

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY



Office of Government Ethics

BEGA – Advisory Opinion – 1559-001

January 26, 2017

ADVISORY OPINION¹

Social Media and the Code of Conduct

Purpose of this Advisory Opinion

This advisory opinion is intended to provide interpretive guidance to District government employees (“Employee” or “Employees”) regarding the effect of the District’s Code of Conduct on the use of personal social media accounts.² Insofar as it is impractical to issue an opinion that addresses each specific instance in which an Employee’s use of a personal social media account could violate the Code of Conduct, this advisory opinion will provide general guiding principles that can be applied to different situations that may arise. Additionally, this advisory opinion will provide examples to which the guiding principles can be applied, as well as an explanation of the result of that application.

¹ Pursuant to section 219(a-1)(2) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.19(a-1)(2)), a proposed draft of this advisory opinion was published at 63 DCMR 53 (December 23, 2016), available at: <http://www.dcregs.dc.gov/Gateway/NoticeHome.aspx?noticeid=6330916>.

² D.C. Official Code § 1-1161.01(7) defines the Code of Conduct as being comprised of the following:

- (A) For members and employees of the Council, the Code of Official Conduct of the Council of the District of Columbia, as adopted by the Council;
- (B) Sections 1-618.01 through 1-618.02;
- (C) Chapter 7 of Title 2 [§ 2-701 *et seq.*];
- (D) Section 2-354.16;
- (E) For employees and public officials who are not members or employees of the Council, Chapter 18 of Title 6B of the District of Columbia Municipal Regulations;
- (E-i) Chapter 11B of this title [§ 1-1171.01 *et seq.*];
- (F) Parts C, D, and E of subchapter II, and part F of subchapter III of this chapter for the purpose of enforcement by the Elections Board of violations of § 1-1163.38 that are subject to the penalty provisions of § 1-1162.21.
- (G) Section 1-329.01, concerning gifts to the District of Columbia.

Additionally, the Board of Ethics and Government Accountability is statutorily authorized to enforce the Code of Conduct as to “all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council of the District of Columbia, boards and commissions, and Advisory Neighborhood Commissions . . .” D.C. Official Code §§ 1-1162.01a, 1-1162.02(a)(1).

Background

Social media is an umbrella term that refers to internet based tools, programs, and applications that allow their respective users to share information. A social media account, therefore, is an account created through a social media platform, including, without limitation, Facebook, Twitter, LinkedIn, Instagram, Snapchat, and Google+. The general use of personal social media accounts is not prohibited by the District's Code of Conduct. However, there are certain instances in which an Employee's use of a personal social media account would violate the District Code of Conduct, and, consequently, be prohibited.

Generally, Employees do not purposefully seek to violate the Code of Conduct through their use of their personal social media accounts. Most violations, therefore, occur unwittingly. Furthermore, these unwitting violations usually occur in situations where Employees can be reasonably deemed to be speaking on behalf of the District. Accordingly, Employees should routinely question whether their personal social media presence gives the impression that they are speaking on behalf of the District. If the answer is "Yes," the Employee should refrain from such conduct.

The remainder of this advisory opinion discusses the general principles with which Employees should be concerned and, to the extent possible, provides examples of possible violations of the Code of Conduct by an Employee's use of a personal social media account.³ With respect to the specific components of the Code of Conduct, this advisory opinion will focus primarily on Chapter 18 of Title 6B of the District of Columbia Municipal Regulations ("DPM"), the Council of the District of Columbia Code of Official Conduct, and the Prohibition on Government Employee Engagement in Political Activity Act ("Local Hatch Act").⁴ Nevertheless, the principles expressed herein are applicable throughout the Code of Conduct.

Discussion

I. Inclusion of District Employment Information in the Biographical Information Section of an Employee's Personal Social Media Account

The DPM provides that Employees are prohibited from using public office for private gain.⁵ The DPM provides further that Employees are prohibited from taking actions that give the appearance that the District sanctions or endorses the activities of an Employee or another person or entity affiliated with the Employee.⁶ Additionally, the DPM prohibits Employees from

³ The examples are intended to be illustrative of the guiding principles enunciated herein. They do not, however, limit the instances in which a Code of Conduct violation can occur.

