



New Hampshire School Boards Association
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Overview and Synopsis of the Right to Know Law

I. School Board Committees:

91-A:1-a Definitions.

I. "Advisory committee" means any committee, council, commission, or other like body whose primary purpose is to consider an issue or issues designated by the appointing authority so as to provide such authority with advice or recommendations concerning the formulation of any public policy or legislation that may be promoted, modified, or opposed by such authority.

VI. "Public body" means: (d) Any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.

- Where there was no statute or ordinance establishing mayor's industrial advisory committee consisting of prominent businessmen, newspapermen, and city council members, which met monthly on call of mayor and performed variety of functions... advisory committee's involvement in governmental programs brought it within scope of right-to-know law. Bradbury v. Shaw, 116 N.H. 388 (1976).
- Municipal finance committee was an agency of municipal corporation so that its meetings were included in the term "public proceedings" as defined by former RSA 91-A:1. Selkove v. Bean, 109 N.H. 247 (1968).
- Informal work sessions involving less than a quorum of school board members are subcommittees if those work sessions are planned or intended for the purpose of discussing matters relating to official business and the [school board] made decisions during the isolated conversation. Taylor v. Oyster River Cooperative School Board, Strafford County Superior Court, January 17, 2012; Webster v. Candia, 146 N.H. 430 (2001).

statute when more than a quorum of its members action upon the email. Taylor v. Oyster River Cooperative School Board, Strafford County Superior Court, January 17, 2012.

The Right to Know law explicitly states that matters within the Board's competence may only be discussed in meetings. Out-of-meeting communications cannot be used to effectuate an end-run around the statute. RSA 91-A:2-a. Cameron v. Town of Marlborough Board of Selectmen, Cheshire County Superior Court, January 31, 2012.

The Board improperly communicated outside meetings, in violation of RSA 91-A:2-a when it corresponded by email. Also, based on at least one email correspondence, on at least one occasion, the Board engaged in improper communications with non-members outside of a meeting, i.e. before and after a public hearing. Cameron v. Town of Marlborough Board of Selectmen, Cheshire County Superior Court, January 31, 2012.

Alternatively, the above-recited correspondence constituted improper meetings of the Board. The topics discussed in emails by a quorum fell within the Board's jurisdiction. The fact that the communications were by e-mail does not defeat their cumulative purpose of fulfilling the function of a meeting under RSA 91-A:2, I. As such, the Board held improper meetings, in violation of the Right to Know law. Cameron v. Town of Marlborough Board of Selectmen, Cheshire County Superior Court, January 31, 2012.

E. What Types of E-Mail Communications Are Permissible?

The Attorney General's Office stated "e-mail among a quorum of members of a public body in a manner that does not constitute contemporaneous discussion or deliberation and does not involve matters over which the body has supervision, control, jurisdiction, or advisory power does not technically constitute a meeting under the Right-to-Know law."

Given this statement, certain e-mails may be permissible. For example, RSA 91-A:1, I(d) states that "circulation of draft documents which, when finalized, are intended only to formalize decisions previously made in a meeting" is not a meeting under the Right to Know law. Therefore, it seems likely that school boards can circulate draft documents via e-mail of contracts, reports, budgets, etc. However, it is advised that board members do not engage in specific discussions about these documents via e-mail, as such discussions may run contrary to the Right to Know law.

Additionally, certain e-mails containing "informational discussions" are likely allowable under the Right to Know law. Examples of these types of e-mails may include an e-mail asking that a particular item be included on the agenda of the next meeting, e-mails notifying board members that a meeting has been rescheduled, etc.