



**Board of Selectmen**  
Town of Hollis  
7 Monument Square  
Hollis, New Hampshire 03049  
Phone: 603.465.2209

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**TO: New and Reappointed Members of Volunteer Boards**  
**FROM: Chrissy Herrera, HR Coordinator/Administrative Assistant**  
**SUBJECT: Appointment Letter, Professional Guidelines and Public Process**

Welcome new and reappointed board members! The Board of Selectmen is grateful to you for your willingness to make a personal sacrifice of time and effort toward the betterment of our wonderful town. Hollis has an enduring reputation, perhaps unequaled in the state, of having a vital tradition of volunteerism. An important thing to remember as you begin your role is that individuals working together carry on this tradition.

Enclosed is a letter from the Board of Selectmen Chairman, Mark Le Doux in addition to documents dealing with ethical and procedural issues. In 2000, the Board of Selectmen adopted the "Professional Guidelines for the Town of Hollis". As the Guidelines indicate, they are intended to embody common sense principles to assist volunteer board members to make decisions regarding conflicts of interest and other ethical issues.

Another enclosure is a copy of RSA Chapter 91-A, New Hampshire's Right-to-Know Law, Brief Municipal Overview provided by the New Hampshire Municipal Association. It is important to recognize that there is a very narrow range of issues for which non-public sessions may be held, and there are also important procedural steps to be taken. Whenever a board goes into non-public session, the motion should identify what portion of RSA 91-A authorizes the session, and the vote should be recorded by roll call. Minutes should be taken of the non-public session, and these should be made available to the public according to the terms of the law. I urge you to study this law carefully—it may seem inconvenient at times to comply with it, but *the interests protected by the Right-to-Know Law are some of the essential civil liberties we all depend on to ensure that government is serving the people, not itself*. The courts have construed this law narrowly and strictly—it is not subject to "common sense" interpretation.

**PLEASE NOTE: Your appointment is not official until you have been sworn in by the Town Clerk.**

Please bring your appointment form (enclosed) to the Town Clerk's office (located in the Marketplace) for signature during the following business hours.

Monday 8:00AM-1:00PM  
Wednesday 8:00AM-1:00PM  
Friday 8:00AM-1:00PM

Monday Evenings 6:00PM – 8:00PM

1<sup>st</sup> Saturday/month 8:00AM – 11:00AM



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April 10, 2017

Dear Neighbor,

First, let me thank you for volunteering your valuable time and knowledge to the board, committee or commission in which you are providing service to our community. We wanted to take this opportunity to acquaint you with the various legal requirements associated with volunteering in our Town. Without your service and that of other dedicated citizens, it would be next to impossible to effectively govern our community and help preserve the legacy of our forebears who have created this magnificent Town of Hollis which we affectionately call home.

To that end, please understand, our intent as the Board of Selectmen is to acquaint you with the various applicable statutes set up by our state government representatives, and embodied in applicable Revised Statutes Annotated (RSA's). One of the overarching statutes deals with the issue of transparency and record keeping. The RSA 91 chapter deals with meetings in general, record keeping requirements, right-to-know language, management of electronic communications and the style and substance of the minutes to be gathered at the meeting.

The first order of business is the posting of and conducting of a public meeting. This requires adequate notice and must have records kept of the attendees, the substance of the topics of discussion, the deliberations, and decisions taken by the competent committee members at such a meeting. Within a fairly brief period of time, these minutes must be prepared, circulated to the boards, commissions or committees in question and acted upon via ratification or amendment at a subsequent meeting. These then become part of the permanent record of the Town and are subject to right-to-know requirements, with certain items exempted dealing with personal reputation or other attorney-client protected communications. There are practical considerations when preparing minutes, and these should be adhered to by staff as well as committee and commission members so that there is an element of consistency observed in the historical documents. The time the meeting is called to order, and a roster of the attendees and those absent should be present in the pre-amble of the meeting minutes. In addition, any deliberations taken on specific topics and the discussions surrounding these should be properly documented, with a vote taken and recorded in the minutes. Staff input when requested to make proper decisions should also be cited by reference and incorporated as points of reference or addenda to the minutes, and the motions made, seconded and passed or rejected should be carefully noted. Finally, a motion to adjourn and a second followed by the vote should be recorded along with the time that the meeting adjourned.

