

Electioneering in New Hampshire

Presented at the Kidder Law Conference

October 7, 2026



Wadleigh, Starr & Peters, P.L.L.C.
Serving New Hampshire since 1899

By: Dean B. Eggert, Esquire
Alison M. Minutelli, Esquire
WADLEIGH, STARR & PETERS, P.L.L.C.
95 Market Street
Manchester, New Hampshire 03101
Telephone: 603/669-4140
Facsimile: 603/669-6018
E-Mail: deggert@wadleighlaw.com
aminutelli@wadleighlaw.com
Website: www.wadleighlaw.com

About the Author

Dean B. Eggert, Esquire (JD., UCLA; B.A., Wheaton College) is a partner in the firm of Wadleigh, Starr & Peters, P.L.L.C. Mr. Eggert is a jury trial attorney. Over the past 41 years he has had extensive experience representing school districts in special education matters at the administrative and appellate levels. He has spoken and lectured extensively on a wide range of legal issues in the field of education law.

Alison M. Minutelli, Esquire (JD., University of New Hampshire School of Law; B.A. Brandeis University) is a partner in the firm of Wadleigh, Starr & Peters, P.L.L.C. For the past 21 years, Ms. Minutelli has practiced in the field of school law, representing public school districts in New Hampshire. She has also written numerous articles and presented on a wide range of legal issues in the field of education law.

A Word of Caution

No two cases are exactly alike. This material is designed to provide educators with a broad understanding of the law pertaining to electioneering in New Hampshire. This material does not include every aspect of the law. You are strongly encouraged to seek a legal opinion from your school district's legal counsel regarding any specific case.

Table of Contents

I. OVERVIEW	3
II. ELECTIONEERING IN NEW HAMPSHIRE.....	3
A. Overview	3
B. Electioneering by Public Employees	4
1. Prohibition on Electioneering.....	4
2. Who is a “Public Employee”?	4
i. While performing their official duties”	5
ii. While using governmental equipment and property.....	6
3. Definition of Electioneering.....	6
4. Permissible Activities.....	7
i. Public Employee Speech.....	8
ii. The Obligation to Inform	8
5. Examples of Electioneering	9
6. Penalties for Engaging in Electioneering.....	10
IV. CONCLUSION	10

I. OVERVIEW

The goal of this material is to provide administrators with an overview of the law pertaining to electioneering. This material does not cover all aspects of the law, and you are encouraged to seek advice from your district's legal counsel regarding any specific case.

II. ELECTIONEERING IN NEW HAMPSHIRE

A. Overview

There are several types of electioneering under New Hampshire law. Public employees, as defined by RSA 273-A:1, IX, are prohibited from electioneering "while in the performance of his or her official duties." RSA 659:44-a, I. In addition, all public employees are also prohibited from using "government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering." RSA 659:44-a, II.

Election officers are prohibited from engaging in electioneering while performing their official duties. RSA 659:44. In the latter context, electioneering is defined as "act[ing] in any way specifically designed to influence the vote of a voter on any question or office." Id.

Election officers are:

- Moderator
- Deputy moderator
- Assistant moderator
- Town clerk
- Deputy town clerk
- City clerk
- Deputy city clerk
- Ward clerk
- Selectmen
- Supervisor of the checklist
- Registrar
- Deputy registrar.

RSA 652:14. The school district moderator would be an election officer.

School district elections and ballot voting are generally coordinated with the town elections/voting. RSA 671:26-a. Although school board members and school district clerks are not specifically identified in this statute, when the district is conducting its own election, or if school board members or school district clerks are serving as election

officials for the district elections, then they would be prohibited from engaging in electioneering when performing duties relating to district election. RSA 659:44.

Electioneering is also prohibited within the polling place building and within “no-electioneering corridors” outside of the polling place, and as established by the moderator. RSA 659:43. This provision applies to all individuals present at the polling place, and is not limited to public employees or election officers. There are specific requirements and limitations outlined in RSA 659:43.

This material focuses on electioneering by public employees, under RSA 659:44-a.

B. Electioneering by Public Employees

1. Prohibition on Electioneering

RSA 659:44-a contains two distinct provisions, both of which prohibit electioneering.

