

GUIDELINES REGARDING LEGISLATOR AND LEGISLATIVE STAFF USE OF STATE-SUPPORTED WEBSITES AND SOCIAL NETWORKING TECHNOLOGY

This document provides guidance regarding the applicability of Chapter 11 of the Wisconsin Statutes, relating to campaign financing, and Chapter 19 of the Wisconsin Statutes, relating to the code of ethics for public officials, to the use of state-supported websites and social networking technology. This document does not attempt to capture all possible situations related to these technologies.

The use of state-supported websites and social networking technology by legislators and their staff shall conform to all legislative rules and policies and all applicable federal, state, and local laws.

General Use

Legislators and their staff may use state resources to create, post information to, and maintain state-supported websites, herein referred to as legislator homepages, to communicate for legislative purposes. Each legislator is responsible for the content of his or her legislator homepage.

Legislators and their staff may use state resources to use social networking technology, such as Facebook, Twitter, LinkedIn, FourSquare, Google+, etc.; to communicate for legislative purposes.

Legislators and their staff may not use state resources to create, post information to, or maintain campaign or business websites.

Each substantially identical posting created with state resources to a legislator homepage or social networking website counts as *one* of the 50 pieces as specified in s. 11.33, Wisconsin Statutes. However, messages sent directly to individuals using social networking technology count as *one piece per recipient*. The distinction is that with posts to a legislator homepage or social networking website, individuals elect to visit the website or receive notices that the social networking systems themselves distribute. Thus, creating a post is like issuing a single press release to the media, which in turn may distribute it to any number of people. Whereas with direct messages, the sender has to select the recipients which is similar to sending email or postal mail.

Legislators and their staff may add links on their legislator homepages to any content or website used to communicate for legislative purposes, including links to their *legislative social networking websites*, except they should not contain links to websites containing campaign or business content.

Use of Legislative Social Networking Websites

Legislators and their staff may use state resources to create, post information to, and maintain *legislative social networking websites* defined as social networking websites which exclusively contain material used to communicate for legislative purposes.

Each legislator is responsible for the content of his or her *legislative social networking websites*. If *legislative social networking websites* are used, the legislative office should either 1) prohibit others from posting material on them or 2) regularly review the websites to remove inappropriate material. This is no different than policing the materials on a state-paid bulletin board.

Legislators and their staff may add links on their *legislative social networking websites* to any content or website used to communicate for legislative purposes, except they should not contain links to websites containing campaign or business content.

Use of Mixed-Content Social Networking Websites

Legislators and their staff may post content to websites that contain a mix of *legislative, personal, business, and campaign* materials, as long as they adhere to the following:

1. state resources should not be used to *create* the mixed-content websites,
2. *legislative staff* may publish *legislative content* to mixed-content websites, while using state resources, as long as that legislative content is also distributed more broadly to the press and public,
3. *legislative staff* may publish *personal, business, or campaign material* to mixed-content websites only on personal time and without using state resources, and
4. *Legislators* may post any type of content to any website at any time as long as they do not use state resources to post *campaign or business* content.

State of Wisconsin\Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE DAVID G. DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

October 11, 2012

Assembly Chief Clerk Patrick E. Fuller
Acting Senate Chief Clerk Jeff Renk
Jeff Ylvisaker, Director, LTSB

Dear Messrs. Fuller, Renk, and Ylvisaker:

This is in response to your questions about the permissible use of social networking technologies by legislators and their staff to communicate with citizens. Such technologies currently include Facebook, Twitter, Linked-In, FourSquare, GooglePlus, and others.

The use of such technologies using state staff and other state resources for communicating for legislative purposes is, of course, permitted. The caveat is that state resources may be used only for a governmental purpose, not for a campaign or other private purpose. §19.45 (2) and (5), *Wisconsin Statutes*. With this in mind, here are our best practices recommendations.

In general, social networking appears to involve both passive communications, such as web sites and Facebook pages, and active communications, such as e-mails, wall postings, instant messaging, and perhaps tweets.

Passive communications

Consistent with laws administered by the Government Accountability Board, legislators and their staff may *without restriction* create, post information to, and maintain web sites, Facebook pages, and the like that contain material related *only* to state issues, processes, and proposals. It would also be permissible to create links to such sites from the Legislature's web site. For purposes of application of §11.33, *Wisconsin Statutes*, which prohibits the use of government resources by a candidate for the cost of distributing more than 49 pieces of substantially identical material after the first date for circulating nomination papers, an individual posting is just that – one piece.

Because state resources will be used in creating and maintaining web sites and Facebook pages, they may not be used for campaign or other personal purposes. Thus, the creator of such sites should either (1) prohibit others from putting material on them (on Facebook this can be done by limiting the administrators with permission to post on the site) or (2) regularly review one's site to remove inappropriate material. This is no different than policing the materials posted on a state-paid bulletin board.

Creating links from a state web-site to a campaign web site would be prohibited as not serving a public purpose.

Active communications

Consistent with laws administered by the Government Accountability Board, legislators and their staff may create e-mails, wall posts, instant messages, and tweets related to state issues, processes, and proposals. For purposes of application of §11.33, the Elections Board and Government Accountability Board have consistently said that an identical e-mail counts as a separate e-mail for each recipient. That is because the sender actively selects the recipients. This is also true of e-mails and messages sent to "friends" or "followers" through Facebook. In contrast, with wall posts on Facebook and tweets using Twitter, individuals elect to receive notices and messages and the systems themselves distribute those materials. Thus, posting a message on Facebook or Twitter is like issuing a single press release to the media which then may distribute it to any number of people. However, state resources have only been used to distribute one piece in that situation. For this reason, we do not believe that individual Tweets and Facebook postings, received by followers, are subject to the 49 piece rule.

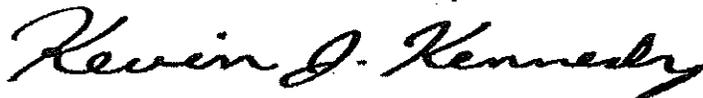
Mixed-use social media sites

With respect to the use of state staff and resources to create and post materials to web and other social media pages that contain a mix of legislative and personal materials, including business and campaign materials, our advice is:

1. State resources should not be used to *create* a website or Facebook page that will be used for mixed purposes.
2. Subject to paragraph 3, *a legislator* may post any type of content at any time to a website, Facebook page or other social media.
3. A legislator should *not use state resources*, such as a state computer, to post non-legislative content to a website, Facebook page, or other social media other than purely personal (not campaign or business) content.
4. *Legislative staff* may post *legislative content* to a mixed-use website, Facebook page, or other social media at any time, even if using state resources, but not to a campaign website, Facebook page, or other social media. However, legislative staff should do this only with respect to materials that are distributed more broadly to the press and public.
5. *Legislative staff* may post personal, business, or campaign content to a mixed-use website, Facebook page, or other social media *only* on personal time and without using state resources.
6. Although a mixed-use website may contain a link to the legislator's official state webpage, a state webpage should not be linked to a mixed-use website, Facebook page, or other social media.

Attached is a spreadsheet that illustrates permissible and impermissible activities.

Wisconsin Government Accountability Board



Kevin J. Kennedy
Director and General Counsel