

New Hampshire Commission on Native American Affairs
October 29, 2020 Meeting Minutes
Zoom Meeting

Members Present:

Kathleen Blake, Chair
Shawn O'Leary, Vice Chair
Garrett Chapman, Treasurer
Sheila Charles
Daniel Howard
Anne Jennison
Denise Pouliot
Barbara Shea
Madeleine Wright

Members Absent:

Kayla Schweitzer, Secretary
Peter Kenney

Guests:

Michael Haley, NH Department of Justice (Presenter)
Ginnie Lupi, Director, New Hampshire State Council on the Arts (Notes/Minutes)

Quorum: Yes

Meeting Proceedings:

1. Call to Order by Chair Kathleen Blake at 3:32 PM
2. Welcome
3. Roll Call Attendance
4. Michael Haley Presentation on RSA 91-A (Right-to-Know Law) and Ethics (slide deck available)
5. Q+A on presentation and Commission enabling statute
6. Adjournment by Chair Kathleen Blake at 4:32 PM

Respectfully Submitted,
Ginnie Lupi, Director, New Hampshire State Council on the Arts



New Hampshire
Department of Justice

Office of the Attorney General

RSA 91-A: New Hampshire's Right-to-Know Law

Michael Haley, Attorney

Purpose

Openness in the conduct of public business is essential to a democratic society. 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 91-A:1 Preamble*

NH Constitution, Part I, Article 8: Government...should be open, accessible, accountable and responsive.

General Rule:

Meetings and agency records are public

Overview

- ▶ Who?
 - ❖ Public Bodies & Agencies
- ▶ What?
 - ❖ Meetings
 - ❖ Government Records
- ▶ Where & When?
 - ❖ Meeting Requirements - Notice, Minutes, etc.
 - ❖ Responding to Right to Know Requests
- ▶ How?
 - ❖ Remedies

RSA 91-A

Who? - Public Bodies

- ▶ Boards
- ▶ Agencies
- ▶ Commissions
- ▶ Advisory Committee established by the governor by executive order
- ▶ Committees
- ▶ Subcommittees
- ▶ Subordinate bodies
- ▶ Advisory Committees

What?

MEETINGS

Meeting

- ▶ Public bodies shall not deliberate on matters over which they have supervision, control, jurisdiction, or advisory power outside of a meeting unless exempted from the definition of meeting. RSA 91-A:2-a, I.

Meeting

- ▶ “Meeting” means the convening of a quorum of the membership of a public body, or the majority of the members of such public body if the rules of that body define “quorum” as more than a majority of its members.

What Constitutes a Meeting?

- ▶ Quorum of membership so members may communicate contemporaneously
 - In Person
 - Telephonic* or electronic*
- ▶ For purpose of acting on or discussing matters within their powers/authority
- ▶ Communications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of the Right-to-Know law. RSA 91-A: 2-a, II

What Does NOT Constitute a Meeting?

- ▶ Chance or social meeting neither planned or intended for purpose of discussing official business.
 - ❖ CAUTION - if quorum of members discuss matters over which they have control.
- ▶ Strategy or negotiations with respect to collective bargaining.
- ▶ Consultation with Legal Counsel
- ▶ Circulation of draft documents which, when finalized, are intended only to formalize previously deliberated decisions.
 - ❖ CAUTION - E-mail simultaneously or sequentially sent to quorum discussing official business.

Meeting Basics*

- ▶ Public Notice
- ▶ Members Physically Present
- ▶ Open to the Public
- ▶ Minutes

*Executive Order 2020-04 and Emergency Order 12 authorizes modified ways of meeting these requirements.

Meeting Basics: Public Notice*

- ▶ Post time and place in two locations
 - May include Board's/Commission's internet website
 - *24 hours* prior to such meeting excluding Sundays and legal holidays

- ▶ An agenda is not required

*EO 12 requires the posting to include how the public can access a remote meeting.

Meeting Basics: Participation*

- ▶ Quorum of the public body shall be physically present at the location specified in the notice.

- ▶ If physical participation not reasonably practical, a member may participate electronically, so long as a quorum is physically present.
 - Must be able to simultaneously hear and speak
 - Reason not practical must be stated in minutes
 - Remote member may vote - Roll call is necessary
 - Must identify persons in the location from which remote member is participating

Meeting Basics: Participation*

- ▶ Executive Order 2020-04 and EO 12 provide an alternative to this requirement in two ways:
 - ❖ Recognizes that the current State of Emergency is grounds for all public bodies to use the emergency meeting procedures that would not require physical participation by a quorum
 - ❖ Authorizes all members and the public to participate remotely, no physical location required

Meeting Basics: Participation*

- ▶ Remote participation requirements:
 - ❖ Members must identify persons in the location from which remote member is participating
 - ❖ Members may vote - Roll call is necessary

Meetings Basics: Open to the Public*

- ▶ Open to public - unless authorized to hold nonpublic session
- ▶ Minutes must be kept
- ▶ Public may record - audio, video, etc.
- ▶ Openness does not provide public right to speak or participate

*EO 12 requires public access by telephone and any other video or electronic means.