Non-Public meetings should bear the name of the committee, board or commission, the list of attendees, the date and the time initiated. A valid reason must be cited for the entity to enter into a non-public discussion, and the public should be excused from the discussion. The time the meeting is created is when a motion has been duly made by a competent member of the board or committee/commission, seconded and voted on in the affirmative. The specific statutory reasons can be one or more of the following:

RSA 91-A-3, II(a) - The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, UNLESS the employee affected (1) has a right to a public meeting, and (2) requires that the meeting be open, in which case the request shall be granted.

RSA 91-A:3. II(b) - The hiring of any person as a public employee.

RSA 91-A:3, II(c) - Matters which, if discussed in public, would likely affect adversely the reputation of any person, OTHER THAN A MEMBER OF THIS BOARD, unless such person requests an open meeting. This exemption shall extend to include any application for assistance or tax abatement or waiver of a fee, fine or other levy, if based on inability to pay or poverty of the applicant.

RSA 91-A:3, II(d) - Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

Of importance here is the need for abutters to said property who may be empaneled in a committee, commission or board to notice same, and offer recusal from discussions due to the potential for self-dealing or other conflicts of interest.

RSA 91-A:3 II(e) - Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed by or against this board or any subdivision thereof, or by or against any member thereof because of his or her membership therein, until the claim or litigation has been fully adjudicated or otherwise settled.

RSA 91-A:3(i) - Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

RSA 91-A:3(l) - Consideration of legal advice provided by legal counsel, either in writing or orally to one or more members of the public body, even where legal counsel is not present.

Once one or more of these applicable statutes has been cited, a roll call vote on the motion to enter a non-public session shall be taken and recorded. Any recording or other copying for the public or discussions made electronically shall be terminated, and the meeting shall proceed absent the public in attendance. All Town personnel present in the meeting shall be noted in the minutes of the Non-Public session. Under RSA 91-A:3-III, all minutes of proceedings in non-public session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided for in this section. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, UNLESS, by recorded vote of 2/3 of the members present, taken in PUBLIC SESSION, it is determined that divulgence of the information likely would affect adversely the reputation of any person OTHER THAN A MEMBER OF THIS BOARD, or render the proposed action of the board ineffective, or pertain to terrorism. In the event of such circumstances, information may be withheld until, in the opinion of a majority of the members, the aforesaid circumstances no longer apply.

Upon the conclusion of the actions of the nonpublic meeting, a motion to come out of said meeting and re-enter public meeting shall be duly made and seconded and voted upon. If the public meeting vote passes, the public meeting shall reconvene, be recorded as such in the minutes, and transcription or recording recommenced. If there is a motion to seal the minutes following the RSA guidelines, it must be taken in public session and have the requisite number of affirmative votes to be kept sealed and the reasons for keeping them sealed must be mentioned. A roll call of the votes to keep the minutes sealed should be taken in the minutes and duly recorded.

#### Public Meetings

The basic rule is that all meetings of a public body must be open to the public and require public notice. Minutes must be kept and be made available to the public upon request within five business days after the meeting. Public bodies may only enter a nonpublic session for specific reasons listed in the law, and must keep minutes of those sessions as well.

Public Records

The basic rule is that governmental records must be made available for public inspection and copying upon reasonable request. The government must respond to requests within five business days. Certain records are exempt from disclosure, but New Hampshire courts generally assume everything is available to the public unless the governmental agency proves otherwise.

Electronic Communications

Under amendments that became effective in 2008, public bodies may not conduct official business via e-mail. Municipal websites may be used as one of the two places for publicly posting notice of meetings. Electronic records must be made available to the public upon request and must be kept for the same length of time as a paper counterpart. Electronic records are considered "deleted" (and no longer available to the public) when they have been "initially and legally deleted" so that they are no longer readily accessible to the public body itself. This means (a) the record wasn't required to be retained any longer, and (b) it has been deleted and the "trash" or "recycle bin" folder has also been emptied.

