



THE ETHICS REVIEW

A JOINT COMMISSION ON PUBLIC ETHICS NEWSLETTER

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Perils of Posting

At JCOPE, we occasionally receive questions from State employees asking whether their personal use of social media may implicate the State's ethics rules, particularly when commenting about an issue or topic about which they have a personal opinion. We advise them that certain uses of social media – even on a personal page – may be prohibited under the State's ethics laws, including provisions of the Public Officers Law and Civil Service Law. Consider the following:

Let's say I have a personal Facebook page identifying my agency and title in my online profile. On my page, I create a post linking JCOPE's website and stating, "A bunch of my colleagues from work and I are going to this fundraiser next week for Candidate X; she exemplifies the best in public service. Come join us and help elect Candidate X for Mayor." The post is on my personal page – so I can express my opinion on political issues, right? Not so fast! Before you post, tweet, or share any comment (yours or someone else's) take note of the following restrictions:

- *Even when you're not at work, you are always a State employee. When using any social media platform in a non-official capacity, State employees must still be mindful of their obligations under Public Officers Law (POL) § 74. Specifically, POL § 74(3)(d), in part, prohibits State officers and employees from using their official position to obtain privileges or exemptions for themselves or others. Under this ethical standard, an employee's personal use of social media should not give the impression that their agency or the State is endorsing a particular point of view or entity.*
- *Additionally, the use of social media should not give the impression that the judgment of State employees, with respect to their official duties, has been impaired or that another person or entity can improperly influence the State employee in the performance of their official duties [POL § 74(3)(f)].*

In this example, merely including my title and employer agency in my Facebook profile is not a problem; nor am I generally prohibited from expressing an opinion about politics. However, an ethics violation may arise when I create a connection between my agency and official title on the one hand and my personal political views on the other. What ethical standards might I have breached?

- **Public Officers Law § 74:** Members of the public may assume that since I'm linking the agency's website to my post and mentioning my State position, my agency is endorsing a particular political candidate. Might the public also infer that I could be influenced by a

candidate to act in a certain way in my State capacity? To avoid confusion, State employees must clarify that they are speaking in their individual capacity or omit disclosing their State position in any social media post supporting a candidate.

- Civil Service Law § 107: Among other restrictions, this law prohibits a State officer or employee from using their State position to coerce, intimidate, or influence other State officers or employees for any political purpose, action, or contribution; or interfere with any election.

What if I am linked as a “friend” on Facebook with subordinates who see this post? Remember that coercion and intimidation is in the mindset of the person who is **receiving** a comment. Might a subordinate feel obligated to attend because I am the boss, or might they assume that the agency expects their attendance?

While you may want to engage in the political process and speak freely about your political beliefs, just remember to make sure that these actions do not become associated with the performance of your State job. As always, you should first check with your agency to find out whether it has any policy on employee participation in political activities. JCOPE staff attorneys are available, as well, to discuss with you how the ethics laws may apply to your circumstances.

Stay tuned for our next Newsletter where we’ll take a deeper dive into the perils of social media posting.

Dear JCOPE

I file a Financial Disclosure Statement with the State. I took ethics training a few years ago, but I don’t know when I’m due for my next one. How can I check this information?

Answer:

Dear Filer,

You are now able to monitor your ethics training status by logging into your profile on the FDS System. You can get to that system here: <https://www.jcope.ny.gov/index.php/access-fds-online-filing-system>. Should you have any issues, e-mail the Education Unit – education@jcope.ny.gov – for assistance.

JCOPE News: New Advisory Opinion on Post-Employment Restrictions

The Commission recently released Advisory Opinion 18-01 to provide more clarity on the post-employment restrictions applied to State officers and employees when they leave State service. This restatement of ethics guidance for those contemplating work in the private sector after retirement from State government comes is based on more than 30 years of interpretation and application of the State’s “revolving door” provisions. Over that time, the world has grown more complicated, as have the various employment situations impacted by the statutory bars. It behooved us to rethink the body of advisory decisions—considering contemporary employment situations that required a careful review of our body of precedent—to ensure that the substantive rules enunciated in the Commission’s opinions are clear, relevant to today’s work environments, and consistent with the provisions of the Public Officers Law

Advisory Opinion 18-01 doesn’t undermine existing exceptions to the post-employment restrictions, but, rather, resolves difficulties and ambiguities that may have accrued over the years in applying the statutory restrictions and thereby better aligns day-to-day practice under the POL with the law’s underlying policy objectives. The new Opinion will ensure that post-employment restrictions do not unduly restrict an individual’s ability to engage in their occupation where the restrictions are not needed to protect the integrity of—and public confidence in—government.

Going forward, the Commission will interpret and apply the “appear or practice” clause to bar those communications and actions by a former State employee within two years of leaving State service that are intended to influence that employee’s former agency to make a specific decision or to take a specific action. Similarly, the “backroom services” clause will be interpreted to prohibit being compensated for rendering services to a person or entity in connection with a matter before that person’s former agency with respect to a decision by the agency that advances its mission. The Commission will continue to consider lifetime bar issues on a case-by-case basis. The new Opinion sets forth a non-exhaustive list of factors to consider when determining whether the lifetime bar applies in the context of a large, extensive project and any government decision. These common-sense factors will serve as meaningful guideposts to State employees, private employers, and the public as to what constitutes ethical conduct.

Questions about Ethics rules?

Contact JCOPE at legal@jcope.ny.gov or

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