

New Hampshire Local Government Center

[NHLGC Home](#)[Back to Index](#)

RSA 91-A: Are We Having a Meeting?

Q. The selectmen are getting together to discuss a letter from our town attorney. Do we have to do that in "public"?

A. Of course, the legal answer to this question is: "It depends." First, if an attorney (preferably the one who wrote the letter) is present to discuss the opinion with you, that "meeting" or consultation with legal counsel is not a "meeting" that is open to the public. [RSA 91-A:2, I\(c\)](#). There is no need to go into non-public session in such a case. So long as you are consulting with your attorney the meeting may be closed to the public for that duration as it simply does not fall within the scope of [RSA 91-A](#). If the board is not consulting with an attorney, [RSA 91-A](#) allows a public body, such as the board of selectmen to go into non-public session for a limited number of purposes. One such purpose is the "consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the body...until the claim has been fully adjudicated or otherwise settled." [RSA 91-A:3, II\(e\)](#). Note that if there is no pending or written threat of litigation or claim, this exception will not apply. Since the board may not be able to meet in non-public session to discuss the letter, it is better off meeting with the attorney.

Q. The planning board is getting together to talk about improving our internal procedures to make the application process run more smoothly for us and for applicants. Is this a "meeting" under [RSA 91-A](#)?

A. Remember, a meeting is a convening of a quorum of a public body to discuss or act upon matters over which the public body has supervision, control, jurisdiction or advisory power. [RSA 91-A:2, I](#). Since the planning board clearly has jurisdiction and control over its own rules of procedure ([RSA 676:1](#)) those rules should be discussed and adopted at a meeting that is open to the public and complies with the basic notice requirements of [RSA 91-A:2, II](#). Keep in mind that this is a public meeting, not a public "hearing." Extended notice is not mandated and the board may exercise its discretion as to the amount of public comment it may wish to take on the matter.

Q. If a quorum of our board goes to an educational program or sits in on another board meeting, is that considered a "meeting" under [91-A](#)?

A. Generally, no. So long as the board is not gathering to discuss or act on matters over which it has control or jurisdiction then the fact that those people are present in the same room does not a meeting make.

Q. What about E-mail? Are we "meeting" if we E-mail each other or instant message? What are the guidelines?

A. Unfortunately the legislature was not able to address these issues when [RSA 91-A](#) was initially adopted. Since that time the use of electronic communication has increased exponentially. NHMA has cautioned against the use of E-mail for discussion of official business since the law has not provided any direction to date. If a quorum of a board is having an electronic discussion of matters over which it has jurisdiction, it could be found to be violating the requirement that such "discussion" take place in public. Also, it is possible that any E-mail could be subject to "public documents" disclosure requirements unless the subject matter qualifies under an exception. [RSA 91-A:5](#). This, of course, raises issues of storage and printing requirements that are not addressed in the current statute. E-mail "discussions" may be appropriate for setting meeting dates and locations or discussing other purely administrative matters although even this has not been challenged, reviewed or approved by any authority. The good news is that a legislative study committee was established in this past session (Chapter Law 287) to study the following relative to [RSA 91-A](#):

I. The need for disclosure requirements or guidelines for email and other electronic communication occurring between and among state, county, and local government appointed and elected officials and employees of governmental entities.

II. The need for disclosure requirements or guidelines for electronic communications with constituents of state, county, and local government appointed and elected officials and employees of governmental entities.

III. Archival requirements for electronic documents.

IV. The status of proprietary data within the definitions of the right-to-know law.

V. The ability to recover costs relative to the retrieval of electronic files and communications.

VI. Issues relative to public records posted to web sites of governmental entities.

VII. Whether a member of a body subject to the right-to-know law may participate in a meeting by teleconference or other electronic means.

VIII. The extent to which the public will be provided access to stored computer data under the right-to-know law.

IX. Any other matter deemed relevant by the commission.”

We are hopeful that the results of this committee's work will fill some of the gaps in this statute regarding electronic communications. Additionally, the committee may be able to better define how [RSA 91-A](#) relates to attorney-client communications and close that loophole which is clearly demonstrated by question number one. In the meantime, NHMA advises that municipal boards limit electronic communications to purely administrative matters and avoid engaging in discussions regarding official business that involve a quorum of any board. In the absence of any legislative or judicial guidance, a conservative approach is generally best.

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