

Wakefield School Board
Public Meeting Minutes – Right to Know Law Workshop
Tuesday, June 4, 2019
Approved

School Board members present: Chair Bob Ouellette, Vice Chair Tracey Kolb, Members Sandy Johnson, Jen McCawley and Relf Fogg

Administration, staff: Superintendent Jerry Gregoire, Business Administrator Marie D’Agostino, Principal James Lampron, Vice Principal Jenn Kuehl, Administrative Asst. Larissa Mulkern

Guests: Attorneys Barrett Christina, Executive Director and Will Phillips, Staff Attorney/Director of Policy Services, of the NH School Boards Association

Other: Gabe Smith of Clearview TV, Library Media Specialist Nicole Anderson, Steve Brown, Beth Seldin, Frank Zappala, Treasurer Carlene Stewart

Call to Order & Flag Salute: Mr. Ouellette opened the meeting at 6:30 p.m. with the Pledge of Allegiance.

Right to Know Law, Overview, Meeting Definitions

Introductions were provided with special guests Attorneys Barrett Christina, Executive Director and Will Phillips, Staff Attorney/Director of Policy Services, of the NH School Boards Association; printouts of the PowerPoint, “Non-Public Sessions & Non-Meetings Under the Right to Know Law,” and copies of the RSA 91-A: Access to Governmental Records and Meetings, as of September 2018, with parts not pertinent to school districts or school administrative units, were distributed.

Mr. Christina: The Right to Know law is very complex, with lots of nuances to it – can probably do an eight-hour workshop and still not have enough time to get through it all. Better for boards if we have an interactive dialogue.

Mr. Phillips: Printout can be used as a reference document; the index on the front page. He reviewed definitions for meetings and examples of what constitutes a jurisdictional quorum.

The purpose of the Right to Know law is to ensure the greatest possible public access to the actions, discussions and records of public bodies and their accountability to the people. The statute does not create the public’s right to open government but codifies into statute a right expressed in the New Hampshire Constitution: *...The public’s right of access to governmental proceedings and records shall not be unreasonably restricted.*’ What the Right to Know law does is describe the reasonable restrictions.

The definition of public body includes the school board, but also subcommittee or advisory committees, thereto, any committee that the board has an official relationship to or established by statute. The definition of “meeting” was reviewed, as defined as a convening of a quorum of the body; whether in person, by means of telephone, or electronic communication, or in any other manner that allows all participating members to communicate with each other contemporaneously; to discuss or act upon something over which the public body has supervision, control, jurisdiction or advisory power. A meeting requires public

notice with time and location, allow public to attend, to conduct deliberations and decision in public unless a nonpublic session exception applies, and that minutes be taken.

Mr. Gregoire asked to clarify whether all three components need to exist to constitute a meeting; if three board members meet for breakfast at the Pub, for instance, is that a board *meeting* if they are not meeting ‘to discuss or act upon something over which the public body has supervision...’ Using another example of board members present at the same t-ball game, Phillips said if the members continued to discuss a matter such as the budget, that would constitute a meeting.

Discussion ensued regarding email correspondence between board members: Mr. Christina: Email can be used to share information, i.e. ‘attached is an agenda, attached is a draft contract etc., that we will be discussing...’, but if a member(s) ‘Reply All’ and state an opinion such as ‘I’m not voting for that,’ ‘I looked through and made some changes, then ‘Reply All’, etc., that would be considered substantive info about board business and would constitute a meeting. Sharing information, asking for agenda items, etc., is fine.

Mr. Phillips: Technology and the Right to Know law are in different time zones; the RTK language is 20 years behind where technology is and every time they try a fix to address it, it’s already a couple years behind. He added that this meeting will focus on the meetings aspect of RTK. The meeting aspect applies to public bodies, not public agencies.

Regarding Facebook and social media: Mrs. McCawley asked how the law applies to Facebook. Three board members are part of a Facebook page. Mr. Phillips said if all three members chime in on the same thread regarding school issues, you probably invoked a meeting if you’re talking about board business. One person commenting on the post may be inadvisable, as you may not know who else chimes in on the same post. The better idea is to talk about board business at board meetings...If you were engaging in a post ‘with intent’, going back and forth with one another, that seems like a meeting.

Regarding responding to a post to “correct the record,” Phillips questioned whether that stops the comments. One board up north tasked two members with representing opposing views of a board issue. The reason they did that was because they thought it was important and there was much misinformation from both directions. The fact is that no one who reads a post on Facebook concurs afterwards that they were mistaken in their view. Mr. Fogg added there are board members who believe they are community members first, and more importantly, individuals, and they enter social media platforms as an individual – they don’t declare they are representing school or select boards, etc. Phillips responded that they have the right to do that but they are both. They can post on Facebook all they want but if others (on the board) chime in it invokes the Right to Know law.