Again, we thank you for your commitment to help us effectively, fairly and impartially govern our community. It is a high honor to serve the public, and we are committed to assisting you in undertaking this endeavor for the greater common good.

Sincerely,



Mark A. LeDoux  
Chairman - Board of Selectmen  
Town of Hollis, NH

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64 Dow Road  
PO Box 327  
Hollis, NH 03049-6502



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## **PROFESSIONAL GUIDELINES FOR THE TOWN OF HOLLIS**

The Professional Guidelines set forth below are for all full-time and part-time personnel; all appointed and elected officials and all volunteers for the Town of Hollis. Collectively, all will be considered as “public officials” and shall:

1. Perform their duties in accordance with applicable laws and regulations and apply them uniformly and fairly. Perform all work related assignments to the best of their ability and in accordance with standards pertaining to their particular duties.
2. Make available all public records in their custody for public review unless access to such records is specifically limited or prohibited by law, or the information has been obtained on a confidential basis and the law permits such information to be treated confidentially. Make every effort to inform the public about their rights and responsibilities under the law and as applied to each case. A written request may be required.
3. Maintain an open, courteous and respectful attitude in their dealings with the public and require the same of their subordinates.
4. Cooperate with other public officials to improve the efficiency and effectiveness of public administration.
5. Conduct their duties and activities in a manner that will reflect credit upon themselves and their professions.
6. Claim no professional designation unless authorized by the conferring organization, whether the claim be verbal or written, not claim qualifications that are not factual or may be misleading.
7. Give full credit to the source of any materials quoted or cited in writings, speeches, or deliberations.
8. Accept no assignments that could reasonably be construed as being in conflict with their responsibility to their employment. Accept no assignments in which there might be an unrevealed personal interest or bias. Accept no assignment in which they are not qualified to perform.
9. Never accept work for which there is compensation dependent upon or influenced by any condition that could impair objectivity. It is not the purpose of this standard to prohibit the acceptance of all contingency engagements. It does, however, prohibit the acceptance of contingency engagements that in any way might compromise the integrity of decisions of the public official.

# PUBLIC MEETINGS

**BASIC RULE:** All meetings of public bodies must have proper notice and be open to the public.

- *Public body:* All committees, subcommittees, boards, commissions, agencies, etc. that perform a governmental function for a town, city, village district or school district. RSA 91-A:1-a.
- *"Meeting":* The convening of a quorum (majority) of any public body to discuss or act on any of that body's business, including work sessions. It is a "meeting" whether the members convene in person, by telephone, or electronic communication, or in any other way in which all members may communicate with each other contemporaneously. **However**, legal meetings may never be conducted by email or any other format which does not comply with notice and public accessibility requirements, or which does not allow the public to hear, read or discern the discussion contemporaneously at the noticed meeting location. RSA 91-A:2.
- *What is not a meeting?* Gatherings of fewer than a quorum; consultation with legal counsel; chance or social meetings neither planned nor intended to discuss official matters and at which no decisions are made; strategy or negotiations regarding collective bargaining.
- *Notice:* Minimum of 24 hours (not including Sundays or holidays), either published in a local newspaper or posted in two prominent public places, one of which may be the public body's website. RSA 91-A:2. Other statutes or local rules may require more notice.
- *"Open to the public":* Anyone, not just local residents, may attend, take notes, record and photograph the meeting. However, except as required in a public hearing, the public has no guaranteed right to speak. RSA 91-A:2.
- *Telephone participation:* Boards may (but do not have to) allow one or more members to participate in a meeting by telephone or other electronic means (RSA 91-A:2), if:
  - Physical attendance is not reasonably practical (note in meeting minutes);
  - All members can simultaneously hear and speak with each other;

- Except in an emergency, a quorum is physically present in the noticed meeting location;
- All parts of the meeting are audible or otherwise discernible to the public in that location.
- *Deliberations:* Public bodies may only deliberate in properly held meetings and may not use communication outside a meeting (such as sequential emails or phone calls) to circumvent the spirit or purpose of the law. RSA 91-A:2-a.