⁴ D.C. Official Code § 1-1171.01 et seq.

⁵ See DPM § 1800.3(g). See also Council of the District of Columbia Code of Official Conduct ("Council Code") § VI(c)(1).

⁶ See generally DPM § 1807.1(e). See also Council Code Rules II(a)(1), VI(c)(3).

engaging in any outside employment, private business activity, or interest in any manner that the Employee capitalizes on his or her official title or position.⁷

Notwithstanding these aforementioned DPM and Council Code provisions, Employees can include their District employment information in the biographical section of their respective social media accounts. The personal social media accounts belong to the Employees, and not the District. Also, it is understood that their personal social media accounts are extensions of their respective self-expressions. Therefore, including information related to District employment in the biographical section of an Employee's personal social media account does not automatically associate the Employee as an official spokesperson for the District. Nevertheless, there are instances in which such an inclusion could violate the Code of Conduct.

In assessing whether an Employee's inclusion of District employment in the biographical section of a personal social media account violates the Code of Conduct, this Office will consider the totality of the circumstances. Specifically, the relevant factors upon which this Office will rely are:

1. Whether the Employee states that he or she is acting on behalf of the government;
2. Whether the Employee refers to his or her connection to the government as support for the Employee's statements;
3. Whether the Employee prominently features his or her agency's name, seal, uniform or similar items on the Employee's social media account or in connection with specific social media activities;
4. Whether the Employee refers to his or her government employment, title, or position in areas other than those designated for biographical information;
5. Whether the Employee holds a highly visible position in the government, such as a senior or political position, or is authorized to speak for the government as part of the Employee's official duties;
6. Whether other circumstances would lead a reasonable person to conclude that the government sanctions or endorses the Employee's social media activities; or
7. Whether other circumstances would lead a reasonable person to conclude that the government does not sanction or endorse the Employee's social media activities.⁸

Not one of these factors is dispositive when determining whether an Employee would violate the Code of Conduct when using a personal social media account. However, the presence of a number of these factors could support a finding that a violation occurred. Therefore, and to the extent an Employee's District employment information is listed in the biographical section of a

⁷ See DPM § 1807.1(e). See also Council Code Rule II(a)(1).

⁸ See Federal Office of Government Ethics Legal Advisory Opinion LA-15-03 (April 9, 2015). While this Office is not bound by the Federal Office of Government Ethics and the manner in which it interprets federal ethics rules, this Office frequently looks to that Office for guidance. In this instance, the factors articulated by the Federal Office of Government Ethics provide a good framework for District employees as well.

personal social media account, a disclaimer that affirmatively disavows government sanction or endorsement of the Employee's posts or a disclaimer that distances the Employee's views from the District's views are beneficial.⁹ Please note, however, that the inclusion of such a disclaimer does not automatically provide safe harbor for an Employee from a finding by this Office that the Employee violated the Code of Conduct.

Consider the following examples:

Example 1

Employee A maintains a Facebook account, which lists Employee A's District employment in the biographical section. There is no disclaimer on Employee A's Facebook account. Employee A posts an advertisement for a business owned by Employee A on the Facebook account.

In this instance, Employee A's Facebook post would not violate the Code of Conduct. The inclusion of District employment in the biographical information portion of an Employee's social media account, without more, does not rise to the level of an ethics violation.

Example 2

Employee A maintains a Facebook account, which does not list Employee A's District employment in the biographical section. Employee A is a deputy administrator in Employee A's agency. Due to the higher profile position, Employee A's Facebook account contains a disclaimer. Employee A posts an advertisement for a business owned by Employee A on the Facebook account. The advertisement reads "Please support my business. All of my @(Employee A's Agency) coworkers say it's the best."

In this instance, due to Employee A's high profile position in the District government as well as the inclusion of a link to Employee A's agency, there is a violation of the Code of Conduct as (1) the post gives the impression that the District government supports the business and (2) uses public office for private gain. The disclaimer would be insufficient to protect this employee under these facts. The result would be no different had the Employee in this example not held a high profile position given the direct reference to his coworkers.¹⁰

⁹ For instance, a statement that reads "The views expressed herein are not the views of the District of Columbia government" would be such a disclaimer that an Employee could include in the biographical section of a personal social media account.

