E-MAIL & RIGHT TO KNOW

(from ***Maine Townsman***, "Legal Notes," October 1999)

Question: Since most of our board now has access to e-mail, we often use it instead of the telephone to communicate with each other about upcoming business. Is there anything we should be concerned about?

Answer: Yes! Whether the communication is by e-mail, by telephone or is face-to-face, Maine's "Right to Know" law (1 M.R.S.A. § 401 et seq.) prohibits the conduct of board business except at a public board meeting of which public notice has been given. If the communication is simply a notice to members (of a special meeting, for example), it would not violate the law. But if the communication turns into a dialogue about substantive matters, it likely would violate the law, whether the conversation is by e-mail or otherwise. If the communication is substantive but there is no dialogue (for instance, a report by one of the members), it may not be contrary to the open meetings requirement, but it should be shared publicly at the meeting, unless it is otherwise confidential and may be discussed in executive session. In short, any dialogue or deliberations by or between board members outside the context of a lawful board meeting are apt to run afoul of the board's obligation to conduct its business openly and in public.

E-mail is also arguably a public record under the law and may therefore be subject to the right of the public to inspect and copy it, unless the contents can be kept confidential by law. In some cases, depending on the subject matter, e-mail may also be governed by the State Archives Advisory Board's Rules for Disposition of Local Government Records, including requirements for retention of records for certain specified periods. *(By R.P.F.)*

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