**MINUTES:** Must be kept for all public meetings and made available to the public upon request within five business days after the meeting (whether or not approved yet). Must include members present, others participating, and a brief description of subjects discussed and final decisions made. RSA 91-A:2.

**NONPUBLIC SESSIONS:** Meetings or portions of meetings that the public may not attend. Begin in a properly noticed public meeting. A motion for nonpublic session is made and seconded, citing the statutory reason, and a majority roll call vote is taken. Once in the nonpublic session, only the reason(s) cited in the motion may be discussed. Minutes must be kept and (unless the board votes to seal them) made available to the public upon request within 72 hours after the meeting, whether or not approved yet. RSA 91-A:3. Nonpublic sessions are allowed only for reasons listed in RSA 91-A:3, II, including:

- Dismissal, promotion, compensation, disciplining, investigation or hiring of a public employee.
- Matters which would likely adversely affect the reputation of any non-board member.
- Buying, selling or leasing real or personal property if public discussion would give someone an unfair advantage over the municipality.
- Lawsuits filed or threatened in writing against the municipality, until fully adjudicated or settled.
- Preparation for and carrying out of emergency functions related to terrorism.

RIGHT TO KNOW LAW

## LEGAL INQUIRIES:

800.852.3358, ext. 384

[legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org)

[www.nhmunicipal.org](http://www.nhmunicipal.org)



# GOVERNMENTAL RECORDS

**DEFINED:** Any information created, accepted or obtained by a quorum of a public body, or by a public agency (such as clerk's office, town administrator or police department), in any physical format, received in or out of a meeting, in furtherance of its official function. RSA 91-A:1-a.

**BASIC RULE:** Governmental records must be made available to the public upon request unless they are exempt from disclosure under RSA 91-A:5 or another statute. Electronic records are treated the same way as paper records in this respect. RSA 91-A:4.

**AVAILABILITY:** Records must be available during business hours at the premises of the public body. If not immediately available, respond within five business days: provide the record, deny it in writing with reasons, or acknowledge it in writing with a note of the time needed to respond. RSA 91-A:4.

- *Copies:* Anyone may make notes, tapes or copies. Never hand over without supervision or lend records out. Citizens may be charged the actual cost of providing the copies. RSA 91-A:4.
- *Format:* Maintain in a manner accessible to the public. May provide in any format the municipality already has, but if one is more convenient, it must be made available. May provide electronic records by access to a municipal computer, or by a copy in standard or common file formats, a printout, or any other means reasonably calculated to comply with the request. RSA 91-A:4.
- *Motive:* The reason for requesting a governmental record is irrelevant; do not even ask.
- *Raw materials:* Tapes and notes used to compile meeting minutes are governmental records as long as they are retained; policy to discard/reuse after minutes are approved is acceptable.
- *Partial release:* If only part of a record is exempt from disclosure, the remainder should be released. Redact the exempt portion(s).

**RETENTION OF RECORDS:** RSA Chapter 33-A:3-a governs the length of time records must be kept. Keep electronic records for the same length of time as their paper counterparts. RSA 91-A:4. However, if a record must be kept for more than 10 years, it must also be transferred to paper or microfilm. RSA 33-A:5-a. *Do not destroy a record after a request has been made for it until the request is fulfilled or disputed requests are fully resolved.* RSA 91-A:9.

**DELETING ELECTRONIC RECORDS:** Electronic records are not subject to disclosure under RSA 91-A after they have been "initially and legally deleted" so that they are no longer readily accessible to the public body or agency. A record is "legally" deleted if the retention period has ended and there are no outstanding or disputed requests for that item. To "delete," you **must** empty the "Deleted Items" or "Recycle Bin" folder. RSA 91-A:4.

