

Social Media Legal Issues

Brian C. England
Deputy City Attorney
Garland, Texas

March 7, 2018

Social Media Legal Issues



Social Media Examiner

15 hours ago

Be honest. Has this ever happened to you? - Erik

Checked email, Facebook, Twitter,
and Pinterest.

Ready to start my day.

Oh look, it's
lunch time.



someecards
user card

Like · Comment · Share · Buffer

88 Shares



Social Media Legal Issues



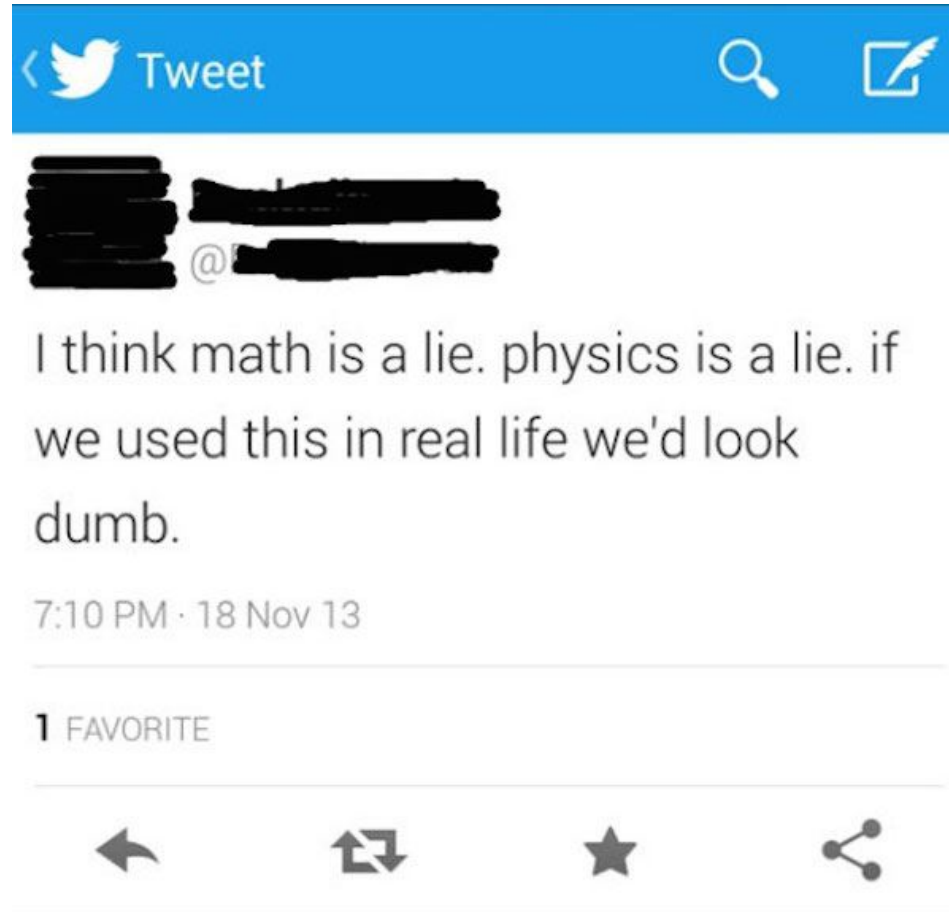
Social Media Legal Issues



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Social Media Legal Issues

Social Media Minefield

1. Privacy concerns
2. Free Speech concerns
3. Employment liability
4. Political liability/Political Advertising
5. Ethical concerns



Social Media Legal Issues

Redondo Beach, CA – Attitudes are Changing

- In 2010, Redondo Beach deleted their Facebook page on advice from City Attorney
- User Interface Concerns
 - Retention of user comments under Public Information Act
 - 1st amendment issues on user comments
 - Open Meetings Act Violations
- Redondo Beach now has a FB page



Social Media Legal Issues

What are the rights of your employees, as public employees?

- Competing Interests between public employees right to free speech and employer's interest in efficient operation of its agency.
 - Public employees have not forfeited their right to freedom of speech by virtue of their public employment (Pickering v Bd. Of Ed. (SCOTUS 1968))
 - Courts will look to see if commenting (1) as a citizen (2) on matters of public concern.
 - “Public Concern” – speech that addresses malfeasance, corruption, breach of public trust, mismanagement of funds, etc.