¹⁰ In the realm of social media, the use of @ followed by text (i.e. @SomeName) creates a link to another account. Additionally, the use of hashtag # followed by text (i.e. #SomeTopic) links a social media post to other similarly themed posts containing hashtag.

II. *Use of Government Time and Resources*

The DPM states that “an employee has a duty to protect and conserve government property and shall not use such property, or allow its use, for other than authorized purposes.”¹¹ When an Employee is on duty, section 1808.1 of the DPM imposes a duty to protect and conserve government property, which includes government computers, government cellular phones, and the time that the Employee is required to work. An Employee’s use of a personal social media account during working hours, therefore, is generally not encouraged, particularly when such use causes an Employee to be unproductive or causes the District to incur costs.

Applying the aforementioned principles, if an Employee’s use of a personal social media account on a government computer causes that computer to experience issues, the Employee will likely be found to have violated the Code of Conduct, as there are costs associated with correcting those issues. Moreover, the amount of time spent using a personal social media account while at work can also violate the Code of Conduct. For instance, an Employee who uses a personal social media account fifteen (15) minutes out of the working day may not be found to have violated the Code of Conduct. However, an Employee who uses a personal social media account two (2) hours out of the working day will likely be found to have violated the Code of Conduct. There are other factors to be taken into consideration, such as agency policy regarding personal social media account use, as well as the job duties of the Employee. Nevertheless, Employees must ensure that their conduct does not amount to a misuse of government time and resources, and be wary that personal conduct may amount to such.

III. *Other District Personnel Manual Provisions*

While the DPM provisions regarding using public office for private gain, taking actions that give the appearance that the District supports or endorses activities, and capitalizing on official title for outside activities are the most common DPM provisions that Employees can violate through their use of their personal social media accounts, there are other DPM provisions of which Employees must be mindful. Employees should ensure that they do not use their personal social media accounts to: (1) solicit or accept any gift or other item of monetary value from a prohibited source;¹² (2) engage in outside employment or activities that conflict with official government duties and responsibilities, such as seeking or negotiating for employment;¹³ (3) violate local, state, or federal laws; (4) teach, write, consult, and speak in a manner that violates the DPM;¹⁴ (5) violate the District’s post-employment prohibitions;¹⁵ (6) disclose non-public

¹¹ DPM § 1808.1. *See also* Council Code Rule VI(a).

¹² *See* DPM § 1800.3(d); DPM § 1803.1 *et seq.* *See also* Council Code Rule III(a).

¹³ *See* DPM § 1800.3(j). *See also* Council Code Rule II(a)(1).

¹⁴ *See* DPM §§ 1807.2 - 1807.5; *see also* BEGA Advisory Opinion #1448-001, Outside Activities: The Meaning of the Phrase “Devoted Substantially” in DPM § 1807.4 (February 4, 2016), available at http://www.bega-dc.gov/sites/default/files/documents/Advisory%20Opinion_0.pdf.

¹⁵ *See* DPM § 1811.1 *et seq.* *See also* Council Code Rule VIII *et seq.*

information;¹⁶ and take actions giving the appearance that the Employee is violating the Code of Conduct.¹⁷

Consider the following examples:

Example 3

Employee A maintains a Facebook account. Employee A is Facebook friends with the owner of a prohibited source, whom he first met after the owner began working with Employee A's agency. The owner of the prohibited source sends Employee A access to a game hosted on Facebook that costs \$60.00. Employee A accesses and plays the game.

In this instance, Employee A has violated the Code of Conduct by accepting a gift from a prohibited source. Access to the game has a monetary value of \$60.00, and that access was provided by a prohibited source.

Example 4

For several years, Employee A operated a popular blog without compensation. The subject matter of the blog post relates directly to Employee A's position with the District. Employee A also learned the subject matter through her District employment. About one month ago, an advertising company contracted with Employee A to pay \$3,000.00 per month for ad space on the blog. The contract required that Employee A continue to blog about the same subject matter. While the contract between the company and Employee A is for advertising space, the contract requires that Employee A continue blogging about a subject matter relating directly to her District employment.

