

# RSA chapter 202-A & Hot Legal Topics

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## Agenda

- ▶ Library Budget
- ▶ Library Basics
- ▶ Library Governance
- ▶ RTK Law
- ▶ Library Employees

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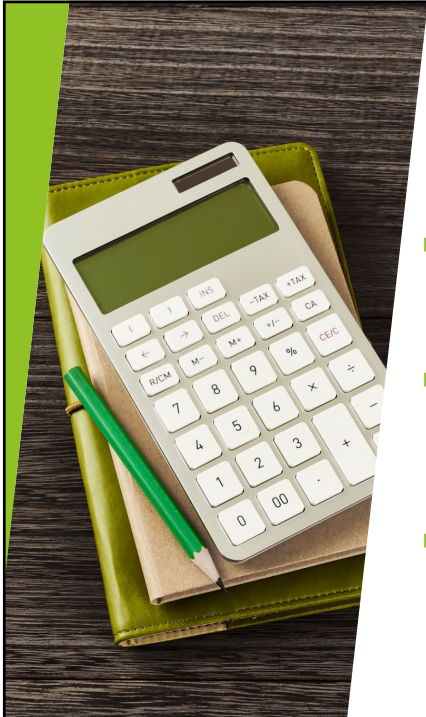
## Library Budget

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## Budget Process

- ▶ Library trustees prepare budget request in accordance with RSA 202-A:11, II
- ▶ Library trustees submit budget request to select board or budget committee, if any, pursuant to RSA 32:5
- ▶ Select board and/or budget committee may modify any budget requests during the budget process, meaning that a different amount may be placed upon the warrant.

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## Budget Process (Cont.)



- ▶ During town meeting, trustees (or other residents) may modify the amount allocated to the library.
- ▶ Whatever amount allocated to the library by town meeting is appropriated to the library in accordance with RSA 202-A:4.
- ▶ Library trustees may spend all monies appropriated to the library. RSA 202-A:11, II.

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## Lapse of Appropriations RSA 32:7



All appropriations shall lapse at the end of the fiscal year and any unexpended portion thereof shall not be expended without further appropriation, *UNLESS*:

- ▶ Encumbered by legally-enforceable obligation;
- ▶ Placed in nonlapsing fund: capital reserve or trust;
- ▶ Appropriated to a capital reserve fund;
- ▶ Amount is raised through bonds or notes (then lapses upon completion of purpose);
- ▶ Money received from state, federal, or private grant (then nonlapsing for as long as program rules)
- ▶ Special warrant article:
  - ▶ Governing body can vote to encumber for one year; OR
  - ▶ Article was labeled as nonlapsing by meeting (specifies lapse, up to 5 years).


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## Bonds/Long-Term Leases

- ▶ Lease/Purchase Agreements, RSA 33:7-e
  - ▶ With escape clause (simple majority)
  - ▶ Without escape clause (supermajority vote)
- ▶ Capital Projects; RSA 32:7-a
  - ▶ Identified capital projects
  - ▶ 2/3 or 3/5 majority vote
  - ▶ Up to 5 years
  - ▶ Included in default budget

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## No Means No RSA 32:10, I(e)

- ▶ *IF*
  - ▶ Budget line item reduced to zero, or
  - ▶ Separate warrant article with appropriation defeated or reduced to zero.
- ▶ *THEN*
  - ▶ That “purpose” is deemed to be one where no appropriation is made.
  - ▶ No money may be spent for that defeated purpose during the ensuing fiscal year.

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## Other Sources of Money

- ▶ Trust funds created for library purposes – whether private or municipally created – can have their income expended by the library trustees. RSA 202-A:11, III.
- ▶ If a town adopts the provisions of RSA 202-A:11-a through the process outlined in RSA 2020-A:11-b, the library may keep all money received from a library's income-generating equipment in a nonlapsing fund
  - ▶ That money may be used for general repairs and upgrading and for the purchase of books, supplies and income-generating equipment.

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## Library Basics

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## Libraries are Important RSA 202-A:1

Mindful that, as the constitution declares, "knowledge and learning, generally diffused through a community" are "essential to the preservation of a free government" the legislature recognizes its duty to encourage the people of New Hampshire to extend their education during and beyond the years of formal education.

To this end, [the legislature] hereby declares that the public library is a valuable supplement to the formal system of free public education and as such deserves adequate financial support from government at all levels.

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## What is a "public library?" RSA 202-A:2

- ▶ Libraries that receive **regular financial support** (at least annually) from public or private sources *and* provide regular library service to the public without charge.
- ▶ The definition may include, but is not limited to:
  - ▶ reference and circulating libraries,
  - ▶ reading rooms, and
  - ▶ museums regularly open to the public.

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## How are Public Libraries Created?