The first provides that:

No public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties.

RSA 659:44-a, I.

This provision prohibits public employees, as defined by RSA 273-A:1, IX, from electioneering while performing their job duties.

The second provision states:

No public employee shall use government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering.

RSA 659:44-a, II.

This provision prohibits all employees of the school district from using government property or equipment for electioneering.

Thus, all public employees are permitted to engage in activities that would otherwise constitute electioneering when they are not performing their job duties and if they are utilizing their own or third party/non-governmental personal property/devices/equipment.

2. Who is a “Public Employee”?

School districts, as political subdivisions of the state, are public employers. RSA 273-A:1, X. Thus, all employees of a school district are public employees. However, RSA 273-A:1, IX exempts certain individuals from the definition of “public employee.” This distinction is relevant for determining which public employees are prohibited from electioneering in the performance of their official duties.

i. “While performing their official duties”

RSA 659:44-a, I defines public employees by reference to RSA 273-A:1, IX, and provides that those public employees are prohibited from engaging in electioneering while performing their official duties. RSA 273-A:1, IX states:

“‘Public employee’ means any person employed by a public employer except:

- (a) Persons elected by popular vote;
- (b) Persons appointed to office by the chief executive or legislative body of the public employer;
- (c) Persons whose duties imply a confidential relationship to the public employer; or
- (d) Persons in a probationary or temporary status, or employed seasonally, irregularly or on call. For the purposes of this chapter, however, no employee shall be determined to be in a probationary status who shall have been employed for more than 12 months or who has an individual contract with his employer, nor shall any employee be determined to be in a temporary status solely by reason of the source of funding of the position in which he is employed.”

From this provision, we know that school board members are not considered public employees, as they are elected officials. RSA 273-A:1, IX(a).

In addition, persons whose duties imply a confidential relationship to the district are not public employees as defined by RSA 273-A:1, IX(c). In the context of determining whether an individual should be a member of a bargaining unit, the New Hampshire Supreme Court has held that “confidential employees” are “those employees who have access to confidential information with respect to labor relations, negotiations, significant personnel decisions and the like.” Appeal of Town of Moultonborough, 164 N.H. 257, 262 (2012), citing Appeal of City of Laconia, 135 N.H. 421, 422 (1992).

However, in the context of electioneering investigations, the attorney general’s office has concluded that the following categories of employees are “public employees”:

- “School district administration, faculty and staff”;

- Principals;
- Teachers.

In at least one instance, the attorney general's office has extended the prohibition on electioneering during the performance of official duties to superintendents. Thus, while a superintendent generally would be exempt from the definition of "public employee" under RSA 273-A:1, IX, the attorney general's office may construe that provision more narrowly when analyzing whether a violation has occurred.

ii. While using governmental equipment and property

All public employees are prohibited from utilizing governmental property or equipment to engage in electioneering. RSA 659:44-a, II. This provision applies to all employees of the school district, including:

- Superintendents;
- School district administrators;
- Principals;
- Teachers;
- School district staff.

School board members are elected officials and are not employees of the school district. Therefore, they remain exempt from this provision.

Governmental property and equipment includes telephones, facsimile machines, vehicles, and computers. RSA 659:44-a, II. It also includes:

- School district websites;
- Photocopiers;
- Printers;
- The school building/school property.

In 2024, the Department of Education issued a technical assistance advisory, noting that this provision prohibits school district employees from utilizing school district e-mail accounts to send communications that would constitute electioneering as defined by RSA 659:44-a. See N.H. DOE Technical Advisory (9/23/24), available at: <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/technical-advisory-electioneering.pdf>.

3. Definition of Electioneering

The definition of electioneering in RSA 659:44-a, III was recently amended such that electioneering is now defined using the definition in RSA 652:16-h. RSA 659:44-a, III.

Electioneering is now defined as “visibly displaying or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted.” RSA 652:16-h.

Thus, to constitute electioneering, the information must be advocating for or against a candidate, political party, or ballot measure.