## EXEMPTIONS TO THE DISCLOSURE REQUIREMENT INCLUDE:

- Records pertaining to internal personnel practices
- Medical, welfare, library user and videotape sales or rental records
- Confidential, commercial or financial information and any other record whose disclosure would be an invasion of privacy
- Notes or materials made for personal use that do not have an official purpose
- Preliminary drafts, notes or memoranda and other records not in their final form and not disclosed, circulated or available to a quorum of a public body
- Some law enforcement records (but not all)
- Written legal advice (until the client shares it with a third party outside the privilege)

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[www.nhmunicipal.org](http://www.nhmunicipal.org)



**Nonpublic Session Minutes**  
**[INSERT NAME OF TOWN AND BOARD]**

Date: \_\_\_\_\_

**Members Present:** [board member name] \_\_\_\_  
[board member name] \_\_\_\_  
[board member name] \_\_\_\_  
[board member name] \_\_\_\_  
[board member name] \_\_\_\_

**Motion to enter Nonpublic Session** made by \_\_\_\_\_ seconded by \_\_\_\_\_

**Specific Statutory Reason** cited as foundation for the nonpublic session:

\_\_\_\_\_ RSA 91-A:3, II (a) *The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, **unless** the employee affected (1) has a right to a public meeting, and (2) requests that the meeting be open, in which case the request shall be granted.*

\_\_\_\_\_ RSA 91-A:3, II(b) *The hiring of any person as a public employee.*

\_\_\_\_\_ RSA 91-A:3, II(c) *Matters which, if discussed in public, would likely affect adversely the reputation of any person, **other than a member of this board**, unless such person requests an open meeting. This exemption shall extend to include any application for assistance or tax abatement or waiver of a fee, fine or other levy, if based on inability to pay or poverty of the applicant.*

\_\_\_\_\_ RSA 91-A:3, II(d) *Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.*

\_\_\_\_\_ RSA 91-A:3, II(e) *Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against this board or any subdivision thereof, or against any member thereof because of his or her membership therein, until the claim or litigation has been fully adjudicated or otherwise settled*

\_\_\_\_\_ RSA 91-A:3, II(i) *Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.*

<b>Roll Call vote</b> to enter nonpublic session:	[name]	Y	N
	[name]	Y	N
	[name]	Y	N
	[name]	Y	N
	[name]	Y	N

**Remove public meeting tape** (if applicable).

**Entered nonpublic session** at \_\_\_\_\_ a.m./p.m.



Other persons present during nonpublic session: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of matters discussed and final decisions made: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Note: Under RSA 91-A:3, III. Minutes of proceedings in nonpublic sessions shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of this board, or render the proposed action of the board ineffective, or pertain to terrorism. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply.*

**Motion made to seal these minutes?** If so, motion made by \_\_\_\_\_, seconded by \_\_\_\_\_, because it is determined that divulgence of this information likely would...  
 Affect adversely the reputation of any person other than a member of this board  
 Render a proposed action ineffective  
 Pertains to preparation or carrying out of actions regarding terrorism

<b>Roll Call Vote to seal minutes:</b>	[name]	Y	N
	[name]	Y	N
	[name]	Y	N
	[name]	Y	N
	[name]	Y	N

**Motion: PASSED / DID NOT PASS** (circle one)

**Motion to leave nonpublic session** and return to public session by \_\_\_\_\_, seconded by \_\_\_\_\_.

**Motion: PASSED / DID NOT PASS** (circle one)

**Nonpublic meeting tape removed, public meeting tape replaced** (if applicable).

**Public session reconvened at** \_\_\_\_\_ a.m./p.m.

**These minutes recorded by:** \_\_\_\_\_

# Right

# to

# Know

# Law



**RSA**  
Chapter 91-A

**PUBLIC MEETINGS**  
(RSA 91-A:1 through 91-A:3)

**BASIC RULE:** Every meeting of a public body must have proper notice and be open to the public.

- **What Is a Meeting?** The convening of a quorum (majority) of any public body to discuss or act on any of that body's business, including work sessions. What is *not* a meeting? Consultation with legal counsel; chance or social meetings neither planned nor intended to discuss official matters and at which no decisions are made; strategy or negotiations regarding collective bargaining.
- **What Is a Public Body?** All committees, subcommittees, boards, commissions, agencies, etc., that perform a governmental function, including all informal advisory committees.
- **What Notice Is Required?** Minimum of 24 hours (not including Sundays or holidays), either published in a local newspaper or posted in two prominent public places. Other statutes or local rules may require more notice in certain cases.
- **What Is Open to the Public?** Anyone, not just local residents, may attend, and may take notes, record or photograph the meeting. However, except for certain people at public hearings, the public is not guaranteed the right to speak.