Meetings Open to the Public

- ▶ No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

RSA 91-A:2, III (c)

Non-Public Session

- ▶ May meet in nonpublic session for an enumerated reason in RSA 91-A:3, including:
 - Dismissal, discipline, hiring of employees
 - Adversely affect reputation
 - Pending claims or litigation, or consideration of legal advice
 - Consideration of confidential, commercial or financial information that is exempt from disclosure under RSA 91-A:5, IV in an adjudicative proceeding.
- ▶ Specific process for entering non-public session, conducting business during non-public, exiting and sealing minutes. See Appendix B of Attorney General's Office Memorandum on New Hampshire's Right-to-Know law for model non-public session motions.

Meeting Basics: Minutes*

- ▶ Minutes include names of members/persons appearing, brief description of subject matters discussed and all final actions. Must also include who made and seconded each motion
- ▶ No requirement for verbatim transcription
- ▶ Available to public in 5 business days
 - Draft is satisfactory
 - Final minutes must be posted on the website or post and maintain a notice on the website stating where the minutes may be reviewed and copies requested.
- ▶ Minutes considered permanent record
- ▶ Public has right to inspect and copy notes, tapes or other sources used for compiling minutes. RSA 91-A:4, II

*EO 12 authorizes remote meetings, which will need to include recording the remote meeting requirements: identify others in the members' location and roll call votes.

Right to Know Requests

General Rule

- ▶ Citizens have a right to inspect and copy governmental/public records during regular business hours and on regular business premises of the agency.

Responding to a Right to Know Request

- ▶ Determine whether the requested records are immediately available for review. If so, produce them!
- ▶ Minutes or records may not be available immediately because they are:
 - 1) In use
 - 2) Require review or redaction
 - 3) Documents need to be located, or
 - 4) Require consultation with legal counsel.
- ▶ If records cannot be produced immediately, send an acknowledgment of the request within 5 business days that includes an estimate of when a response will be provided.

Remedies for Violation

- Agency liable for costs if Court finds lawsuit necessary to ensure compliance with the statute
- Agency Liable for attorney's fees if Court finds agency knew or should have known conduct was a violation
- Court may invalidate the action taken at a meeting if the circumstances justify invalidation. This is a discretionary decision.
- Court may enjoin future violations
- Court may require officer or employee, to undergo appropriate remedial training, at such person or person's expense
- Civil penalty against officer, employee or other official for “bad faith” violations

State Code of Ethics

- ▶ **RSA 21-G:21 - 27**
 - ▶ Conflict of Interest
 - ▶ Misuse of Position

Conflict of Interest

Executive branch officials and classified employees shall not participate in any matter in which they, or their spouse or dependents, have a private interest which may directly or indirectly affect or influence the performance of their duties.

RSA 21-G:22

Conflict of Interest

“It is a general rule of law, and the law in New Hampshire, that there is a conflict of interest when a public officer votes on a matter in which he has a direct personal and pecuniary interest.”

Atherton v. Concord, 109 N.H. 164, 165 (1968) (internal quotations and citations omitted).

Conflict of Interest

“The reasons for this rule are obvious. A man cannot serve two masters at the same time, and the public interest must not be jeopardized by the acts of a public official who has a personal financial interest which is, or may be, in conflict with the public interest.”

Atherton v. Concord, 109 N.H. 164, 165 (1968) (internal quotations and citations omitted).

Conflict of Interest

However, the rule is also well established that, to disqualify, the personal pecuniary interest of the official must be immediate, definite, and capable of demonstration . . .

Atherton v. Concord, 109 N.H. 164, 165 (1968) (internal quotations and citations omitted).

Conflict of Interest

. . . not remote, uncertain, contingent, and speculative, that is, such that men of ordinary capacity and intelligence would not be influenced by it.

Atherton v. Concord, 109 N.H. 164, 165 (1968) (internal quotations and citations omitted).

Conflict of Interest

The common law of New Hampshire identifies a conflict of interest where a potential exists for a public officer to influence the outcome of a matter in which he has a direct personal and pecuniary interest.

Such conflict normally arises in a context where an official is acting in a judicial or legislative capacity.

Marsh v. Town of Hanover; Berlin, Hanover Town Manager; and Wood, Hanover Fire Chief, 113 N.H. 667, 672 (1973) (emphasis added) (internal citations and quotations omitted).



Misuse of Position

- ▶ No executive branch official or classified employee shall:
 - ▶ Disclose or use confidential or privileged information acquired in the performance of his or her duties for the state for personal benefit or for financial gain.

RSA 21-G:23, I.

Misuse of Position

▶ No executive branch official or classified employee shall:

▶ Use his or her position with the

state to secure privileges or advantages for himself or herself, which are not generally available to governmental employees, or to secure governmental privileges or advantages for others to which they are not otherwise entitled.

RSA 21-G:23, II.



RSA Chapter 15-A

FINANCIAL DISCLOSURES

FINANCIAL DISCLOSURES

The purpose of RSA Chapter 15-A is to ensure that the performance of official duties does not give rise to a conflict of interest by requiring certain individuals to file a statement of financial interests with the Secretary of State.