Mr. Christina said if you take that idea, that as a board member you don’t lose right as individual; three of you are predisposed to certain positions, and talking about them ‘as individuals,’ tell me where that line is. It’s impossible to clarify. Mr. Fogg responded that he thought the line was clear: it’s when you take action. Mr. Christina said the easiest way to draw the line is not to have quorum discussions on substantive matters anywhere. Decisions need to be made with deliberations in public with a vote.

The attorney noted that there is a training document on the NHSBA website that deals more with electronic communication.

Mrs. Kolb asked about discussing a topic with members when you don’t have a quorum.

Mr. Phillips responded that if there were two members of a policy committee waiting for a third member started talking about the athletic field, that would be OK, if it's not a jurisdictional issue for a policy committee. If you have a meeting, you must provide public notice, must allow the public to attend in a physical location, conduct decision making in public unless a nonpublic session exception legally applies, and make appropriate minutes. Communication outside the meeting, including sequential communication among members of the public body, should not be used to circumvent the spirit and purpose of 91-A, he reiterated.

Mr. Barrett added actions such as individual communications, one on one calls, between members to ascertain positions, counts votes, could be construed as a way to count votes and circumvent the Right to Know law.

Non-Meetings & Non-Public Sessions

Per the law, all meetings are "open" in that they are required to be open to the public. Non-public sessions are exceptions to the requirement that the public be permitted to be present for all deliberations and decision-making. Attorneys reviewed the non-public sessions exceptions. The rationale for non-public sessions is that there are certain matters that warrant discussion and even decision making out of the public eye. In one way or another each of the grounds concern individual privacy, the District's legal or competitive interests, or safety concerns.

A 'non-meeting' is for unintended and inconsequential social discussions. RSA 91-A:2, I, states in part: A chance encounter; not convened for the purpose of discussing or acting upon [jurisdictional matters; shall not constitute a meeting; and if no decisions are made regarding such matters. This exception applies only when the quorum discussion was not convened with the intent of discussing a jurisdictional matter, and no decisions were made. With a non-meeting, you don't need prior notice, or minutes.

The attorneys reviewed acceptable reasons to enter nonpublic sessions, which include: dismissal, promotion, compensation or disciplining of any public employee, or the investigation of any charges against him or her, unless that employee has a right to an open meeting and requests the meeting be open; the hiring of any person as a public employee; matters which would likely affect adversely the reputation of any person, other than a member of the school board itself, unless such person requests an open meeting; consideration of acquisition, sale or lease of real or personal property; consideration or negotiations of pending claims or litigation which has been threatened in writing or filed by or against the public body or any subdivision thereof...; consideration of matters related to the preparation for and the carrying out of emergency functions...; consideration of entering into a tuition contract authorized by RSA 194 or RSA 195-A, which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general public or school district that is considering a contract... and consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.

Mr. Phillips pointed out that all exceptions for nonpublic sessions are not mandatory – boards can decide to discuss topics such as those listed in the exceptions in public, unless the employee asks to have discussion in nonpublic session.

An issue that has not been decided by the courts is whether a candidate for an appointed position can request the hearing in public, as the board's themselves are the entity to call for a nonpublic session, not the individual appointee. One recourse for the person is to file a petition to the court.

In other comments and advice from attorneys:

- When sealing minutes, it's better to seal them without a time frame.
- Minutes only need to be sealed as long as they need to be sealed, i.e. property negotiations in sealed minutes can be unsealed once the transaction has been resolved.
- Threat of litigation must be in writing
- The exception regarding entering into tuition contract; read the statute as there are extra technical requirements; it's not about the 'existing' contract, unless talking about renewing; but if you're having problems with your current contract that's not enough reason for nonpublic.
- Emergency functions: related to shooters, terrorism, not pushing and shoving in lunch line. These are types of plans involving law enforcement and fire department.
- Legal: a provision allows you to talk about advice give to you by legal counsel.

The NHSBA provides a checklist to school boards for conducting non-public sessions (included in packet.)

The workshop wrapped up at approximately 6:30 p.m.; the board thanked the Attorneys for their presentation. Mr. Phillips offered to return to address any other specific topic.

Respectfully submitted for approval at the June 18 School Board meeting.

Administrative Assistant

Larissa Mulkern