

## **Legal Q&A: Alternate Trustees**

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*Alternates are a necessary part of any board including those boards that govern libraries. Several statutes apply directly to alternates for library trustees: RSA 202-A:6 and RSA 202-A:10. These statutes together inform boards that there may be no more than three alternates and that the names of alternates may be recommended by the library trustees to the governing body for appointment to one-year terms, but they do not answer some basic questions about alternates and their roles on boards. This column hopes to answer some of those basic questions.*

### **Do alternates take an oath of office?**

Yes, RSA 42:1 states, in relevant part, that “[e]very town officer shall make and subscribe the oath or declaration as prescribed by part 2, article 84 of the constitution of New Hampshire.” That would include all alternates to boards as well as all regular members.

### **Are alternates required to attend every meeting?**

Alternates are not required to attend every meeting, but it is good practice for them to try to attend all meetings so that they are familiar with the issues on which the board has been working.

### **At a board meeting are alternates considered just a member of the public except when serving in place of an elected trustee?**

Alternates only fill in “when elected members of the board are unable to attend a board meeting.” RSA 202-A:10. Therefore, they are not technically board members when not serving in place of a trustee, but keep in mind that the public may know that they are alternates and believe — wrongly or rightly — that they have some extra influence on the board as compared to the general public. There is nothing much that can be done about that, but boards should be careful to ensure that they take pains to avoid even the appearance of conflicts of interest. This could come up if an issue is debated with public input where an alternate not participating as a board member voices a strong opinion for or against the issue, the board decides to wait to vote on the matter until the next meeting, then, at the next meeting, the board finds that it needs to pull an alternate from the audience onto the board to fulfill the quorum requirement. The alternate who has not voiced an opinion is a better choice than the one who has voiced an opinion because, as NHMA constantly cautions, board members should try to limit expressing their opinions on matters pending before the board to board meetings.

### **At a board meeting when can alternates speak or participate?**

Alternates who are participating as substitutes for board members who are not present are both literally and figuratively sitting in the seats of those absent board members. Therefore, they are entitled to the full rights of any other board member.

Alternates who are not presently acting in the place of full board members should not participate actively as a board member. Remember, they aren’t technically on the board except when a full board member is absent.

### **When can alternates vote?**

Alternates can vote *only* when they are serving in place of a full board member. Otherwise, there would be no difference between alternates and full board members.

***Can an alternate be elected as an officer of the board? Such as Treasurer or Secretary?***

No. Alternates only serve when a full board member is absent. They cannot be an officer of the board because the full board may be present, in which case the alternate is not entitled to participate.

***Can alternates attend a non-public session?***

A board may choose who to invite into nonpublic session entered into under RSA 91-A:3. While it is permissible for the board to invite non-board members, including alternates, into nonpublic session, boards would be wise to consider whether that is appropriate. In most cases, it is best to limit nonpublic session to the then-existing board. (Note, of course, that disclosure of the discussion of nonpublic session by any officer of the municipality is a violation of the Oath of Office according to RSA 42:1-a, II.)

***Can an alternate serve on a trustee board-approved committee?***

Committees created by a board are composed of whoever the board decides to appoint. Frequently, it is the case that mixed committees, composed of board and non-board members, can assist a board. Therefore, it is perfectly permissible for the board to appoint non-board members, including alternates, to the committee.

One thing boards should keep in mind, however, is that any board-approved committee is subject to the Right to Know Law, RSA 91-A, and the board should take care to both inform the committee of the requirements of that statute and ensure that the committee is following that statute.

***Can an alternate “speak” for and/or represent the elected trustee board, such as at a budget hearing, etc.?***

The board may appoint whoever it likes to represent it before other boards. The preference, of course, is a full board member, but there may be circumstances where that is not possible or advisable. If that is the case, it is perfectly permissible for the board to take a vote to appoint someone else, including an alternate, to speak for it before another board or committee. □