

Legal Q&A: *The Right-to-Know Law and How It Affects You!*

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I was very fortunate to be invited to present at this year's NHLTA conference, and greatly enjoyed giving an overview of the statutes pertaining to libraries and some hot topics that have arisen over the last year. I didn't quite realize, however, how popular the Right-to-Know Law, RSA chapter 91-A, would be during the presentation.

One of the particularly tricky areas of the Right-to-Know Law is when a "meeting" of a "public body" occurs. The term "meeting," is, for better or worse, defined at length in RSA 91-A:2, I. It means, "the convening of a quorum of the membership of a public body... whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously... for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power." In other words, enough members of the public body meet about board business that they could make board decisions.

If the entire board meets at the town Fourth of July festival and refrains from discussing board business, there is no issue as it is a social encounter according to RSA 91-A:2, I. These social and other non-board business encounters are something that can and frequently do trip up new board members. For instance, many are reticent to travel in the same car with another board member to a board training or talk with them at their child's sports practice.

What is more difficult is understanding what qualifies as a "public body." The definition provided in RSA 91-A:1-a, IV is necessarily lengthy. It contains not only the component parts of government, but also all "subcommittee[s]" and "advisory committee[s]."

While the term "subcommittee" is almost universally acknowledged as some smaller portion of a whole committee – the term "advisory committee" has created and continues to create issues. Fortunately, this issue has been addressed several times by the New Hampshire Supreme Court. In the first case, *Bradbury v. Shaw*, 116 N.H. 388 (1976), the Court looked at Rochester's "Industrial Advisory Committee." The committee had been created by the Rochester City Mayor and consisted "primarily of prominent businessmen, but also ... newspapermen and members of the city council." The committee met for a variety of purposes, but the Court noted its involvement in the sale of several parcels of city-owned property and frequent discussions concerning the extension of city water and sewer lines and the construction of new streets. As such, the Court found that the committee advised the City and, subsequently, fell under the provisions of the Right-to-Know Law.

More recently, the Court again visited the term in *Martin v. City of Rochester*, 239 A. 3d 1002 (N.H. 2020), and the rule promulgated in that case is directly applicable in many municipal contexts. In short, Rochester created a Technical Review Group (TRG) that was comprised of city employees from various departments and a representative of the conservation commission. The purpose of the TRG was to review applications that were to be submitted to its planning board in order to apprise applicants of the relevant concerns of the municipal departments represented by its members. In other words, it was providing advice to applicants to the planning board, not the planning board itself, and that advice *could* be provided in one-on-one meetings with department representatives in meetings that would not be subject to the Right-to-Know Law. As such, the Court determined that the TRG did not qualify as an "advisory committee" and, therefore, was not subject to the provisions of the Right-to-Know Law.

There are many instances where citizens and citizens groups seek to assist their local governments, and it is unclear whether and when such organizations subject themselves to the provisions of the Right-to-Know Law. A simple example can be found in planning the library's annual cookie sale in coordination with the annual book sale and apple pie festival. While the approval of activities taking place on town property or requiring a town expenditure need the approval of the relevant town board, the actual organizational activities may take place in the gray area of the law. Where exactly the line is between a private proposal to host a cookie sale and an entirely public "advisory committee" to suggest the same kind of thing is something that will have to be determined on a case-by-case basis under current law.

The better approach — for public celebrations, at least — is to be cautious. RSA 91-A:2, III(d) and RSA 91-A:2-a, II jointly warn against trying to circumvent the "spirit and purpose" of the Right-to-Know Law. It may be more laborious, but certainly less risky to consider any planning of these types of events to be meetings subject to the Right-to-Know Law. □