

Town of Milton  
Board of Selectman Special Meeting  
Monday, November 24<sup>th</sup>, 2014  
Milton Town Hall  
Meeting Minutes

**Members in Attendance:** Chairman Tom Gray, Mike Beaulieu, Andrew Rawson, Elizabeth Dionne, Town Administrator. **Also in Attendance:** Town Attorney Jim Sessler, Toni McLellan, Recording Clerk

**Public in Attendance:** Pat Smith, Betsy Baker, Karen Brown, Robert Bourdeau, Michelle Beauchamp, Kathy Wallingford, Barb Berry, Larry Brown, Cynthia Wyatt, Brian Boyers, John Katwick, Nick Marique

Chairman Gray called the meeting to order at 6:00pm. The Pledge of Allegiance was recited.

**The purpose of the meeting this evening was to have an open forum to discuss RSA 91-A: 1 with Boards, Committee's and Department Heads. This type of meeting will also be held after the election for new members.**

**91-A: 1 Preamble - Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.**

Attorney Sessler spoke to the RSA. He stated that there have been many questions lately about RSA 91A and there has been some litigation involving the Right-to-Know law.

There is a general Policy that anything in the Right-to-Know law is to be liberally construed. If there is a doubt, or there is a gray area, always err on the side of keeping meetings and information open to the public unless there is a specific exemption otherwise. This is the way a court would look at it. The court is not going to interpret in favor of the municipality.

Attorney Sessler - The Right-to-Know law is divided into a couple areas. What constitutes a "meeting" (section 91-A:2); communications outside of the meetings and how should they be handled as well as nonpublic sessions, how they should be held and what the conditions are for holding a nonpublic session. Minutes and records available to the public are also a consideration as are remedies for violations. The area that seems to be a big problem currently is electronic communications such as emails, blogging, Facebook. Can you and should you be employing these methods of communication? Every time there is a communication and there is a quorum in the chain of an email, that is considered to be a meeting and as such, is a violation of the Right-to-Know law. Attorney Sessler advises not to communicate via email about business. It is fine to communicate about social matters such as attending the Christmas Party or a wedding, etc. but do not discuss business at all with other Board members. You also cannot discuss business with one Board member, and subsequently that Board member goes to another to discuss the matter, and so on. This is called a "Daisy Chain" and is also a violation. Do not discuss business using your home computer. If someone takes you to court, your private computer is subject to a search by the litigant. That means that everything from your finances to emails can be searched. There are provisions in the right-to-Know where members can communicate by phone conferencing. One member can communicate via conference call under certain circumstances such as an emergency. This is rare, however and the members of the public in the room must be able to hear what is being discussed. Before doing this, check with E. Dionne first and she will in turn check in with Attorney Sessler. If a Board member or Dept. head wants to call a special meeting of the Board they need to contact E. Dionne, and she will check with all members of that Board for availability. If

you attempt this via email, you risk having a quorum and, discussion of business matters. Do not include Attorney Sessler in emails. Chance social meetings at the hardware store, Post Office, grocery store, or similar, are exempt from this even if there happens to be a Quorum. However, business cannot be discussed. In the past, Boards could meet when you have a Quorum, as long as decisions were not made. However this is no longer legal. Regarding blogging; do not participate in them. Do not sponsor them as a Board, and they should not be part of Board activities. This violates the requirement to hold a meeting in a place where the public can be part of it. If something is going to be run like this, make certain it is an employee not a Board member. Regarding “Non-public” sessions; most often the BOS is the only Board that will go into nonpublic sessions. The Conservation Commission may do so if discussing buying or selling a property. The library Trustees may go into nonpublic regarding library records. Recreation may go into nonpublic if talking about employees or conveying property. If you are faced with this situation, touch base with E. Dionne prior to the meeting to ensure it is done correctly. Regarding minutes and records – The Right-to-Know Law does not give someone the right to demand answers from employees. It just gives someone the right to inspect records and to copy them. Employees do not have to go out of way their way to copy a document for someone under this law or answer such questions as: where do you get the authority to do this? If they are asking for land records they must provide the record to copy and inspect. They only get the records you normally produce in the course of business. Electronic records can be obtained. Someone can obtain minutes under this law but the town is not obligated to show draft minutes. Minutes must be completed in a timely fashion. Staff must get this done when they are supposed to, even in the case of illness. If working on a file, but it is not finalized, that is not subject to the Right- To-Know law. Until it is in final record, it is not something that you have to give up because of the Right- To-Know Law. Keep in mind though, that there is a fine line of when it actually does become public record. If uncertain, check with E. Dionne. Regarding penalties – the town will pay attorney fees if you make a mistake. The town doesn’t necessarily have to indemnify though if you pay a fine for making a mistake. If you are in doubt, ask E. Dionne and she can ask Attorney Sessler if need be.

### **Questions:**

L. Brown – How long can a record be sealed?

Attorney Sessler - When going into a nonpublic session the Board must vote by roll call under one of those exceptions and then cite why they are going into nonpublic session. It is possible to seal records indefinitely. The BOS must vote on it. It has to be in the minutes. Generally though, they are only sealed until the next meeting. There must be a good reason to seal them. It depends on the nature of the problem as to how long they are sealed. For example, if disciplining an employee, the record could be sealed for a year while going through the disciplinary process. It is also possible to seal the minutes indefinitely.

