Advisory Opinion 11-02E

Elected Officials' Use of Social Media

Introduction

For most of the twentieth century, public servants and their constituents communicated primarily either in person – at town halls, meetings in the community or in the officials' office, or in the checkout line at the grocery store – in written correspondence, or by telephone. At the end of the twentieth century, e-mail emerged as a fast, easy, and cost-effective way for public servants and constituents to communicate, and the dawn of the twenty-first century has seen the emergence of two new modes of communication, blogs and social media sites.

In some ways, these new modes of communication function much like any other communication. But they bear one important distinction, which is that these new modes of communication can be viewed by anyone with access to the Internet. So an exchange between a constituent and his or her elected representative is not viewable only to those two individuals and the people with whom they share it, it is available for viewing anywhere in the world. The same is true of a blog post on a hot-button issue, and the comments – positive and negative, measured and vitriolic – that the post garners. This conversion of formerly private speech into public speech has two crucial side effects. It makes the process of governing more transparent for all, and it converts these private communications into mass communications, making them more susceptible to misuse by elected officials seeking voter approval at the ballot box.

The Commission is charged with ensuring that City resources are not used for campaign purposes. The Commission recognizes that if it is overzealous in policing the use of these new modes of communication for misuse, elected officials could grow overly cautious in their use of social media, or stop using these new tools altogether. Seattleites would lose a valuable tool for actively engaging in, or simply monitoring, the work done by City officials. The advice that follows is guided by a desire to permit, to the greatest extent possible, elected officials to use social media without fearing a Commission enforcement action. If the Commission determines that this license is being abused, it may revisit these questions and take a more restrictive view. But for now, unless an elected official uses social media in a way that plainly violates the Elections Code or the advice contained in this opinion, the Commission will not resolve close questions regarding the application of the Elections Code to social media in enforcement proceedings.

Law

SMC 2.04.300 provides as follows:

> No elected official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or

> authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include but are not limited to use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the officer or agency; provided, that the foregoing provisions of this section shall not apply to the following activities:
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> A. Action taken at an open public meeting by the City Council to express a collective decision or to actually vote upon a motion, proposal, resolution, order or ordinance, or to support or oppose a ballot proposition so long as (1) any required notice of the meeting includes the title and number of the ballot proposition, and (2) members of the City Council or members of the public are afforded an approximate equal opportunity for the expression of an opposing view;
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> B. A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry; and
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> C. Activities that are part of the normal and regular conduct of the office or agency.

Uses of City facilities are also subject to the Ethics Code, which provides at SMC 4.16.070.2.b that individuals subject to the Ethics Code may not:

> Use or attempt to use, or permit the use of any City funds, property, or personnel, for a purpose which is, or to a reasonable person would appear to be, for other than a City purpose…

The Commission is well aware that use of social media raises issues under other laws as well, namely the open public meetings act and the public records act. The Commission has no role in the enforcement of these acts, and so they will not be addressed in this opinion.

Guidance

The Commission offers the following guidance for City officials seeking to use social media[1] in compliance with the Elections Code. The Commission cautions that this advice is not

[1] By "social media sites," also known as social network sites, the Commission refers to "web-based services that allow individuals to (1) construct a public or semi-public profile within a bounded system, (2) articulate a list of

exhaustive; it is impossible to anticipate all of the issues that will be raised by social media in the years to come. The Commission expects to revisit this issue in the future as new questions arise, and remains open to revisiting the advice contained in this opinion if social media usage develops in ways that call into question the utility of these media for strengthening our democratic institutions.

1. **Elected officials and the City employees who answer to them may not provide visitors to City web sites, or recipients of City communications, with links to sites that contain campaign advocacy or information about how to contact or learn about campaigns.**

It is settled law that a City official cannot in his or her City newsletter advocate for a position on a ballot measure or promote or oppose a candidate for office. When that same City official sends out a communication, or posts on his or her web page, information about how the public can find the official on facebook, or follow their tweets, or read their blog, those sites also become off limits for campaign advocacy. The official has used City resources to direct people to these sites, and City resources cannot be used to direct people to campaign advocacy.

If a public official maintains a facebook page, a twitter account or a blog on their own time, using their own resources, and does **not** provide links to those platforms from the City, then the official would not violate the City's Elections Code by posting campaign material on that site. What City officials do on their own time using their own resources is beyond the reach of the Elections Code.

The Commission offers these examples to help City officials understand the rules.

Example 1. An official provides a link to their personal blog from their e-newsletter. The blog contains a report from a recent campaign event, and an invitation to visitors to check out the official's campaign site.

Both the report on the recent campaign event and the invitation to check out the official's campaign site make the link to the blog from the newsletter a violation of the Elections Code. The public cannot be directed from official communications to sites that contain campaign advocacy posted by the official or an agent of his or her campaign.

Example 2. An official uses City resources and staff to maintain a facebook page. Someone posts to the official's wall a comment supporting an upcoming vote on a ballot measure. Another person posts a call for a no vote on the levy, and criticizes the official's performance. A third person posts something echoing the first commenter's post and calling for people to get out and vote for the official.