**MINUTES:** Minutes must be kept of all public meetings and must be made available to the public upon request within 5 business days after the meeting. Minutes must include the names of members present, others participating, a brief summary of subject matter discussed, and any final decisions or votes.

**NONPUBLIC SESSIONS:** Meetings or portions of meetings that the public may not attend.

- Allowed only for reasons listed in RSA 91-A:3, II, including:
  - ▶ Dismissal, promotion, compensation, disciplining, investigation, or hiring of any public employee
  - ▶ Matters that would adversely affect the reputation of a non-board member
  - ▶ Buying, selling or leasing property if public discussion would give someone an unfair advantage over the municipality
  - ▶ Lawsuits actually filed or threatened in writing against the municipality, until fully adjudicated or settled
  - ▶ Preparation for and carrying out of emergency functions including anti-terrorism issues
- Entering nonpublic session: Begin in a properly-noticed public meeting. A motion must be made and seconded to enter nonpublic session, citing the reason from the statute, and a majority roll-call vote is required. Once in nonpublic session, only the reason(s) cited in the original motion may be discussed.
- Minutes must be kept of nonpublic sessions, and, unless the board votes to seal the minutes, they must be made available to the public upon request within 72 hours after the meeting.

*Important note:* This is a very simplified overview of the Right to Know Law. It is not intended to be legal advice and is provided for convenience only.

**Please refer to RSA Chapter 91-A or legal counsel for further information.**

Please note that the legislature continues to debate the law as it pertains to e-mail. Caution is urged when using e-mail.