RSA 202-A:3 provides two options:

- ▶ Legislative body may vote to establish a library
- ▶ Legislative body may vote to accept a library that is created in whole or in part by donation or bequest.

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## Can Public Libraries be Shuttered?

- ▶ Town established libraries may be discontinued pursuant to RSA 202-A:18, requiring a vote of the legislative body.
- ▶ Privately established libraries may not be able to be discontinued.
  - ▶ RSA 202-A:18 states that it does not apply to “a public library [that] has been acquired by the town in whole or in part by donation or bequest.”
  - ▶ RSA 202-A:4 provides that “[a]ny city or town having a public library shall annually raise and appropriate a sum of money sufficient to provide and maintain adequate public library service therein or to supplement funds otherwise provided.”
    - ▶ Note that RSA 202-A:4 prevents a library from “ceas[ing] to function,” thus making it impossible for it to be defunct for the purposes of RSA 202-A:19, unless RSA 202-A:18’s vote applies.

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## Other “Types” of Libraries

- ▶ **Cooperatives**
  - ▶ RSA 202-A:4-a provides that towns can raise and appropriate money for participation in library cooperatives.
- ▶ **Contracts w/Other Libraries**
  - ▶ RSA 202-A:4-b provides that towns can raise and appropriate money for their citizens to use library services in another town.
    - ▶ Typically seen smaller towns.



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## Can Libraries Charge User Fees?

No, RSA 202-A:5 prevents a public library from charging user fees of any resident of the municipality in which it is located.

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## Special Legal Penalties



Damaging library property, misdemeanor w/ special penalty (3x amount damage forfeited) (RSA 202-A:24)



Detaining books (i.e. late books), violation (RSA 202-A:25)



Trustee violating law, misdemeanor (RSA 202-A:21)

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## Library Governance

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## Libraries are Governed by Library Trustees RSA 202-A:6, :11

- ▶ Entire custody and management of the public library and of all the property of the town relating thereto, including appropriations
- ▶ Adopt bylaws, rules, and regulations
- ▶ Prepare an annual budget
- ▶ Expend all moneys raised and appropriated for library
- ▶ Expend income from all trust funds for library purposes
- ▶ Appoint a librarian
- ▶ Appoint other employees, in consultation with the librarian, and determine their compensation and other terms of employment

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## Library Trustees Basics



Elected, three-year terms

Odd number of trustees

Up to 3 alternates (1-year terms)

• RSA 202-A:6, :10; RSA 669:16


No compensation, RSA 202-A:14




City Library Trustees, RSA 202-A:8

Special Library Trustee, RSA 202-A:7

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## Trustees' Discretionary Powers RSA 202-A:13



-  Pay for library courses and professional development
-  Allow nonresidents to use library
-  Deposit money with state to pool purchasing with state library

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## Gifts, Donations, & Trust Funds

-  RSA 202-A:4-c authorizes town meeting to vote to allow library trustees to apply for, accept and expend, unanticipated money from a governmental or a private source.
-  RSA 202-A:4-d authorizes town meeting to vote to allow library trustees to accept gifts of personal property (not money or real estate).
-  RSA 202-A:22 - :23 authorizes library trustees to accept gifts of trusts, which are held by the trustees of trust funds, unless the trust specifies that the library trustees can hold and manage it.

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Annual Reports Required

- Receipts
- Expenditures
- Property in trustees' care/custody
- Bequests/donations
- Number of books
- Number of borrows and statement on use of library
- (Must also submit report to state library)

RSA 202-A:12: Annual Report

RSA 202-A:12-a: Report to Attorney General

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RTK Law

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## Right-to-Know Law Applies to Library Trustees



Library trustees qualify as a “public body” under the definition in RSA 91-A:1-a

- “Public body” means any of the following: 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.

RSA 202-A:3-a reiterates this fact:

- The library trustees a “public body,” for purposes of RSA 91-A[.]

Therefore, library trustee meetings must follow the notice, access, and minutes requirements of RSA 91-A

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## Briefly: Public Comment

- No right to speak in meeting, unless you say public can speak (remember hearings are different)
- Establish & explain rules, apply consistently
- First Amendment: Many restrictions are not acceptable!
- Maintain control & order
  - Removal?



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## Right-to-Know Law Applies to Libraries

Public library qualifies as an “agency” under the definition in RSA 91-A:1-a.

“Public agency” means any agency, authority, department, or office of the state or of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision.



RSA 202-A:3-a reiterates this fact:

A public library established or accepted by a town or city shall be deemed a “public agency,”... for purposes of RSA 91-A[.]



Therefore, libraries must follow the records requirements of RSA 91-A.

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## What About “Non-Profit” Libraries?



RSA 202-A:2, I: “Public library” shall mean every library which receives regular financial support, at least annually, from public or private sources and which provides regular and currently useful library service to the public without charge.



