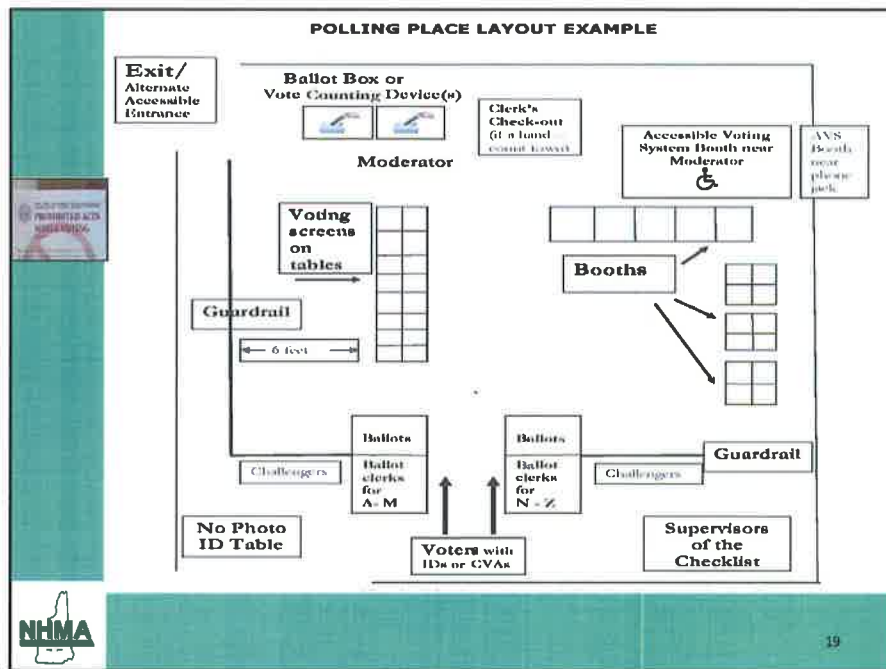
What election duties, if any, can be performed by a moderator or a select board member who is also on the ballot?

If the moderator is on the ballot for an elective position, she is permitted to perform all of her election duties, except she shall not handle marked ballots and the counting of votes . However, if the moderator is on the ballot for the position of an election officer, she may carry out all of her election duties. If an election official is on the ballot, he would be prohibited from handling marked ballots and he would also be prohibited from being within the guardrail during the counting of votes for an office for which he is a candidate. RSA 659:58; See also RSA 658:24.



What disqualification provisions govern other election officials?

RSA 659:58, Disqualification of Officials, states: Any election official, other than the moderator, who is also a candidate for office shall not be allowed to remain within the guardrail during the counting of votes for an office for which he is a candidate. Such official shall disqualify himself from election duties relating to the tabulation of votes; and the moderator shall appoint an assistant who shall take the same oath as, serve in the same capacity as, and have all the powers of the election official who is disqualified until such official may properly return.

