

Social media policy rejected

Dover abandons effort to restrict workers' rights

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by DOUG DENISON

A Dover city committee rejected a proposed policy Monday night that would regulate city employees' activities on Facebook, Twitter and other online social media networks, even while workers were off the clock.

Council members and others on the city's Legislative, Finance and Administration Committee said the policy drafted by Human Resources Director Kim Hawkins and Acting City Manager Scott Koenig would have infringed on workers' rights under the First Amendment.

On Friday, City Council and the committee received a letter from the American Civil Liberties Union of Delaware urging them to reject the policy because of the limitations it would have placed on free speech.

As written, the policy would have barred city employees from making any negative comments about individuals or groups based on race, gender or other legally protected characteristics on social media websites, blogs or other online forums.

The policy also said employees could not post disparaging comments about co-workers, superiors or members of the public they may interact with in the course of their jobs.

According to the policy, workers would be subject to those rules even when posting from their homes on their own time, regardless of whether they represent themselves as city employees in their posts.

Richard H. Morse, legal director of the Delaware ACLU, wrote the letter and attended the committee meeting to speak against the proposal.

He called the proposed rules a "clear violation" of First Amendment rights and told the committee that public employees are not subject to any special restrictions on their speech because of the nature of their positions.

Hawkins defended the draft policy, saying the city needs to update its employee rules to reflect the changing nature of technology.

She said the policy was never meant to curtail employee's free-speech rights. It was supposed to protect the city from legal liability in harassment cases could that originate online.

Hawkins also noted that the city's top administrators got the idea and the wording for the policy from a legal workshop presented by a group of outside attorneys earlier this year.

Koenig said it's easy to see how an employee's private online activities could impact the working environment.

"It was really to inform employees that there are things you say and do outside of work that can affect the workplace," he said. "Our lives are more public than ever. ... Sometimes there are consequences."

Councilman David Anderson said the language was a serious overextension of the city's power.

"It goes far beyond existing policies," he said. "It treats free speech as an action. My thoughts are not regulated."

Government and private entities across the country have adopted social media policies for personnel in recent years, but overly restrictive rules for public employees have run afoul of the courts.

In his letter, Morse cited a bevy of federal court rulings that have upheld the free-speech rights of government workers and struck down attempts by government agencies to limit those rights.

Anderson said the city should look at the federal rules that have evolved from those court rulings.

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