**New Hampshire Municipal Association**

25 Triangle Park Drive  
Concord, New Hampshire 03301

Tel: 603.224.7447

Members Only: 800.852.3358

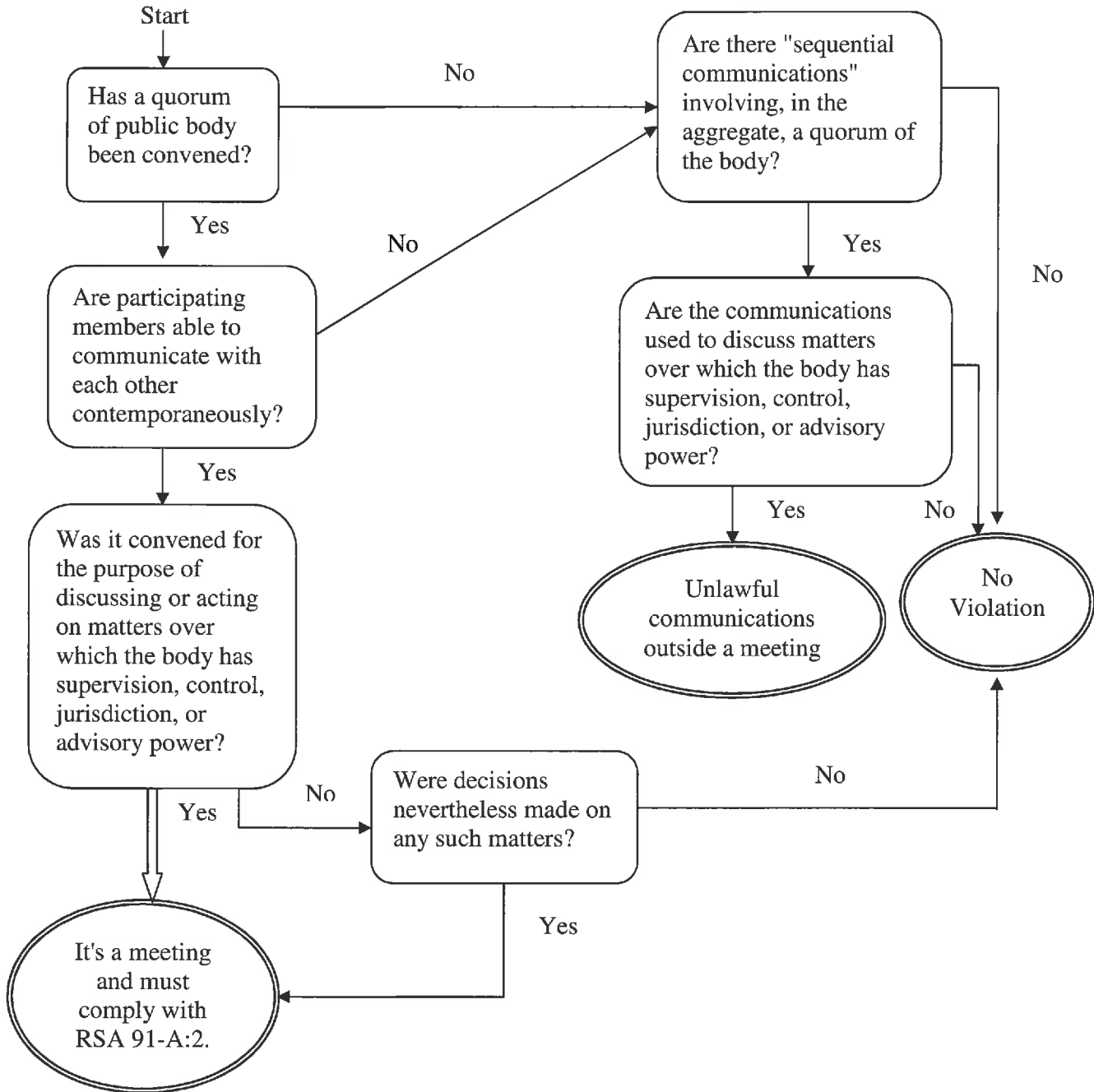
Fax: 603.224.5406

E-mail: [nhmainfo@nhmunicipal.org](mailto:nhmainfo@nhmunicipal.org)

Web site: [www.nhmunicipal.org](http://www.nhmunicipal.org)

## Is It a Meeting?

Use this flow chart to determine whether communications among members of a public body constitute a meeting subject to the Right to Know Law, or, if they do not constitute a meeting, whether they are unlawful communications outside a meeting.



## Draft Meeting Minutes – Practical Considerations

- A. A meeting is held, and the Right to Know Law (RSA 91-A) requires “minutes” to be prepared and be made available to the public upon request within 5 business days after the meeting. RSA 91-A:2, II. The board which met probably does not meet again to approve the minutes within this time frame, so the minutes will always be the output of the single staff person or board member tasked to create the document. This version, whether approved or not, becomes a “governmental record” under RSA 91-A:1-a, III and must be made available upon request. Minutes must be retained as a governmental record forever under RSA Chapter 33-A, so they must be reduced to a paper format and may not be kept solely as electronic records. RSA 33-A:5-a. Thus, a permanent paper record will come into existence within 5 business days of the meeting and is subject to disclosure under the Right to Know Law, even if the board regards it as a draft document.
- B. There is no requirement in the Right to Know Law that any board act to “approve” its minutes. However, it is a near universal practice for all boards to review the minutes that were created within the 5-day time frame. During this review, members often suggest additions, deletions and corrections. If a board wishes to amend the minutes, it may do so, but the discussion and vote must take place at a duly-noticed public meeting of a quorum of the board. This point is now made clear by the 2008 revisions to the statute prohibiting communications among a quorum of the members of a board outside of a properly held meeting. Therefore, the actual discussion to amend and approve the minutes must be documented in the minutes of that subsequent meeting as an item of business the board considered.
- C. Given the system set up by the law, we suggest that whenever minutes are created, they are marked as “not yet reviewed” or “draft.” This will warn anyone who reads them that the board, as of the date the minutes were created, has not approved them. If the board does amend them at its next meeting, the minutes of that next meeting should refer to the old minutes and detail the changes made. The board may also wish to produce a new document of the amended minutes labeled “as amended and approved by board” or something of that nature.
- D. However, we do not recommend that “draft” minutes be destroyed or altered when they are stored. If these so-called draft documents are destroyed, there is a risk that some member of the public or a different town official actually received the draft and has already used it. Between the time when the draft was created and the time it was amended and approved by the board, the draft *was* the minutes and thus exists as a governmental record. The possibility of reliance on a preliminary document is greatly increased if the board immediately posts the document on its internet website, or distributes it to members of other local boards for informational purposes. Also, if the draft document is altered to reflect changes made in a subsequent meeting, any discussion and debate about why the

change was made could be lost forever if no document preserving the original text is allowed to survive.