FINANCIAL DISCLOSURES

- ▶ RSA 15-A - Created a uniform statement of financial interests.
 - These forms are available online at the Secretary of State's website:
<http://sos.nh.gov/FinInterest.aspx>

FINANCIAL DISCLOSURES

Statement of Financial Interest

Forms are located at:



The screenshot shows the New Hampshire State website header with the seal and the text 'NEW HAMPSHIRE William M. Gardner | Secretary of State'. Below the header is a navigation bar with links for Administration, Archives & Records Management, Corporation Division, Elections Division, Securities Regulation, Uniform Commercial Code (UCC), and Vital Records. The 'Administration' menu is expanded, listing various services. A red arrow points to the 'Financial Interests - RSA 15-A and 12-G' link. To the right, the 'Administration' page is displayed, featuring a banner for 'Access Administrative Services online with NH Quickstart.' with a 'GET STARTED' button.

NEW HAMPSHIRE
William M. Gardner | Secretary of State

Administration Archives & Records Management Corporation Division Elections Division Securities Regulation Uniform Commercial Code (UCC) Vital Records

Home > Administration

Administration

Access Administrative Services online with NH Quickstart.
Obtain a Special Marriage License.
Coming soon: Notary Public Filings, Justice of the Peace Filings, Commissioner of Deeds Filings, and more.

GET STARTED

- Administration
 - Apostilles and Certificates
 - Athlete Agents
 - Auctioneers
 - Ballot Law Commission
 - Board of Claims
 - Bonded Warehouses
 - Commissioner of Deeds
 - Congressional Delegation
 - Executive Orders
 - Executive Branch Ethics - RSA 21-G:24
 - Financial Interests - RSA 15-A and 12-G
 - Governor and Council
 - Hawker & Peddler
 - Honorariums and Expense Reports - RSA 15-B and 14-C
 - Itinerant Vendor
 - Justices of the Peace
 - Lobbyists
 - Lobbyist Financial Reports
 - NH-Canadian Trade Council
 - NH-Canada Trade Forum held on Aug. 13, 2012
 - NH-Canada Trade Forum - Event Highlights
 - New Hampshire Constitution
 - Notaries Public
 - Petroleum Sales Contracts
 - Special Marriage Licenses
 - Contact Administration

FINANCIAL DISCLOSURES

Statement of Financial Interest

2020 NEW HAMPSHIRE STATEMENT OF FINANCIAL INTERESTS - RSA 15-A

Type or Print Clearly

Full Name JON DANIEL LAVALLEE Work Address 33 CAPITOL STREET CONCORD, NH 03301

Primary Occupation ATTORNEY e-mail jon.lavallee@doj.nh.gov Work Phone (603) 271-4097

Name the office, position, board or commission, board of directors, etc. or employment with state or county government held by you. NO ACRONYMS
Attorney, Client Counseling Unit, Civil Bureau, N.H. Department of Justice

A. List below the name, address, and type of any profession, business, or other organization in which you or a family member was an officer, director, associate, partner, proprietor, or employee, or served in any other professional or advisory capacity, and from which any income in excess of \$10,000 was derived during the preceding calendar year. Sources of retirement benefits other than federal retirement and/or disability benefits shall be included. (Use additional sheets as necessary.)

- U. S. COAST GUARD
- PLAYWORKS

If you have no qualifying income indicate by writing your initials next to the following statement. My income does not qualify

B. Indicate below whether you or a family member has a special interest in any of the following businesses, professions, occupations, groups, or matters. A person has a reportable special interest in an item on this list if a change in law, a change in administrative rule, a decision whether or not to award a contract, grant a license or permit, discipline a licensee or permittee, or other decision by government affecting the listed business, profession, occupation, group, or matter would potentially have a greater financial effect on you or a family member than it would on the general public:

FINANCIAL DISCLOSURES

Who must file?

(c) Every person appointed by the governor, governor and council, president of the senate, or the speaker of the house of representatives to any board, commission, committee, board of directors, authority, or equivalent state entity whether regulatory, advisory, or administrative in nature.

(d) All agency heads.

(e) Any public official designated, due to the responsibilities of the position, by the agency head.

(h) Any person, not employed by or working under contract for the state, who is acting on behalf of the governor or an agency while engaged in state business.

RSA 15-A:3

FINANCIAL DISCLOSURES

- ▶ Deadline for filing financial disclosures:
 - ▶ Except those who are elected or appointed, **within 14 days** of assuming the office, position, or appointment that makes the person subject to this chapter, unless the person has previously filed a statement during the calendar year.
 - ▶ Annually, no later than the third Friday in January.

FAIL TO FILE = JEOPARDIZES PARTICIPATION

Resources

- ▶ AG Right to Know Memo:
<https://www.doj.nh.gov/civil/documents/right-to-know.pdf>
- ▶ AG Emergency Order 12 Memo:
<https://www.doj.nh.gov/documents/emergency-meeting-guidance-checklist.pdf>
- ▶ Template response letters, non-public motions and minutes