The statute goes on to state that “[e]lectioneering includes, but is not limited to:

- I. Wearing clothing or paraphernalia that displays a candidate's name, likeness, or logo, a ballot measure's number, title, subject, or logo, a political party's name or logo, or any communication that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure. A person who is eligible to vote or register to vote in the voting district who is unable to reasonably remove or cover such clothing may wear such clothing in the polling place while actively and expeditiously engaged in the process of registering to vote or while actively and expeditiously engaged in the process of voting.*
- II. Distributing or posting a card, handbill, poster, placard, picture, pin, sticker, circular, or any other form of communication that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure.*
- III. Organizing or conducting surveys that are expressly or primarily political, meaning that they have a format, questions, or other characteristics that clearly indicate a preference for one or more candidates or political parties in an election or one or more policies that are reasonably anticipated to be on the ballot or otherwise at issue in an election. This paragraph shall also apply to any person identified in RSA 273-A:1, IX(b), (c), or (d).*

RSA 652:16-h.

4. Permissible Activities

The following activities would not constitute electioneering and would therefore not violate RSA 659:44-a:

- A public employee putting up yard signs on their personal property, supporting candidates or ballot measures;
- Public employees canvassing for a candidate or ballot measure, outside of school hours;

- School board members recommending or not recommending warrant articles;
- School board members informing voters about the various measures appearing on the warrants and explaining what the warrant articles mean and the impact of each;
- Public employees using personal funds, property, devices, or equipment to advocate for a candidate or ballot measure.

i. Public Employee Speech

Public employees have a “full right to publicly discuss and give opinions as an individual on all matters concerning any government entity and its policies.” RSA 98-E:1. In this context, a “public employee” is “any person employed by the state or any subdivision thereof, including, but not limited to, . . . school districts and school administrative units.” RSA 98-E:1-a.

Public employers are prohibited from interfering “in any way with the right of freedom of speech, full criticism, or disclosure by any public employee,” subject to laws relating to confidentiality and privileged records or communications. RSA 98-E:2, RSA 98-E:3.

This statute is consistent with the electioneering law, RSA 659:44-a, which prohibits public employees from engaging in electioneering while performing their official duties.

ii. The Obligation to Inform

School boards are required to provide voters with information about the content of their warrant and are required to make recommendations on all warrant articles containing appropriations. RSA 32:5. School boards should provide information, including what the board is recommending and the reason for the recommendation, but should not direct individuals to vote in a specific way.

The First Amendment protects the government’s right to inform the public, and the United States Supreme Court has held that the government may use its own funds to support its own measures. See *Johanns v. Livestock Marketing Ass’n*, 544 U.S. 550 (2005).

School district websites are forums for governmental speech and can be utilized to inform the public. See e.g. *Sutcliffe v. Epping Sch. Dist.*, 584 F.3d 314 (1st Cir. 2009). However, the information that is posted on school district websites must also remain consistent with the electioneering laws.

5. Examples of Electioneering

The attorney general's office has concluded that the following activities constitute electioneering:

- A teacher utilizing a school district email account to advocate for candidates running for school board. The teacher used their school district email address to send two emails supporting two different candidates running for school board; this conduct was found to be communication designed to influence the votes of voters in the upcoming election;
- Creating videos that were produced and taped on school property, and posting them on YouTube, with a link to the videos on the school district website, that depicted school district staff and students providing statements about school district facilities, and the superintendent stating that the facilities "need immediate attention," and "[o]ur schools are in need of upgrades and if they don't happen, the student's suffer. Please join me in supporting [school district's] youth with a foundation of a strong education. Throughout this website there is ample information available for you to digest about this project and we hope you support this come March!";
- Producing and taping videos on school property, during school hours and as part of school operations, and posting said videos on the school's website;
- School staff using school district photocopiers to copy mailers created by a third-party organization that included the phrase "YES on [warrant article]12," along with the date, time and location of the school district election, and distributing those flyers on behalf of the third-party organization;
- A principal posting a message on the school district website asking parents to "support our school district this year," and stating "if candidates aligned with the budget committee are elected, they can revert school spending back to the lower levels of the budget initially proposed by the budget committee, can cut teaching positions, and ignore the will of the citizens who attended the deliberative session."