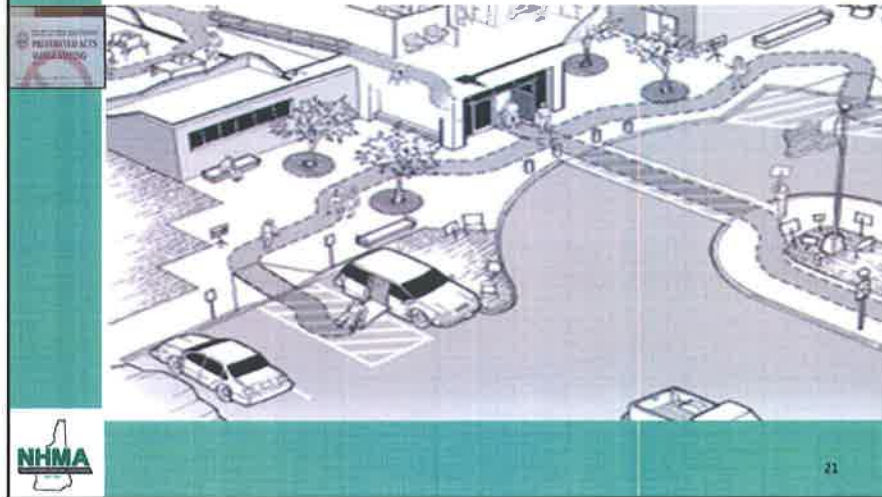


- The flag of the United States must be displayed inside and, weather conditions permitting, flown outside the polling place on election day.
- A guardrail shall be so constructed and placed so that only such persons as are inside such rail can approach within 6 feet of the ballot box and of the voting booths. The arrangements shall be such that the voting booths can be reached only by passing within the guardrail.
- The voting booths shall be in plain view of the election officers, and both they and the ballot box shall be in plain view of those outside the guardrail. Each voting booth shall have 3 sides enclosed, one side in front to open and shut by a door swinging outward or to be enclosed with a curtain. Each side of the booths shall be not less than 6 feet high. The booth shall be between 28 and 36 inches wide, and between 28 and 36 inches deep. The door or curtain shall extend to within 2 feet of the floor and shall be closed while the voter is marking his or her ballot. Each booth shall be well lighted and shall contain a shelf between 12 and 15 inches wide running the width of the booth at a convenient height for writing.



- Each polling place shall have at least one voting booth which is easily accessible to elderly persons and to persons with physical disabilities. The entrance handicapped accessible booth shall have a clear opening of at least 60 inches and shall have clearances that comply with the New Hampshire building code, RSA Chapter 155-A, and with standards implementing the Americans with Disabilities Act of 1990, 28 C.F.R. Part 36.
- Each polling place shall have table-top voting screens available for use in an election. Each voting screen shall consist of 3 panels, to be positioned on a table or similar surface so that when a voter is marking a ballot he or she is provided privacy. Each panel of the screen shall be at least 17 inches high and 15 inches wide. RSA 658:9.

Accessible Polling Station

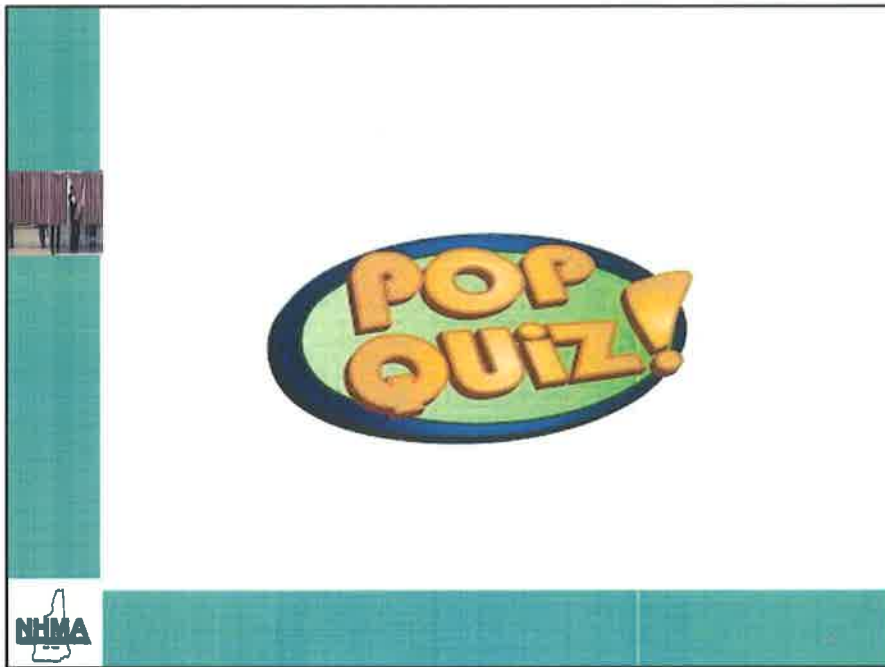


Are there mandatory requirements for accessibility to the polling place by those with disabilities and the elderly?

Polling places shall be easily accessible, as provided in RSA 658:9-a, to all persons including persons with disabilities and elderly persons who are otherwise qualified to vote. Where parking is provided for the polling place, there shall be at least one van-accessible parking space that is in compliance with the New Hampshire building code, RSA 155-A, and with standards implementing the Americans with Disabilities Act of 1990, 28 C.F.R. Part 36 and designated with the international symbol of accessibility. The paths of travel to and from the polling place shall comply with the accessible route requirements of the New Hampshire Building Code, RSA Chapter 155-A, and with standards implementing the Americans with Disabilities Act of 1990, 28 C.F.R. Part 36. RSA 658:9-a.

