

Advisory ____ : Social Media

**Preliminarily Approved by the State Ethics Commission on October 15, 2020,
Subject to Further Revision**

The conflict of interest law, G.L. c. 268A, places certain restrictions on the conduct of all state, county and municipal employees (“public employees”). As explained below, issues may arise for public employees under various provisions of the law when they use “social media” in performing their official duties, or when they use social media privately for a personal or political purpose. “Social media” refers to any internet-based service that allows users to create, share, re-purpose and publish informational content. Social media platforms typically require users to create an account with a uniquely identifiable profile. Examples include, but are not limited to, Facebook, Twitter, LinkedIn, Wikis, Instagram, YouTube, Snapchat, GoFundMe, and blogs.

This Advisory provides general guidance about how the conflict of interest law applies to the use of social media by public employees. Public employees who have specific questions about how the law applies to them may [request confidential advice by telephone or in writing from the Commission’s Attorney of the Day](#). Further, this Advisory addresses only conflict of interest law issues related to social media use; it does not address any other legal issues that may arise from public employee or public agency social media use.

I. Public or Official Social Media Use

Social media is often used by public agencies and public officials to help them to better serve the public. Many public agencies, departments, boards and elected officials use social media for important purposes, including to inform and communicate with the public.

When public employee time, technology, devices, email, contact lists, or other public resources are used to create or maintain a social media account, the account is a public resource, and it is considered a “public” or “official” social media account. In contrast, social media accounts created and maintained without the use of any public resources, are personal or non-public accounts. *See* part II below for conflict of interest law issues regarding personal social media use.

Section 23(b)(2) of the conflict of interest law, G.L. c. 268A, prohibits public employees from using their public positions or public resources to give an unwarranted privilege or exemption of substantial value (\$50 or more) to themselves or others that is not available to similarly situated individuals. This law prohibits public employees from using public resources, including public social media accounts, for political, campaign-related, or personal purposes. For example, a public employee who uses social media as part of her official duties and uses public resources in connection with the social media account, may not also use that same social media account for personal, private, or political purposes. Activity is considered political when it is directed toward the success or failure of a political party, candidate, or partisan political group.

The Commission offers the following guidance to help public employees who use social media as part of their official duties to comply with the conflict of interest law.

1. **Adopt a Policy.** To help employees avoid § 23(b)(2) issues, public agencies and officials are advised to adopt a written social media policy that contains objective criteria for the type of content that will, or will not, be posted. For example, because public resources may not be used for a political purpose, an agency's social media policy might state that no political statements or endorsements will be posted on the agency's social media. Adopting a policy will also help to ensure that public employees responsible for posting social media content will not provide preferential treatment to certain individuals, groups or entities. Agencies must take care to provide equal access to their social media to all similarly situated individuals and groups. For example, if a city allows a community theater group to post information about an upcoming theater production to the city Facebook page, the city must allow similarly situated groups to post information about other events in the city. *See* [Social Media Legal Guidance Toolkit](#); [Mass.Gov Social Media Policy](#); [Town of Sandwich Social Media Policy](#).
2. **Designate, Authorize and Train Employees.** The Commission recommends that public agencies authorize and train certain employees to be responsible for social media accounts. Limiting the number of employees who are authorized to represent the public agency on social media can help to eliminate conflicts because, ideally, the employees responsible for the agency's social media will receive training and be familiar with the agency's social media policy.
3. **Protect Confidential Information.** A public employee may not disclose confidential information on the public agency's social media. *See* [G.L. c. 268A, § 23\(c\)\(2\)](#).
4. **Keep Personal Social Media Separate.** Public employees must be careful not to commingle personal and public social media accounts. Public social media accounts should not be used to make personal or political statements, or to send private messages that are unrelated to the employee's official duties. For example, a police officer may not Tweet on the Police Department's Twitter account, "whatever you do, do not vote for Candidate X tomorrow, he is a ding-a-ling!"
5. **Be Aware of Conflicts Involving Private Affiliations.** If a public employee has a private affiliation with a person or organization, he may have a conflict if he is called upon to post about the person or organization in his public job. For example, an employee who must decide whether to post social media content that involves the employee's family members, close friends or a private organization with which the employee is affiliated may have a conflict.
 - **Example:** Miguel, a town employee, is responsible for maintaining the town's public social media. As part of Miguel's official duties, he decides what information is posted on social media. A local Farmer's Market asks Miguel to post its hours of operation on the town Facebook page. Miguel's sister is the Director of Marketing for the Farmer's Market. Miguel's sister will receive a

\$1,000 bonus if at least 1,000 customers visit the Market in the next month. Miguel knows that if he posts information about the Market on the town Facebook page, then more customers will likely go to the Market and his sister will be more likely to get a bonus. The town has not previously posted information about the Market, its hours of operation, or similar information for any other local business.

