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Political Activities

Social Media

Charter Sections: 2604(b)(2), 2604(b)(3), 2604(b)(4), 2604(b)(14)

Board Rules: 1-13(a), 1-13(b)

Opinions Cited: 2003-6, 2009-5, 2012-5, 2013-1, 2013-2

Advisory Opinion No. 2017-1 (Revised)

The Conflicts of Interest Board (the “Board”) has been asked to apply Chapter 68 of the City Charter, the City’s conflicts of interest law, to social media platforms such as, but not limited to, Facebook, Twitter, YouTube, LinkedIn, and Instagram, which have become ubiquitous in recent years. Many City agencies, including the Board, operate official accounts on one or more social media platforms to communicate with the public on matters of City business.¹ These official social media accounts allow City agencies to communicate with the general public more broadly and more quickly than they can by more traditional methods of communication. Similarly, many elected officials use social media accounts for these same City purposes. Many public servants, including some elected officials, also use social media accounts for a variety of

¹ The Board’s official Twitter account, for example, is @NYCCOIB. A complete list of official City social media accounts can be found at: <http://www1.nyc.gov/connect/social-media.page> (accessed February 23, 2017).

non-City purposes, and some public servants' registered campaigns for elective office use social media accounts to advance such campaigns.

Given social media's wide array of uses, the Board has encountered questions involving the extent to which, consistent with Charter Chapter 68, the City's conflicts of interest law, public servants, including elected and high-ranking appointed officials and their subordinate City employees, may use social media platforms. To set forth the Board's responses to these questions, which may be of a particular interest in a Citywide election year, the Board issues this advisory opinion.

The Board first sets forth the relevant City Charter provisions and Board Rules and summarizes other official City policy.

I. Relevant Law

Board Rules Sections 1-13(a) and 1-13(b) prohibit the use of City time and City resources for any non-City purpose.² Although the Board has determined that these Rules do not prohibit certain limited personal use of City time and resources (for example, the use of the City copier to copy a child's report card, or a call during the City work day to schedule a doctor's appointment, will not violate Chapter 68), it has made clear that all private compensated activities and all political activities *always* fall within the prohibition on use of City time or resources, that is, there is no "incidental use" exception for business or political activities. See Advisory Opinion No. 2012-5 at 2. The Board has thus held that City employees may not use City time or City

² Board Rules § 1-13(a) states that "it shall be a violation of City Charter § 2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City.

Board Rules § 1-13(b) states that "it shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose."

resources to schedule campaign events. Id. at 5. The Board has similarly held that the photographs taken by City staff as part of that staff member’s official City duties are the property of the City and therefore “may be provided to a campaign only if they are made available to the general public, and then only on the same terms.” Id. at 11.

Charter Section 2604(b)(3) prohibits a public servant from using or attempting to use “his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.” The Board has held that this provision prohibits, among other things, a public servant from accepting a gift from a subordinate public servant, except on special occasions. See Advisory Opinion No. 2013-1 at 6.

Charter Section 2604(b)(4) prohibits a public servant from disclosing confidential City information and also from using such information for the public servant’s private advantage.

Charter Section 2604(b)(14) states: “No public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.”

The *Official New York City Social Media Policy* (the “Policy”) reflects and repeats many of these prohibitions. The Policy recognizes that official social media accounts are City property and that City employees authorized to engage with members of the public on these accounts “may do so on City time and using City resources, including other personnel.”³ In contrast, the Policy states that public servants “who wish to use social media in a personal capacity must

³ The *Official New York City Social Media Policy* can be found at: <http://www.nyc.gov/html/conflicts/downloads/pdf2/publicdocs/Official%20New%20York%20City%20Social%20Media%20Policy.pdf> (accessed February 23, 2017). The Policy also cautions that material posted on official social media accounts “may be considered an agency record subject to applicable retention requirements and to the Freedom of Information Law.”

indicate they are only representing themselves, and cannot do so on City time and using City resources, including personnel.”

II. Application to Social Media Accounts

The Board now applies these provisions of Chapter 68 to several types of social media accounts.

A. Official City Social Media Accounts

Many City agencies and elected or high-level appointed officials operate official City social media accounts and appropriately use City time, resources, and subordinate personnel to do so. These accounts must be used only for official business, not for political purposes.

For example, a public servant’s political endorsement is a personal action, not an official action, so that a public servant may not issue political endorsements on City letterhead and may not otherwise use City resources or staff in connection with a political endorsement. See Advisory Opinion No. 2009-5 at 3. The announcement of a political endorsement, or of a campaign fundraiser, may therefore never be included on any official City social media account. A public servant who has any doubt as to whether a proposed communication on an official City social media account would violate Chapter 68 should first seek advice from the Board.