Resources: **ADA Guide For Small Towns.**
<https://www.nhmunicipal.org/Resources/ViewDocument/444>

The ADA and City Governments: Common Problems.
<https://www.nhmunicipal.org/Resources/ViewDocument/443>





Most New Hampshire cities have their municipal elections in November, but one city has its elections in March. Which one is it?

1. Berlin
2. Keene
3. Lebanon
4. Dover



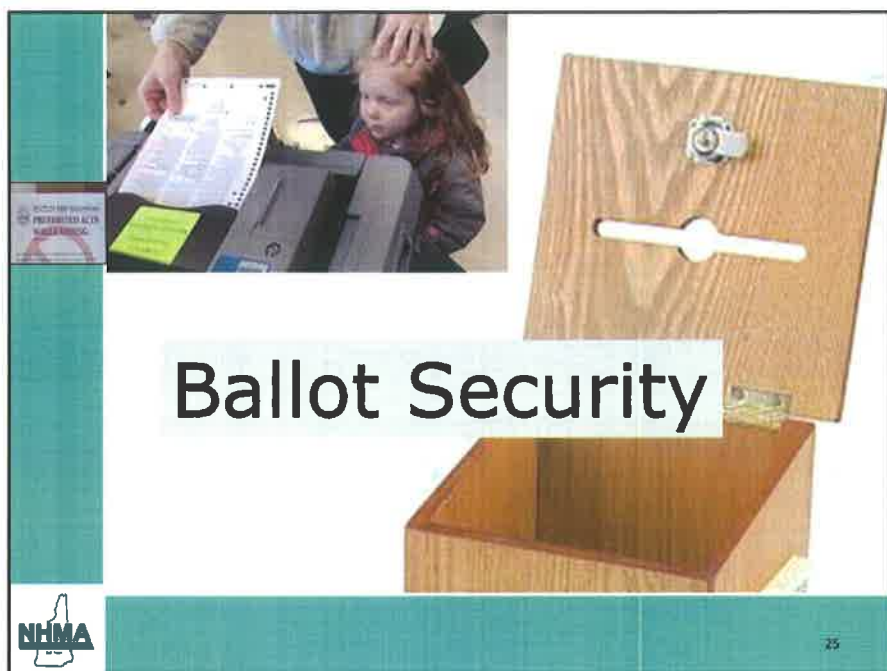


What information is required to be posted at the polling place?

The following information is required to be posted at the polling place:

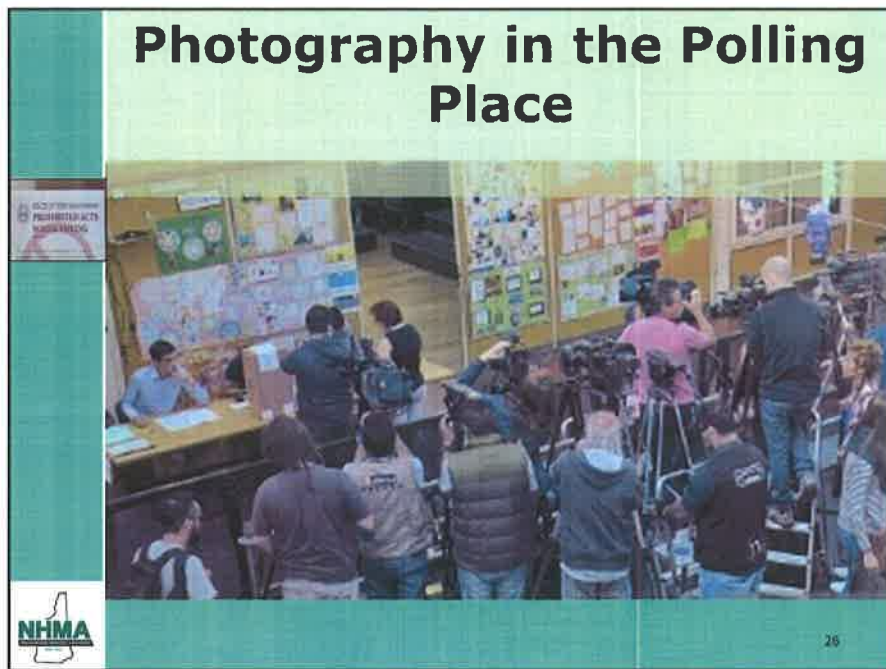
- Sample ballots shall be posted outside the guardrail. For the general election, 2 sample ballots to be posted. For the state and presidential primaries, 2 sample ballots of each party are to be posted. At least one sample ballot for the general election and one sample ballot of each party for each of the primaries shall be posted no higher than 48" so as to be convenient for those voters in wheelchairs. RSA 658:26.
- A voter instruction card prepared by the secretary of state shall be posted in each voting booth along with no fewer than 3 such cards posted immediately outside the guardrail. RSA 658:38.
- The secretary of state shall prepare and distribute copies of the following RSA sections which shall be posted outside the guardrail at all elections: RSA 654:7-a, RSA 654:7-b, RSA 659:13, RSA 659:13-b, RSA 659:27, RSA 659:30, RSA 659:31, RSA 659:32, RSA 659:34, RSA 659:35, RSA 659:37, RSA 659:38, RSA 659:40, RSA 659:41, RSA 659:103, RSA 666:4, RSA 666:5, and RSA 666:8.
- A notice prepared by the secretary of state explaining to voters the photo identification requirement in RSA 659:13, including all the permissible methods for proving identity. Such notice shall also include the penalties as described in RSA 659:34. The governing body must have this photo identification notice posted at least 14 days prior to any election. During the election the poster must be placed