This provision, in effect, makes the contract one where Employee A is receiving payment for writing about a subject matter directly related to the District employment, which is prohibited. In this instance, Employee A has violated the Code of Conduct by receiving payment for writing that relates directly to District employment.

IV. *The Local Hatch Act*

The Local Hatch Act limits the political activity of District employees.¹⁸ Political activity is "any activity that is regulated by the District directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum."¹⁹ Specifically, the Local Hatch Act prohibits, among other things, Employees from using their

¹⁶ See DPM § 1800.3(c); DPM § 1807.3. See also Council Code Rule VII *et seq.*

¹⁷ See DPM § 1800.3(n).

¹⁸ See generally D.C. Official Code § 1-1171.01 *et seq.* See also Council Code Rule IX.

¹⁹ D.C. Official Code § 1-1171.01(8)(A).

official authority or influence to interfere with an election, as well as soliciting, accepting, and/or receiving political contributions.²⁰ It also imposes additional prohibitions on Employees irrespective of whether the political activity is regulated by the District.²¹ In those instances, Employees are prohibited from engaging in all political activity while on duty, in any room or building occupied in the discharge of official duties in the District government, including any agency or instrumentality thereof (i.e. a District owned or occupied room or building), while wearing a uniform or official insignia, or in a District owned vehicle.²² With respect to social media, an Employee can violate the Local Hatch in two ways depending on (1) the time of the day that the Employee uses a private social media account and (2) the manner in which the Employee uses a private social media account.

As to when an Employee's use of a private social media account violates the Local Hatch Act, Employees are prohibited from engaging in political activity, without regard to jurisdiction, on a personal social media account when they are on duty or official time, in a District occupied room or building, or a District vehicle. Therefore, and with minor limitations, an Employee can engage in political activity on a personal social media account when off duty and outside of a District owned building or room, so long as the Employee is not using his or her official authority or influence to interfere with an election. Thus, a post on a personal social media account shall not reference an Employee's employer, employing agency, or position, when the post includes political activity.

While the definition of political activity is clear, the manner in which it can manifest on social media is not as straightforward. The most obvious example of political activity in the realm of social media is a post that explicitly directs people to vote for or against a candidate. Political activity on social media, however, is not limited to such a post. For instance, linking to a partisan political group's social media account in a post is political activity because it demonstrates support for the group as does posting the picture of a partisan political candidate or a political cartoon. And the same is true for linking to or sharing a link to a partisan political group's website or an article advocating for or against a partisan political candidate. Nevertheless, simply "liking" any of the aforementioned posts or links is not considered political activity.²³

Consider the following examples:

Example 5

Employee A wants to get involved in the management of the political campaign of a candidate for a partisan political office for an election regulated by the District. Employee A creates a website for the candidate. One of the pages on the website created by Employee A is a page to contribute to the campaign.

²⁰ D.C. Official Code §§ 1-1171.02(a)(1) – 1-1171.02(a)(2). *See also* Council Code Rule IX(a)(1).

²¹ *See* D.C. Official Code § 1-1171.03(c). *See also* Council Code Rule IX(a)(1)-(2).

²² *See* D.C. Official Code § 1-1171.03(a). *See also* Council Code Rule IX(a)(5).

²³ Liking a post is the method by which one shows approval for what has been posted.

In this instance, Employee A has violated the Code of Conduct by engaging in fundraising activities. Note that creation of the campaign website without the fundraising page does not violate the Code of Conduct.

Example 6

Employee A maintains a Twitter account. The Twitter account lists Employee A's position with the District in the biographical section. The Twitter account also contains a disclaimer stating that the views expressed on the account are not the views of the District. Employee A spots a co-worker at a political convention on television. Employee A takes a picture of the co-worker and posts the picture on Twitter. Below the picture is the following sentence "So proud of my @Agency colleague. @PartisanPoliticalGroup." The partisan political group supports a partisan political candidate.

In this instance, Employee A's conduct violates the Code of Conduct. The @ sign operates as a link. Therefore, Employee A has linked this post to both the agency and the partisan political group's social media pages. Linking to the partisan political group's social media page is political activity. Also, linking to Employee A's agency's social media page is equivalent to using official authority or influence to interfere with an election.