B. Campaign Social Media Accounts

The registered campaigns of public servants who are seeking elective office can advance such campaigns for elective office by using social media accounts.⁴ Because of their political purpose, absolutely no City time and no City resources may be used to operate campaign social

⁴ To distinguish from the candidate’s personal social media account, the Board considers a campaign social media account to be one that is registered and operated by the campaign, not one that is registered and operated personally by the public servant. The conflicts of interest rules regarding personal social media accounts are discussed in Section II.C.

media accounts. See Board Rules Sections 1-13(a) and (b); Advisory Opinion No. 2012-5. A City employee therefore may not during his or her City work day or using his or her City computer post an official City press release on a campaign social media account.

Absent such impermissible use of City time or resources, however, a campaign may disseminate messages from an official City social media account on a campaign social media account, such as re-tweeting a tweet from an official City Twitter account or such as copying an official press release onto a campaign website or Facebook page. Moreover, because the Board has long recognized that a City employee may volunteer to work for the political campaign of his or her superior (see Advisory Opinion No. 2003-6), a City employee may, *on his or her own time* and without the use of City resources, operate the campaign social media account of his or her City superior, or any other elected official, and in doing so may disseminate on that account publicly available communications from an official City social media account.

C. Personal Social Media Accounts

Different from the campaign social media accounts of public servants are the purely personal social media accounts of elected and high-ranking appointed officials, accounts often created before these officials entered City service.⁵ For these accounts, in contrast with the exception for campaign social media accounts, the general rule against superiors accepting gifts from their subordinates applies. See, e.g., Advisory Opinion No. 2013-1. A subordinate who creates content for or manages a superior's personal social media account adds value to that account and thus provides a benefit to the superior. Accordingly, a City employee may not manage, or contribute content to, the personal social media account of his or her City superior,

⁵ An elected or high-ranking appointed official may wish to convert his or her preexisting personal social media account to a government account in order to use City time, resources, and personnel to manage and create content for the account. Such an account would then become a permanent government account. An official considering such a change to a social media account should seek the Board's advice before doing so.

even if done entirely without the use of City time or City resources and even if the City superior is engaged in a campaign for elective office. If done without compensation, the superior who accepted this gift would be misusing his or her City position, in violation of Charter Section 2604(b)(3). See Advisory Opinion No. 2013-1. If done for compensation, both the superior and subordinate would be violating Charter Section 2604(b)(14). This means, for example, while an elected official's staff may prepare and send tweets for their superior's official City Twitter account (subject to the limitations discussed in Section II.B., above), and while the official may re-tweet those tweets on his or her personal Twitter account, that staff person may not compose tweets for the superior's personal Twitter account, whether on City time or otherwise.

A public servant, other than an elected official, who references his or her City position on a personal social media account may not imply that he or she is speaking on behalf of the City or is invoking the authority of his or her City position. Thus, for example, if a public servant chooses to reference his or her City position on a personal social media account such as LinkedIn, the public servant "cannot say 'I speak for my City agency,'" nor can he or she imply as much. See Advisory Opinion No. 2013-2 at 4 n. 5. Similarly, the *Official New York City Social Media Policy* states that public servants "who wish to use social media in a personal capacity must indicate that they are only representing themselves."

By contrast, Chapter 68 does not, by itself, prohibit an elected official from speaking as an elected official on his or her personal social media account. The Board's jurisprudence has traditionally treated elected officials' titles differently than those of other public servants. For example, in Advisory Opinion No. 2009-5, the Board explained that, although the endorsement of candidates for elective office is a political activity, a City elected official, unlike all other public servants, will not violate Chapter 68 by using his or her City title in connection with the

endorsement of candidates for elective office. See Advisory Opinion No. 2009-5 at 3 n 1. The Board reaffirms that principle in concluding here that an elected official may speak as an elected official on his or her personal social media account. The Board similarly relies on Advisory Opinion No. 2009-5 to support its conclusion that an elected official may not use City resources or staff in connection with his or her personal social media account, as it held in Advisory Opinion No. 2009-5 that an elected official “may not issue political endorsements on City letterhead and may not otherwise use City resources or staff in connection with their political endorsements.” Advisory Opinion No. 2009-5 at 3.

* * * * *

Finally, Charter Section 2604(b)(4) prohibits a public servant from disclosing confidential City information and also from using such information for the public servant’s private advantage. Any public servant who maintains a social media account, whether an official City account, a campaign account, or a personal account, must take care not to disclose confidential City information on that account.

A public servant who has any doubt over whether a proposed communication on a social media account would violate Chapter 68 should first seek the advice of the Board.

III. Conclusion

Summarizing the foregoing, the Board advises as follows:

1. Public servants may not use official City social media accounts for political purposes, regardless of whether they do so on City time or whether they use City resources.
2. Public servants may not, on City time or using City resources, operate social media accounts registered and operated on behalf of a campaign for elective office.

3. Subordinate public servants may not manage, or create content for, their superior's personal social media accounts.
4. Public servants who reference their City positions on personal social media accounts may not imply that they are speaking on behalf of the City or are invoking the authority of their City positions.



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