To comply with the conflict of interest law, Miguel either will need to abstain from making the decision whether to post information about the Market on the town Facebook page, or he will need to obtain a conflict of interest law exemption by disclosing in writing to his appointing authority that his sister, an immediate family member, has a financial interest in whether the information is posted. Miguel may make the decision if he files a written disclosure form and his appointing authority gives him written permission to participate.

In general, unless an exemption is obtained, public employees may not participate in a matter if they, their immediate family members, or any business organization for which they are an officer, director, trustee or employee, has a financial interest in the matter.

- Example: State Representative Smith has been asked by a constituent to post on her official public Twitter account: “Residents, please consider donating to the CityEats Food Pantry today!” and to include a link to the non-profit organization, CityEats’ website. Rep. Smith’s spouse is the Chairperson of CityEats’ Board of Directors.

To ensure compliance with the conflict of interest law, Rep. Smith’s office should have a written policy containing objective criteria about what information will be posted on the Representative’s official public Twitter account. If CityEats’ request complies with Rep. Smith’s official social media policy, then she may post the request to her public Twitter account provided: (1) she treats the request the same way she would treat such a request from a similar organization; (2) she does not provide preferential treatment to CityEats; and (3) she files a [disclosure of appearance of conflict of interest pursuant to G.L. c. 268A, § 23\(b\)\(3\)](#), disclosing that her spouse is the Chairperson of the Board of Directors for City Eats, before she decides whether to post the information.

II. Personal Social Media Use

The conflict of interest law does not prohibit public employees from using personal social media accounts when off duty, on their own time, provided they do not use public resources, including their government computers. However, it is important for public employees to be aware of potential conflict issues that may arise when using social media for a personal purpose.

Public employees must take care to comply with agency-specific policies in addition to complying with the conflict of interest law restrictions. Public agencies may have social media,

code of conduct, or other personnel policies that place additional restrictions on their employees' personal social media use.

Public employees who wish to use their personal social media accounts for political fundraising should be aware that the campaign finance law, G.L. c. 55, places restrictions on public employees' political fundraising activities. For additional information and advice about these restrictions, *see* [970 CMR 1.24](#) or contact the [Office of Campaign and Political Finance](#).

Public employees who have access to confidential information in their public positions must be careful not to disclose it on their personal social media accounts.

The Commission offers the following guidance to public employees when using personal social media accounts.

1. **Use of Title:** Generally, an appointed public employee may not use her public title in connection with posts on personal social media. An elected public employee, however, may use her public title for such a purpose. All public employees may use their public titles in biographical summaries or on their resumes. They also may use them to identify their employers. Public employees who reference their public positions on their personal social media accounts must take care not to imply that they are speaking on behalf of their public agencies or departments or acting in their capacity as public employees.

Examples of what **does not violate** the conflict of interest law:

- On Juan's personal Facebook page in the "About" section under "Work and Education," he lists his current position as "Attorney, Commonwealth of MA, State Ethics Commission."
- On Inara's personal LinkedIn page, which contains her employment history, she lists her present position as a "Physics Teacher, Winnings High School," with a description of her official duties. Inara's LinkedIn page then appears to the public with her name and official title in the headline.
- Jasmine is an appointed municipal employee. On Jasmine's private Twitter account, she posts: "I am proud to endorse Jane Doe for State Senate. Please vote for Jane Doe!" Note: Jasmine does not reference her municipal title or position in her endorsement of Senator Doe.
- Cal Smith is an elected State Senator. On Cal's private Instagram account, they post a photograph of themselves with a candidate for City Council, with the statement: "I'm State Representative Smith and I know that candidate Doe is the right choice for City Council. Vote Doe for City Council!" Note: This is only lawful for elected public employees. Appointed, or non-

elected public employees may not use their public titles to endorse a candidate for elected office, or for any other political activity.