outside the guardrail. RSA 658:29-a.



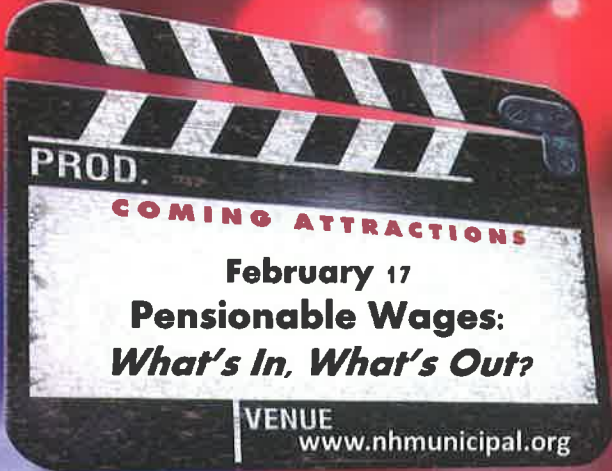
What statutory provisions protect against ballot fraud?

- As provided in RSA 658:31, at or prior to the opening of the polls, the seal of the ballot packages delivered to the municipality by the secretary of state is publicly broken by the clerk and the ballots given to the ballot clerks to be examined and counted by the election officers in the presence of the clerk, the moderator, and at least one other legal voter.
- As provided in RSA 658:36, at the opening of the polls, the ballot box must be publicly opened and shown to be empty; and the election officers shall ascertain that fact by a personal examination of the box. Spoiled ballots must be marked cancelled and preserved. RSA 659:22.
- After the counting of the votes and announcement of the results by the moderator, the moderator must record and sign a ballots cast form prepared by the secretary of state within 48 hours of the closing of the poll. RSA 659:73 (VI).



- Nothing specifically authorizes the regulation of video or still photography within the polling station.
- However, RSA 659:37 does protect a voter from interference by another while the voter is within the guardrail.
- To the extent a voter expressed an objection to being photographed while in the act of voting (such as a religious objection), the moderator could deem such activity to be an interference with a voter and order the offending person to cease or leave the polling station.
- Although prohibiting photography or videography within the polling station may clash with the First Amendment, the Third Circuit Court of Appeals found that there is a very real possibility that the presence of reporters during the sign-in period, when individuals are necessarily exchanging personal information in preparation for casting a private vote, could concern, intimidate, or even turn away potential voters.
- The Third Circuit ruled that Pennsylvania election officials could exclude print and video news reporters from polling stations. PG Publishing v. Aichele, 705 F.3d 91 (3d

Cir. 2013). In addition, RSA 31:41-c would permit the Town Meeting to adopt a bylaw to prohibit any activity that affects the safety, welfare, and rights of voters within or near a polling station




PROD.

COMING ATTRACTIONS

February 17

Pensionable Wages:
What's In, What's Out?

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Mission Statement

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