RSA 202-A:3-a: A public library established or accepted by a town or city shall be deemed a “public agency,” and the library trustees a “public body,” for purposes of RSA 91-A...



Establishment or acceptance require a vote of the municipality’s legislative body. RSA 202-A:3.



No establishment or acceptance as a public library = RSA 91-A does not apply.

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## Any Citizen Can Request Records (RSA 91-A:4, I)

- ▶ No definition of “citizen” in statute or relevant case-law, but, presumably, at least a New Hampshire citizen.
- ▶ Best practice is anyone who shows up should be assumed to qualify as a “citizen” for the purposes of requesting records.
- ▶ This can make online requests tricky.

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## Only Governmental Records Can Be Requested - RSA 91-A:1-a



### Any information

- created
- accepted, or
- obtained

### By, or on behalf of,

- any public body, or a quorum or majority thereof or
- any public agency

### in furtherance of its official function

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## What They're Requesting Must Be "Reasonably Described"



Municipal employees must know what they are looking for in the voluminous materials kept by the municipality.



Municipal employees do have an obligation to clarify with the citizen what the citizen is requesting. *Salcetti v. City of Keene*, No. 2019-0217 (June 3, 2020) (speaking in *dicta* about a "spirit of collaboration").



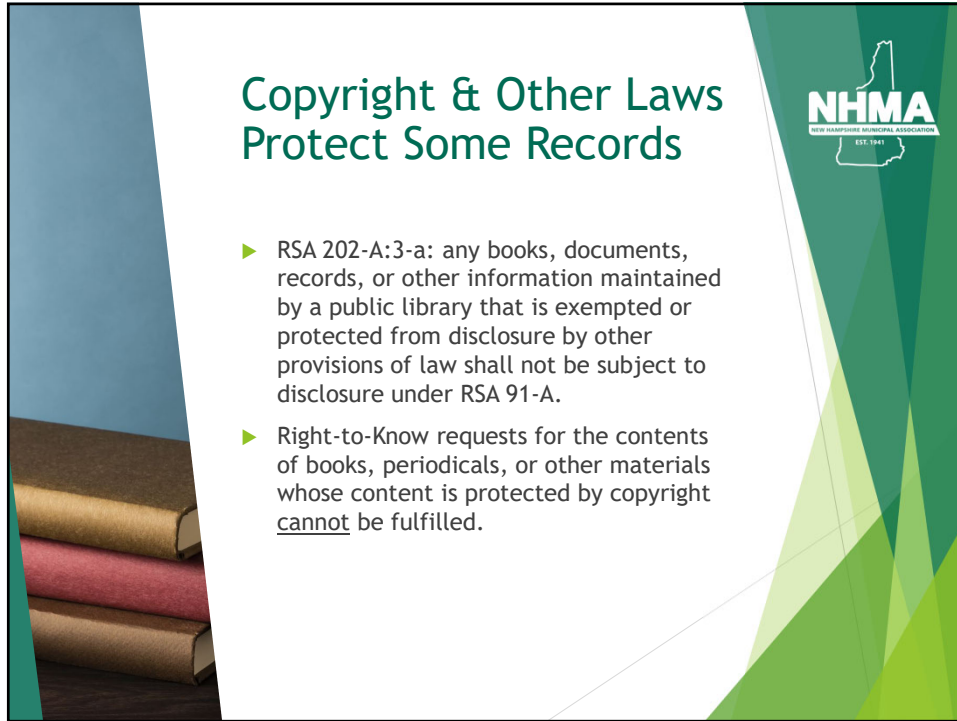
This may require a clarifying phone call.

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## Library User Records Protected Under RSA 91-A:5, IV

- ▶ The following governmental records are exempted from disclosure under the right-to-know law:
  - ▶ Records pertaining to library users.
- ▶ Note, however, that the exemption analysis under this statute *may* require use of a privacy-balancing test following recent New Hampshire Supreme Court rulings on other provisions listed in the sentence with "library user" records.

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## Copyright & Other Laws Protect Some Records

**NHMA**  
NEW HAMPSHIRE BIENFICIAL ASSOCIATION  
EST. 1941

- ▶ RSA 202-A:3-a: any books, documents, records, or other information maintained by a public library that is exempted or protected from disclosure by other provisions of law shall not be subject to disclosure under RSA 91-A.
- ▶ Right-to-Know requests for the contents of books, periodicals, or other materials whose content is protected by copyright cannot be fulfilled.

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## Library Employees

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## Public Librarian



“Sufficient breadth & depth to give leadership in the use of books and related materials”



Appointed by trustees



Term of office, time of appointment



Administrative head of library



Recommends appointment of other employees

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## Removal of employees

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Discharge or removal

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Malfesance, misfeasance, or inefficiency in office, or incapacity or unfitness

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Written statement of grounds/reasons

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May request hearing

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Not more than 30 days

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No change in salary during proceedings

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