Example 7

Employee A maintains a Facebook account. One day, during a fifteen minute break, Employee A contributes \$2,000.00 to a partisan political candidate's campaign through a Facebook link while located in a District building.

In this instance, Employee A violated the Code of Conduct because donating to a campaign is political activity. Furthermore, the political activity occurred during the tour of duty and in a District occupied building space.

V. Recommendations or Endorsements

Another common area where an Employee's use of a personal social media account can violate the Code of Conduct is in the realm of social media recommendations or endorsements. Social media platforms allow their users to recommend or endorse other users generally or the skills of other users specifically. This Office previously provided guidance pertaining to letters of recommendation.²⁴ As indicated in that guidance, "anyone who undertakes to provide a letter of recommendation for a contractor or grantee must be certain that he or she has the authority to speak on behalf of the District government or the writer's employing agency or District entity."²⁵ The Employees who have that authority are the Mayor, Councilmembers, agency heads, and in some instances, high-level executives, managers, and Council staffers.²⁶ The overwhelming

²⁴ See Office of Government Ethics Legal Advisory Opinion 1040-001 (November 19, 2014).

²⁵ *Id.* at 5.

²⁶ See *id.*

majority of Employees do not have this authority to speak on behalf of the District. As a result of this lack of authority, any recommendation or endorsement on a personal social media account must be done in a personal capacity.

As an initial matter, it is not a violation of the Code of Conduct for Employees to provide recommendations or endorsements on their personal social media accounts simply because the account references their District employment.²⁷ The social media recommendations or endorsements usually take the form of a “like,” “thumbs up,” or the phrase “Employee endorses skill.” Social media recommendations or endorsements, however, usually do not include narratives. Accordingly, there would be no violation of the Code of Conduct during most social media recommendations or endorsements, as there is no impression that a District employee is suggesting the District recommends or endorses someone or some company due to the lack of a narrative accompanying the recommendation or endorsement. However, to the extent an Employee includes a narrative in a recommendation or endorsement, the narrative must not reference the Employee’s title, position, or employer, as the Employee would likely be deemed to be speaking on behalf of the agency or District government without permission and, as a result, be in violation of the Code of Conduct.

Consider the following examples:

Example 8

Employee A maintains a LinkedIn account that contains Employee A’s biographical information. Employee A supervised Volunteer A in a District agency. Employee A is a mid-level manager at the agency. After leaving the agency, Volunteer A requested Employee A endorse Volunteer A’s writing and communication skills, and provide a written recommendation of both on LinkedIn. Employee A endorsed Volunteer A’s writing and communication skills on LinkedIn. Employee A stated in a narrative “I would strongly recommend Volunteer A for any job that requires intensive writing and communication skill. I became acquainted with Volunteer A’s ability to write and communicate when Volunteer A worked at my District agency. I served as the assistant deputy director of my District agency and was directly responsible for supervising Volunteer A’s work. Volunteer A’s work product was as good as that of full time employees of the District agency. You will not be disappointed in your decision to hire Volunteer A.”

Unless Employee A has express authority to speak on behalf of the agency, or otherwise to provide such references for former employees, Employee A’s narrative violates the Code of Conduct. The recommendation would have accomplished the same effect without mentioning the District. However, by linking the District to the recommendation, Employee A implicitly suggests that the District as a whole, and the agency in particular, endorses Volunteer A’s writing and communication skills.

²⁷ See Section I, *supra*.

Example 9

Employee A maintains a LinkedIn account that contains Employee A's biographical information. Employee A worked in the same District agency as Employee B. They did not work on any projects together. Accordingly, their relationship was personal and not professional. Employee B left the District agency and requested Employee A endorse Employee B's writing and communication skills, and provide a written recommendation of both on LinkedIn. Employee A endorsed Employee B's writing and communication skills on LinkedIn. Employee A stated further in a narrative "I would strongly recommend Employee B for any job that requires intensive writing and communication skill. Based upon reviews from supervisors who managed Employee B, Employee B's work was always top-notch. You will not be disappointed in your decision to hire Employee B."