Examples of what **violates** the conflict of interest law:

- Maria creates a GoFundMe page and writes: “I am a Firefighter in the City of Tilton and I am no longer able to work full-time due to injuries I sustained in the line of duty. If you are able to help my family during this difficult time, please contribute to my fund.” Maria may not use her municipal title for this private purpose. See [*Advisory 19-1: Gifts and Gratuities, FAQ No. 16.*](#)
 - Lee, a police officer, posts on the Police Association Facebook page a photograph of himself in his police uniform at an outdoor festival posing with an individual dressed up as a candidate for the upcoming presidential election. Lee’s post states his support for the candidate. Lee was on duty when the photograph was taken and when he posted it to the Police Association website.
2. **Use of Time**: Public employees, whether appointed or elected, may not use their public time or that of their staff in connection with personal social media use.
- **Example**: Mary, an elected state official, may not direct her state staff to post to her private or campaign social media accounts on state time.
3. **Use of Other Resources**: Public employees, whether appointed or elected, may not use public resources in connection with their personal social media.
- **Example**: Rithy, an Administrative Assistant who works at City Hall may not use their City computer to post to their private social media accounts.
 - **Note**: Minimal or *de minimis* personal social media use during work time, such as occasionally using a work computer to check a personal social media account during a break, will not violate the conflict of interest law, provided it complies with the policies of the public employee’s agency.
4. **Solicitation**: Public employees must take care not to use personal social media to solicit anything valued at \$50 or more from any person or entity under their official authority or with whom they have official dealings. Sending general untargeted solicitations is permissible, even if sent to individuals under the public employee’s official authority or those with whom the public employee has official dealings. Sending targeted solicitations to this category of individuals, however, is prohibited by G.L. c. 268B, § 23(b)(2)(ii), because it is inherently coercive. Postings on a Facebook “wall,” “tweeting” on Twitter, or posting on LinkedIn, are generally considered untargeted solicitations, even if the user’s account is set to private so that

only friends and followers can view postings. However, if a public employee sends a direct message or a “DM” soliciting charitable donations or support to someone under his official authority, it is likely to be considered a prohibited targeted solicitation.

Example of what **does not violate** of the conflict of interest law:

- Fouzia, a Town Administrator, posts to her personal Facebook page and the post is open to the public so anyone may view it: “My brother was recently diagnosed with leukemia. My family is participating in a walk to support the Cure Leukemia Foundation. Please consider donating to our team ‘Walk for Hassan!’ Click here to donate.”

This is not a violation because it is not targeted to anyone with whom Fouzia, as Town Administrator, has official dealings or anyone who is under her official authority, and she is not using her Town title or any other Town resources. However, if, as Town Administrator, Fouzia becomes aware that someone under her official authority, or someone with whom she has official dealings (i.e. one of her subordinates or the Town vendor whose contract she oversees) has made a donation to her team, or in response to the Facebook post, then Fouzia would need to file a [disclosure of appearance of conflict of interest pursuant to G.L. c. 268A, § 23\(b\)\(3\)](#) before participating as Town Administrator in a matter that involves the individual or entity that made the donation.

Example of what **violates** the conflict of interest law:

- A teacher sends an email to parents of his students and includes a link to a GoFundMe page. The email states: “If you were considering a year end gift to me, I would like to request that the gift be in the form of a donation to a charity that is extremely near and dear to me. My nephew recently was diagnosed with autism. My family is participating in a walk to support the Cure Autism foundation. Please consider donating to our team ‘Walk for Declan!’ Click here to donate.”

This is a violation because the teacher is using his position as a public employee to target individuals with whom he has official dealings (i.e. parents of his students) to donate to a private foundation. For further information regarding these restrictions, see [Advisory 14-1: Public Employees’ Private Business Relationships and Other Private Dealings With Those Over Whom They Have Official Authority or With Whom They Have Official Dealings.](#)

5. **Public Dealings with Private Social Media Contacts:** The conflict of interest law prohibits public employees from taking action in matters in which their impartiality may be questioned unless they first file a disclosure. For example, a public employee, privately, on her own time, has created a GoFundMe page to raise money for a family

member. Someone she knows has donated to the GoFundMe page, and the employee, in her public job, must take official action on a matter involving the donor. The public employee will need to file a [§ 23\(b\)\(3\) disclosure](#) prior to taking action in order to dispel the “appearance” of a conflict. In lieu of filing the disclosure, the public employee may abstain from acting on the matter.

III. Additional Guidance for Elected Officials.

Elected officials at all levels of government use social media in their public lives. When running for elected office, a candidate often gains large social media followings. Conflict issues often arise when a political campaign ends and a candidate becomes an elected public official.