- E. Some clerks have adopted the following practice. The draft minutes document is created as noted above. If changes are made at a subsequent meeting, the changes are detailed in the minutes of that second meeting. As the minutes are being prepared for permanent storage in paper format, the clerk will add a notation to the permanent record of the first meeting that corrections were made, and give an exact reference to the page where the changes appear in the minutes of the subsequent meeting. This seems to be an excellent way to serve all interests, in that it preserves the draft document as originally created and made available to the public, allows the board to review the record and make any needed changes, and allows the users of the documents to see the text as originally prepared, the changes that were made, and the reasons why the changes were made.
  
- F. We have also heard that some clerks will destroy draft minutes and only keep the “perfect” record that reflects the amendments made. We do not endorse this method because there is a large risk that a member of the public, the board, or another board will be misled by using the earlier document, and then later be unable to determine when, how, or why the changes were made. This could be very important in a planning board or zoning board of adjustment case that is litigated when the “certified record” is prepared for filing with the court.

# Right to Know Law



**RSA**  
Chapter 91-A

**ELECTRONIC  
COMMUNICATION**  
(RSA 91-A:1 through 91-A:6)

Effective July 1, 2008

## PUBLIC MEETINGS

- **E-mail as a Meeting?** No. Legal meetings may never be conducted by e-mail or any other format which does not allow the public to hear, read or discern the discussion contemporaneously at the meeting location.
- **Telephone Participation:** Boards may allow one or more members to participate in a meeting by telephone or other electronic means, if:
  - (1) physical attendance is not reasonably practical (note in minutes);
  - (2) all members can simultaneously hear and speak with each other;
  - (3) except in an emergency, a quorum is still physically present in the location where the public was told the meeting would occur; and
  - (4) all parts of the meeting are audible or otherwise discernable to the public in that location.
- **What Is a Meeting?** When a majority of a public body convenes to discuss or act on any matter within its jurisdiction, it is a meeting whether the members "convene" in person, by telephone or electronic communication, or in any other way in which all members may communicate with each other contemporaneously (but as noted above, meetings may not be held by e-mail or online chat because the public cannot hear, read or discern the discussion contemporaneously at the meeting location).
- **Deliberation:** Public bodies may only deliberate in properly held meetings, and may not use communication outside a meeting (such as sequential e-mails or phone calls) to circumvent the spirit or the purpose of the law.
- **Posting Meeting Notice on the Internet:** Notice of meetings must be posted in at least two public places, one of which may be the public body's Web site.

## GOVERNMENTAL RECORDS

- **Defined:** Any information created, accepted or obtained by a quorum of a public body, or by a public agency (for example, the clerk's office, police department or other municipal office), in any physical format, received in or out of a meeting, in furtherance of its official function.
- **Availability:** Just like paper records, electronic governmental records must be made available to the public upon request unless an exemption applies.
- **Retention:** Electronic governmental records must remain accessible to the public for the same length of time as their paper counterparts. Check RSA 33-A:3-a for a list of retention periods for certain categories of municipal records. If a record must be kept for more than 10 years, it must also be transferred to paper or microfilm.
- **When Is an Electronic Record No Longer Subject to Disclosure Under the Right to Know Law?** When it has been "initially and legally deleted" so that it is no longer readily accessible to the public body. Simply deleting it is not enough; the "Deleted Items" or "Recycle Bin" folder must also be emptied. A record is "legally" deleted if the retention period has ended and there are no outstanding or disputed requests for that item.

**Important note:** This is a very simplified overview of the Right to Know Law. It is not intended to be legal advice and is provided for convenience only.

**Please refer to RSA Chapter 91-A or legal counsel for further information.**

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