It's Not Just for Kids and Geeks

Legal Aspects of Municipal Social Networking

First Amendment

Municipal Social Networking Can Lead to First Amendment Violations:

- Establishing a town website.
- Creating a Facebook page.
- Other forms of social media.
First Amendment
"Designated Public Forum"
or"Government Speech"

First Amendment
What is a "Designated Public Form?"

First Amendment
Any prohibition of expression on a designated public forum is subject to *Strict Scrutiny*.
First Amendment

Does the municipality allow the public to comment on its Facebook page?

› If yes, a court would likely find that the municipality intends the page to be a designated public forum.

First Amendment

Government Speech

Does the municipality choose and control the content that is displayed on its Facebook page?

› If yes, a court would likely find that the municipality is engaged in government speech.

First Amendment

Options for Municipalities

1. Do not engage in social networking.

2. Engage in social networking, but disable "comments," "wall posts," and "discussions."

3. Engage in social networking and allow comments, but do not remove protected comments.
First Amendment

Americans with Disabilities Act

- DOJ: ADA accessibility requirements apply to state and local government websites!
- "Poorly designed websites can create unnecessary barriers for people with disabilities, just as poorly designed buildings prevent some from entering."
- Solutions?

Iowa's Open Records Law

What social networking records are subject to the Iowa's Open Records Law?
Iowa's Open Records Law

If an email, text message, Facebook message, or other document is composed, received or stored on my personally owned electronic device, is it subject to Iowa's Open Records Law?

Iowa's Open Meetings Act

Does Iowa's Open Meetings Act apply if a majority of a quorum comments on a Facebook post for the purpose of discussing public business?

Iowa's Open Meetings Act

Emails, text messages, and/or Facebook posts could constitute "Electronic Meetings."
Iowa’s Open Meeting Act

Suggestions:
- Limit and restrict use of elected officials;
- Avoid cross-comments between officials;
- Avoid “reply all” function;
- Avoid official action.

Public Employees & Social Networking

Issues:
- Use of Social Networking Websites to Pre-Screen Candidates;
- Monitoring Employee’s Use of Social Media;
- Disciplining Employee’s for Social Media Use.

Use of Social Networking Websites to Pre-Screen Candidates
Monitoring Employee Social Networking

Does an employer have the right to monitor activity on an employer-owned cell phone?

Monitoring Employee Social Networking

If an employer searches an employee's work computer and discovers the employee's username and password for an employee's Facebook account, can the employer examine the employee's Facebook account?

Monitoring Employee Social Networking

How can you avoid a violation of the Stored Communications Act?
Disciplining Employee’s for Social Media Use

- First Amendment Rights;
- Iowa Public Employee Relations Act

Public Employee First Amendment Rights

- Public sector employees have a right to free speech on matters of “public concern.”
- Right to free speech is not absolute.
- Balancing Test: Employee has the right to free speech but the employer has a right to maintain efficient operations.

Iowa Public Employee Relations Act

Public employees shall have the right to engage in protected concerted activity!
Iowa Public Employee Relations Act

A work rule that would reasonably tend to chill employees in the exercise of their Section 8 rights is unlawful.

Iowa Public Employee Relations Act

Is a work rule unlawful?

Test: Part 1 – Does the rule explicitly restrict Section 8 rights?

- Example: “Do not discuss your pay with coworkers!”

Iowa Public Employee Relations Act

Test: Part 2 – if not explicit, the rule is unlawful if:

1. It causes the employees to believe it limits Section 8 activity;
2. It was promulgated in response to union activity; or
3. It has been applied to restrict the exercise of Section 8 rights.
**Unlawful Work Rules**

- Non-disparagement prohibitions
  - Example: "Avoid making negative comments about your employer or your coworkers"
  - Reason – Prevents negative comments about your employees working conditions

**Unlawful Work Rule**

Prohibiting Defamation

Example: "Don't post anything that harasses or defames employees, officers, or board members."

Reason – To lose protection, comments must be maliciously false

**Unlawful Work Rule**

- Prohibiting Disrespectful, Unprofessional or Inappropriate Communications
  - Reason – Too broad and too vague.
  - Employees could interpret as prohibiting Section 8 activity
Unlawful Work Rule

- Prohibiting "work related" communications without first using company process

- E.g. "You are encouraged to resolve concerns about work by using internal resources rather than using social media."

- Reason – Chills exercise of rights

THANK YOU FOR ATTENDING