Section 23(b)(2) of the conflict of interest law prohibits the use of public resources for a political purpose. When public resources are used in connection with a social media account, the account itself becomes a public resource and may not be used for political or campaign purposes. For elected public officials who use social media, the Commission offers the following guidance about complying with the conflict of interest law. Public officials should also check with the [Office of Campaign and Political Finance](#) regarding its regulations on social media use. *See* 970 CMR 1.24.

Best Practices Tips for Elected Officials When Using Social Media

1. Don't use public resources, including official staff, public devices, technology, public email or contact lists, or staff time to manage **campaign** social media accounts. Also ensure that your public staff do not use public resources to operate your campaign social media. If any of your public staff also serve as volunteers for your political campaign, they must follow this rule.
2. Don't make political endorsements or campaign announcements or solicit campaign funds on **official** social media accounts. Public resources may not be used for political or campaign purposes. A public official may not use official letterhead, or other public resources to endorse a candidate. Likewise, a public official may not use official social media for such a purpose.
3. Don't convert an **official** social media account into a **personal or campaign** account when you are running for re-election. When public resources are used to create and/or operate a social media account, then the account becomes a public resource and it may not later be turned back into a personal or campaign account.
4. Start over with new social media accounts when newly elected. It is a best practice for newly elected officials to create fresh social media accounts after an election and to avoid converting their campaign social media account into a public account. The newly created social media account should clearly state that it is the elected official's public account. After an election, newly elected public officials often post messages on their campaign social media requesting that followers switch to their new account created for official business. Creating a new public social media account allows the

- elected official to then re-use the old campaign social media account when running for re-election because no public resources were ever used in connection with the campaign account and the campaign account was never converted into a public account. Although it is not a conflict of interest violation for an elected official to convert a campaign account into a public account, once public resources have been used to operate the account, it becomes a public resource and may not later be turned back into a campaign account.
5. Maintain a wall between your **official** and **personal/campaign** social media accounts. Public resources, including staff time, technology and contact lists may not be used for a political purpose. Public social media accounts are a public resource. To avoid conflict issues, it is best for elected officials to use separate social media accounts for campaign activities and official activities.
 6. If you are unable to maintain multiple separate social media accounts (i.e., one personal/campaign account and a second public account), then it may be best to maintain one social media account and take care not to use **any** public resources in connection with that account. When no public resources, including staff time, devices, technology, or contact lists are used in connection with a social media account, the account is not a public resource and it may be used for private or political purposes. For example, an elected selectman who never uses any town resources, including office equipment, staff, or his constituent contact lists, in connection with his social media account may use the account to make political announcements and endorsements and may also post important constituent information on it, provided he takes care not to imply that it is an official town social media account (i.e. although he may use his public title, he should not list his town telephone number, email address, or other contact information and he should not use a photo of the town seal, and if possible he should include a disclaimer on the account that it is not an official town account).
 7. Don't use your public office telephone number, email address, or office contact information on your campaign social media accounts. Your public telephone number and email address are public resources and may not be used for campaign purposes. Further, including your public contact information on your campaign social media accounts may imply that the account is an official social media account and that it carries with it the authority of your public office.

IV. FAQs

1. While a public employee, may you post a photograph or endorsement of a candidate on your state or municipal agency Facebook page?

Answer: No. This is prohibited pursuant to G.L. c. 268A, § 23(b)(2). Public resources, including the agency Facebook page, may not be used for a political purpose.

2. In your personal capacity, while off duty, and using your personal social media account, may you share or link to content created by a political candidate? For example, are you permitted to post a tweet that includes the Twitter handle of a candidate? May you retweet a tweet of a candidate?

Answer: Yes, the conflict of interest law does not prohibit you from sharing or posting, on your personal social media account, content created by a candidate, including an incumbent elected official.

3. In your personal capacity, while off duty, and using personal social media accounts, is it permissible for you to “like” or otherwise react – “love,” “laugh” – to content on Facebook, Twitter, or Instagram?

Answer: Yes, the conflict of interest law does not prohibit you from using personal social media accounts to “like” or otherwise “react” to content on social media.

4. May you retweet or share on Facebook content from your personal social media account that originated from your public agency social media account?

Answer: Yes, as long as you do so on your personal time, use your personal computer and do not use any public resources.