In addition, the Attorney General's office has cautioned that creating posters in a public school building urging citizens to "vote yes" on a teacher's contract could violate

the electioneering statute, when the posters are created on school property, by school employees, even if done after school hours.

6. Penalties for Engaging in Electioneering

Electioneering has historically been a misdemeanor. RSA 659:44-a, IV(a). On numerous occasions where the Attorney General's office has found that conduct constitutes electioneering in violation of RSA 659:44-a, the Attorney General's office would issue a cease and desist letter, rather than prosecute the conduct as a misdemeanor.

However, as of January 1, 2026, an additional penalty has been added to the statute:

“Any person who violates this provision and is not subject to the penalties imposed under subparagraph IV(a) shall be subject to a civil penalty not to exceed \$1,000.”

RSA 659:44-a, IV(b).

IV. CONCLUSION

Public employees are prohibited from engaging in electioneering during the performing of their official duties and are prohibited from using school district property and resources to engage in conduct that would constitute electioneering.

School boards may prepare and distribute factual and impartial information about warrant articles and may utilize government property to do such.

School boards should refrain from endorsing candidates or engaging in electioneering with regard to school district elections. Individual school board members may endorse or promote specific candidates for office, provided they do such when they are not performing their official duties as members of the school board.

Public employees are permitted to engage in conduct that would otherwise constitute electioneering when they are not performing their official duties, and when they are using their own resources (or non-government resources).

Relevant Statutory Provisions

659:44 Electioneering by Election Officers. – No election officer shall electioneer while in the performance of his official duties. For the purposes of this section, "electioneer" shall mean to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this provision shall be guilty of a misdemeanor.

659:44-a Electioneering by Public Employees. –

I. No public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties.

II. No public employee shall use government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering.

III. For the purposes of this section, "electioneer" is defined according to RSA 652:16-h.

IV. (a) Any person who violates this section shall be guilty of a misdemeanor.

(b) Any person who violates this provision and is not subject to the penalties imposed under subparagraph IV(a) shall be subject to a civil penalty not to exceed \$1,000.

652:16-h Electioneering. –

Electioneering means visibly displaying or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted. Electioneering includes, but is not limited to:

I. Wearing clothing or paraphernalia that displays a candidate's name, likeness, or logo, a ballot measure's number, title, subject, or logo, a political party's name or logo, or any communication that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure. A person who is eligible to vote or register to vote in the voting district who is unable to reasonably remove or cover such clothing may wear such clothing in the polling place while actively and expeditiously engaged in the process of registering to vote or while actively and expeditiously engaged in the process of voting.

II. Distributing or posting a card, handbill, poster, placard, picture, pin, sticker, circular, or any other form of communication that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure.

III. Organizing or conducting surveys that are expressly or primarily political, meaning that they have a format, questions, or other characteristics that clearly indicate a preference for one or more candidates or political parties in an election or one or more policies that are reasonably anticipated to be on the ballot or otherwise at issue in an election. This paragraph shall also apply to any person identified in RSA 273-A:1, IX(b), (c), or (d).

Chapter 285, HB 340 (2026)

285:1 Electioneering by Public Employees; Penalties. Amend RSA 659:44-a, III to read as follows:

III. For the purposes of this section, "electioneer" [means to act in any way specifically designed to influence the vote of a voter on any question or office] ***is defined according to RSA 652:16-h.***

285:2 Electioneering by Public Employees. Amend RSA 659:44-a, IV to read as follows:

IV.(a) Any person who violates this section shall be guilty of a misdemeanor.

(b) Any person who violates this provision and is not subject to the penalties imposed under subparagraph IV(a) shall be subject to a civil penalty not to exceed \$1,000.

285:3 New Paragraph; Electioneering by Public Employees. Amend RSA 652:16-h by inserting after paragraph II the following new paragraph:

III. Organizing or conducting surveys that are expressly or primarily political, meaning that they have a format, questions, or other characteristics that clearly indicate a preference for one or more candidates or political parties in an election or one or more policies that are reasonably anticipated to be on the ballot or otherwise at issue in an election. This paragraph shall also apply to any person identified in RSA 273-A:1, IX(b), (c), or (d).

285:4 Effective Date. This act shall take effect January 1, 2026.