Social Media Legal Issues

Rights as Public Employee (cont.)

Graziosi v. City of Greenville, Miss., 775 f.3d 731 (5th Cir.2015)

- 1st Amendment Case (Personal Social Media)
- Rights of Public Employee's speech criticizing government employer
- Police officer was terminated for criticizing the chief of police on Facebook for not paying for gasoline to send police officers to the funeral of another officer.
- Court held that (1) by using terms such as "we" and "our" she spoke as an employee; (2) comments were not a matter of public concern, but instead involved dispute over intra-departmental decision-not protected; and (3) even if they were a public concern there is evidence her speech disrupted the police department (efficient public services).



Social Media Legal Issues

Employee Conduct Policy (cont.)

A gov't agency should extend any personnel code of conduct to an employee's social networking activities.

- Allow identification as employee of agency?
- Allow use of agency logo, seal, trademark?
- If allowed, does the agency require a disclaimer regarding any postings or blogs are solely the opinion of the employee and not the agency?
- Require all employees to sign acknowledgement of policy?



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Agency Maintained Social Media



Social Media Legal Issues

Political Advertising

1. Use of Public Resources Prohibited (Tex. Gov't Code 255.003)
2. An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising
3. Does not apply to factual descriptions of a measure if communication does not advocate passage or defeat (factual explanation v. motivational slogan”
4. **Criminal Liability**



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Political Advertising

1. “Political advertising” means a **communication** supporting or opposing a candidate for nomination or election to a public office or office of a political party. . .or a measure that:
 - ...(b) appears (i) in a pamphlet, circular, flier, billboard, or other periodical or is broadcasted by radio or television; **or**
 - (ii) on an internet website**

*It is a communication that advocates a particular outcome in an election. *Explanatory material* about a measure is permitted (purpose of election, election dates, and polling places, etc.)



Social Media Legal Issues

Official Web Pages or FB Pages

Should Citizen Comments Be Allowed?

- Policy decision with legal considerations
- State law considerations
- Federal law considerations

Document Retention?



Social Media Legal Issues

Retention Concerns

Government Record?

Government record as defined in the Local Government Records Act (LGRA) and in the Government Code Chapter 441 for State Agencies; records can exist in a variety of formats, including “electronic medium, or other information recording medium, regardless of physical form or characteristic (LGC 201.003(8)).



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Retention Concerns

If the information shared is merely cursory and minimal with no *lasting importance or need* beyond its initial purpose of informing therefore capture and retention is not necessary (posting of upcoming events, etc.).



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Retention Concerns

- The retention periods for government documents may possibly apply (but, are they unique?) to FB comments (Garland currently uses ArchiveSocial?)
- AG has issued an opinion that FB comments of gov't officials are subject to TPIA



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Retention Concerns with Deleted Citizens Comments?

- AG has issued an opinion that FB comments are subject to TPIA
 - Complaints about gov't services
 - Public safety and emergency responses
- The retention periods for government documents would apply to FB comments
- BEST PRACTICE: Garland currently uses ArchiveSocial



Social Media Legal Issues

Communication between members of a governing body a violation of OMA?

- Quorum
- “Liking” v “commenting”
- We do not recommend Councilmembers commenting on FB posts
- Recent Legislation allows internet discussion under certain conditions
 - In writing
 - Posted to an online message board that is both viewable and searchable
 - Displayed for at least 30 days
 - Agency may only have one online message board



Social Media Legal Issues

Public Comments under Federal Law

What can an agency do with unwanted public comments?

Hawaii Defense Foundation, et al. v. City and County of Honolulu (June 19, 2014)

- City Removed two posts from its Police Department's Facebook page and banned the posters
- City and county were sued
- Settled by changing their policy and paying attorney's fees



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Public Comments under Federal Law

- Safest practice is to not allow public comments
- What is the agency's stated purpose of social media presence? Governing Board guidance?
 - Information tool
 - Exchange of Ideas



Social Media Legal Issues

Public Comments under Federal Law

- If the agency is allowing public comments then does the agency have any ability to delete comments?
 - Maybe, but very risky and can be expensive
 - Case-by-case review based on specific facts
 - What type of Forum? (open, limited public, closed?)
 - Limited public forums may have restrictions, but they must be reasonable and content-neutral
 - DO NOT DELETE PUBLIC COMMENTS WITHOUT FIRST CONSULTING WITH YOU ATTORNEY