5. As part of your official duties, may you retweet an American Academy of Pediatrics tweet that states: “Vaccines are safe, effective and save lives?”

Answer: Yes, if posting such information furthers your public agency’s mission and the post complies with your agency’s social media policy. This does not violate the conflict of interest law because it addresses a public policy issue and it is not directed toward the success or failure of a political party, candidate or partisan political group.

6. As part of your official duties, may you post information about an upcoming Black Lives Matter rally on the School Department’s Twitter account and use the hashtag #BLM?

Answer: Yes, if posting such information furthers your public agency’s mission and the post complies with your agency’s social media policy. This does not violate the conflict of interest law because it addresses a public policy issue and it is not directed toward the success or failure of a political party, candidate or partisan political group.

7. May I list my public title in my headline with my name on a personal LinkedIn page?

Answer: Yes. Such a reference is biographical and therefore permissible under the conflict of interest law.

8. May I send or accept a LinkedIn connection invitation to/from my co-worker or someone with whom I have official dealings in my public position?

Answer: Yes. Sending or accepting a LinkedIn connection invitation to/from a co-worker or another individual with whom you have official dealings will not violate the conflict of interest law. If a matter later comes before you in your public position involving an individual with whom you have a significant private social media relationship, then before you participate in the matter as a public employee, you may need to file a disclosure of appearance of conflict pursuant to G.L. c. 268A, § 23(b)(3). See [Advisory 05-01: Standards of Conduct](#) and [§ 23\(b\)\(3\) disclosure form](#).

9. As part of your official duties as Police Chief, may you advocate for the construction of a new public safety building on the Police Department's Facebook page?

Answer: Yes, this is permissible because as Police Chief, you hold a "policy-making position" and construction of a new public safety building is a matter within the purview of the Police Department. If you hold a position that is not a "policy making position," then you may not use public resources, including the Police Department Facebook page, to advocate for the construction of a new public safety building. See [Advisory 11-1: Political Activity](#) for additional information.

10. May I post a picture of myself in my police uniform on my campaign Facebook page?

Answer: No, this is an impermissible use of your uniform, which is a public resource, for a private purpose.

11. As a public school teacher, may I post on the School's Twitter page advocating for the construction of a new school?

Answer: No, not unless you are specifically authorized to do so by the School Superintendent.

12. I am an elected member of the General Court who is running for re-election. May I direct my staff to post campaign-related materials to my constituent services social media account?

Answer: No. You also may not include a link to your political campaign site on your official website. This is prohibited pursuant to G.L. c. 268A, § 23(b)(2). You may not use state time and state resources in connection with political activity.

13. May I share a link to a political campaign website on my public agency social media account?

Answer: No, this is prohibited pursuant to G.L. c. 268A, § 23(b)(2). Both the public agency website and social media account are public resources that may not be used in connection with political activity.

14. I am an elected City Councilor and I frequently use Twitter for constituent services. In all of my official City correspondence, I list my Twitter handle and ask constituents to follow me. I am now running for re-election. May I use my Twitter account to announce that I am running for re-election?

Answer: No, this is prohibited pursuant to G.L. c. 268A, § 23(b)(2). City resources were used to build your Twitter following. Therefore, the account is now a public resource and it may not now be used for a campaign or political purpose.

15. May I include contact information for my public office, including my office telephone number and email address, on my campaign social media accounts where I am also soliciting donations?

Answer: No. Including your public office contact information on your campaign account may lead to confusion as to whether it is a public or campaign account. Public resources, including your public telephone number and email address may not be used for a political purpose, and your campaign account should not imply that it is your official social media account. However, your personal social media account may include a disclaimer directing constituents to your public email address or a link to your public website. For example, your personal or campaign social media account may include a disclaimer which states: “This is my private page. The views expressed on this page are entirely my own. If you would like to contact me about official town business, please contact me at jane.doe@town.gov.

V. The Limits of this Advisory

This Advisory, which is intended to summarize the Commission’s advice concerning compliance with the conflict of interest law, is informational in nature only. It is not a substitute for advice specific to a particular situation, nor does it mention every aspect of the law that may apply to a particular situation. For specific questions, public employees should contact their state, county or municipal counsel (as applicable), or the Commission’s Legal Division by submitting an [online request](#), by calling the Commission at (617) 371-9500 and [asking to speak to the Attorney of the Day](#), or by submitting a written request for advice to the Commission at One Ashburton Place, Room 619, Boston, MA 02108, Attn: Legal Division.

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