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other users with whom they share a connection, and (3) view and traverse their list of connections and those made by others within the system." Danah M. Boyd & Nicole B. Ellison, *Social Network Sites: Definition, History, and Scholarship*, from the Journal of Computer-Mediated Communication, Volume 13, page 211 (2007).

So long as the posters are not agents of the host's campaign, the Commission will not treat these posts as constituting a misuse of City resources for campaign purposes. Just as comments made in City Hall's lobby should not be attributed to those with offices above, comments on facebook pages should not be attributed to their hosts.

Example 3. An official provides a link from their City web page to a news article touting the falling unemployment rate in the City. The news site contains several ads, including a banner ad paid for by a committee backing a ballot measure.

The ads do not make the link a violation of the Elections Code. The official is not responsible for the ads that accompany the news story, which can change from day to day, or even minute to minute.

Example 4. An official provides a link from their City web page to their facebook page. Under the official's "likes" are listed the campaign pages for candidates as well as the campaign pages for committees supporting ballot measures.

The posting of this information by the official on his or her facebook page makes it a violation of the Elections Code for the official to maintain the link to their facebook page from a City communication. Just as it would be improper for the official to include a campaign address in a newsletter, it is improper to make those links available from a page that he or she links to from a City communication.

2. **Elected officials may not delete content posted by third parties on their social media sites or blogs unless it is obscene, profane, libelous or defamatory, or the sole purpose of the post is to sell goods or services.**

As noted in the introduction, one of the key features of social media and blogs is that they provide avenues for constituents to make their case to their elected officials and to other readers as well. As opposed to a newsletter, where an official can simply share his or her views, social media and blogs invite readers to post their own comments, either supporting or challenging the official's statements.

The Commission believes that this opportunity for "back and forth" is a healthy development, and is guided by a desire to see these sites develop into places for robust and vigorous debate – virtual public squares, so to speak.

Accordingly, when an official's social media site is prepared using City resources, or linked to from City communications, the official may not remove comments from the site. If the official deletes critical comments and leaves up supporting comments, then the site loses its value to the public. It becomes a site for making the official look good, which is of value to his or her campaign, but is not of value to the public.

If a public official wants to remain free to remove comments from his or her social media sites or blogs, then the official may not prepare them at public expense, or link to them from City sites or communications. Officials can also choose not to permit readers to post comments.

The prohibition on deleting comments extends only to comments that are not obscene, profane, libelous or defamatory, and which are related to the governance and operation of the City.

The Commission offers these examples for guidance.

Example 1. An official writes a blog post laying out their vision for the City's central waterfront. One commenter calls the official a "tool of the rich," who is "only interested in increasing property values for the City's wealthy landowners," and asks "how is that leash fitting?" Another commenter lauds the official's far-reaching vision. A third comment is laced with profanity, and a fourth encourages readers to follow a link to learn more about weight loss.

The official must leave up the first and second comments. Even harsh, caustic comments have a place in the public square. The third comment can be removed because it contains profanity, not because of the viewpoint the commenter expresses. The official cannot leave up a comment that calls the official "[expletive] awesome," and remove one calling them a "[expletive] idiot." The fourth comment can be removed because it is unrelated to City government.

Example 2. An official posts to their facebook page a link to a news story on the Seattle Public Schools. Someone posts a reply praising the schools and urging a vote for the Families and Education Levy, which is up for renewal at the time. Someone replies to that post urging a vote against the levy, claiming that Seattle homeowners are overburdened with property taxes.

The official may not remove either comment. Readers of the facebook page can engage in spirited debates, and the Commission will not attribute these third party comments to the official. To do so would involve the official in monitoring the page to an extent that would likely discourage officials from using these new media, and would increase the risk that the official would engage in the selective editing that the Commission has ruled off limits.

Example 3. An official posts to their facebook page a link to a news story on the Seattle Public Schools. Someone posts a reply, asking where the official stands on the Families and Education levy.

The bar on using City resources for campaign purposes contains an exception for "[a] statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry." Accordingly, the official may respond.

To fit within this exception, it is critical that the official's statement be (1) about a ballot measure and (2) "in response to a specific inquiry." It would be improper for the official to join

a debate over a ballot measure without being invited by the public to share their opinion. And it would never be proper for an official to discuss a candidate election on a facebook page linked to from a City communication.

The Commission is concerned about the potential for officials to prompt questions from supporters on their blogs or social media sites, providing them with an avenue for engaging in advocacy that they could not otherwise engage in without violating the Elections Code. If experience shows that officials are using this exception to thwart the law's intent, the Commission will revisit this guidance.

Conclusion

Like our counterparts at the state and federal level, the Commission is concerned that overregulating these new means of communication could do more harm than good. For that reason, the Commission's guidance is intended to provide officials with as much leeway as possible in their use of social media.

ADOPTED by a unanimous Commission vote on May 4, 2011.