M. Beauchamp – She has books of sealed minutes. Is she supposed to make them public after a certain amount of time? She is holding on to these records.

Attorney Sessler – After the expiration (of being sealed), discuss it with E. Dionne first , then bring them to the BOS. They should be the ones to unseal them.

C. Wyatt – Regarding attachments, agendas, draft ordinances, draft minutes, letters, how should this be handled? If the Board is discussing the draft letter, you must follow all requirements. Many towns will have a “Correspondence File” and this is fine. As long as you don’t discuss or do business until the meeting, it is fine but you must be careful about circulating the draft, do not discuss the draft until the meeting. Do not send it in an email. If you want an item on your agenda, one member can ask the person creating the agenda to add the item, but best not to circulate an email to everyone. Send to one person at a time. If you have staff to do this, best to go through your staff to develop the agenda. For example, the Conservation commission can go through Karen.

Attorney Sessler – Prefers to do it through a call. If you must do it through email, email one person, not all. Problems enter when you email all and business discussions of any sort happen. The simple act of scheduling meetings is fine. Do not however, discuss business of any sort while scheduling meetings, just schedule the meeting.

Attorney Sessler - Regarding packets - do not discuss packets before the meetings. Best not to send packets through emails because discussing business tends to happen. Simply circulating packets is fine. Business Blogging –Do not have any Board host a blog about Board business. There is no control over it, or who is reading it, or responding. Personal blogs are fine, but official blogs are discouraged.

M. Beaulieu – Addressing misinformation on the town Facebook site.

Attorney Sessler - Facebook has not been addressed to date; emails are only starting to be addressed. However if you both are on the same forum discussing business, even if it is electronic, this can be construed as a violation by the courts as a meeting with a Quorum and that it was not open to the public. So the bottom line remains, do not talk business on Facebook, blogging, etc.

M. Beauchamp – should towns have Facebook?

Attorney Sessler - Websites are great. They are informative. Does not like Facebook. Everyone must be addressed and with Facebook, many members of the public are not on Facebook.

K. Wallingford – Can a town be held liable for anything said on Facebook?

Attorney Sessler - Yes. Just like anything else; website, etc. can be held liable. He feels that a website is a much better option. Texting is the same as email. One must be very careful.

Attorney Sessler - Boards must be very careful. Staff members do not need to be as careful about Quorums and meetings. Boards must be very careful about communicating when there is more than one of them. He recommends video-taping and publishing the meeting tape and having the proceedings televised. The truth is in the audio. The Fire Dept. having a Facebook page is acceptable. However, Boards, the Selectman should not respond to a Department Facebook page. An employee responding is another matter, they can respond.

K. Wallingford – Can negative information be addressed on the website?

Attorney Sessler - Yes.

K. Brown – Can Dept. heads respond to Facebook? This is a different issue than the Right-to-Know law. A Dept. head can, and should, respond if they feel it necessary but the BOS should not respond. Do keep it positive however. The BOS can establish policy on whether Dept. heads should be responding to these things. Neither should the ZBA. The Dept. Heads must follow policies and procedures validly adopted of the BOS, but the BOS cannot control how they do their job.

N. Marique - Can a Dept. head notify BOS of equipment need or failure?

Attorney Sessler - Notify E. Dionne instead of BOS. She will go to the BOS.

Attorney Sessler – It is fine to send notification of a meeting, but ask recipients not to hit “reply all”. If all respond, business will inadvertently get discussed.

M. Beachamp – When Dept. heads have meetings, do they have to keep minutes?

Attorney Sessler - No, they are not an official “Board”. If Board and Commission members are present however, each Board has to “notice” the meeting. Whenever two or more are together on any instance, if business is conducted or discussed, it must be made public unless it is a chance meeting.

It is no longer is the case (as it was in the past) that if you do not vote, it is not a meeting. Currently anything that can be construed as conducting business is a “meeting”.

A. Rawson – can he sit in the audience of a meeting if another selectman is on the Board.

Attorney Sessler - He can be present at that meeting observing, but BOS business cannot be discussed. Caution is warranted though as it is a fine line of what is construed as “business”. He would recommend erring on the side of caution and not attending the meeting.

Attorney Sessler - If the BOS posts that they are meeting with the Conservation Commission on such a date, the Conservation Commission does not also have to post.

K. Brown – if someone comes in (on the Board) to have a check signed; this is only a “Chance meeting”.

Attorney Sessler – Yes.

M. Beauchamp – If someone is requesting information from your Dept. does it have to be in writing under 91A or can it be verbal?

Attorney Sessler – Ask for it in writing. They have to tell you what they want but they don’t necessarily have to use town forms. Records can be taken out of their normal place of filing. For example if an employee working on them takes them out of their file, they have the right to continue to work on them until such time they are finished. Then the interested party can obtain them.

L. Brown – What is the punitive cost of records?

Attorney Sessler - Ask the superior court what they charge and then charge that. It must be a fair charge, for the amount of time it takes to produce the records, the paper used, the use of copier and Kathy’s time to produce one copy.

Chairman Gray adjourned the meeting at 7:08 pm and thanked everyone for attending.

Respectfully Submitted,

Toni McLellan  
Recording Clerk

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Chairman Tom F. Gray

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James Michael Beaulieu

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Andrew Rawson