Employee A's recommendation narrative violates the Code of Conduct. Although it does not mention the District, professional recommendations must be based on a professional relationship and personal knowledge. Here, there was neither a professional relationship nor personal knowledge concerning the skills of Employee B. As stated earlier, this Office's past guidance regarding Employee conduct generally applies in the social media context as well.

Example 10

Employee A maintains a Facebook account that contains Employee A's District employment information in the biographical section of the Facebook page. While browsing Facebook, Employee A noticed the page of Company A, a prohibited source. Employee A liked the prohibited source's Facebook page. Employee A also left the following recommendation on the prohibited source's Facebook page: "I strongly recommend this company for any IT issues you may have. I had an issue in my agency where I was unable to access the internet. My IT department was unable to resolve the issue. My IT department contacted Company A, which resolved the issue immediately."

The recommendation is not a violation of the Code of Conduct. Although Company A is a prohibited source, Employee A's recommendation does not mention the District, is provided in a personal capacity, and based on a professional relationship.

Example 11

Employee A maintains a Facebook account that contains Employee A's District employment information in the biographical section of the Facebook page. While using that account, Employee A "likes" a co-worker's company page. Employee A has no professional relationship with the co-worker's business.

Employee A has not violated the Code of Conduct. Without more, endorsing or recommending a person or business entity with which an employee has no professional relationship is not a Code of Conduct violation.

VI. *Additional Considerations*

A. Use of Official Social Media Accounts

While the crux of this advisory opinion is focused on the use of personal social media accounts, I would be remiss not to mention the use of official social media accounts. To that end, many District agencies have various official agency social media accounts to which some Employees have access. Official agency social media accounts are considered government resources. Insofar as official social media accounts are government resources, Employees must not use official agency social media accounts for other than their authorized purposes.²⁸ The phrase “authorized purposes” is statutorily defined as “those purposes for which government property is made available to members of the public or those purposes authorized by an agency head in accordance with law or regulation.”²⁹ Accordingly, an official social media account must be used for official agency business only.

Consider the following example:

Example 12

Employee A is an elected official. Employee A’s office maintains an official Twitter account. Employee A uses the office’s official Twitter account to tweet about an upcoming election involving Employee A. Specifically, Employee A drafts the following tweet “Please vote for me, Employee A, because I have a history of getting the job done.”

Employee A’s tweet violated the Code of Conduct. Employee A used the agency’s official Twitter account for an unauthorized purpose.

B. Agency Limitations on Use of Personal Social Media Accounts

It bears mentioning that each specific agency may impose additional restrictions on an Employee’s use of a personal social media account. As a general rule, these additional restrictions are not part of the Code of Conduct. Therefore, BEGA has no jurisdiction with respect to the enforcement of any additional restrictions. For instance, while this Opinion advised that under certain circumstances, an Employee can provide an endorsement on LinkedIn for another Employee, an agency may limit that conduct and provide that its Employees are not allowed to endorse other Employees. Such restrictions fall within the ambit of personnel related matters. And, as a result, each individual agency would be responsible for ensuring compliance with those restrictions.

²⁸ See DPM § 1808.1. See also Council Code Rule VI(a).

²⁹ DPM § 1808.2.

Conclusion

In sum, Employees should be careful not to give the impression that the District endorses or supports their posts on social media. Employees should also avoid giving the impression that they speak on behalf of the District when there is no authorization to do so. Finally, Employees should not capitalize on their District employment to the benefit of the Employee's outside activities. Adhering to these general principles, as well as understanding that specific provisions of the Code of Conduct apply to activity on social media, should help ensure that Employees do not violate the Code of Conduct through their use of their personal social media accounts.

Please be advised that this advice is provided pursuant to D.C. Official Code § 1-1162.19(a-1)(1), which empowers me to issue, on my own initiative, an advisory opinion on any matter I deem of sufficient public importance concerning a provision of the Code of Conduct over which the Ethics Board has primary jurisdiction.

For further assistance, especially in resolving any questions about whether a social media post and a social media account violates the Code of Conduct, please feel free to contact the staff of this Office at (202) 481-3411.



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