

## Trustees 2014-15

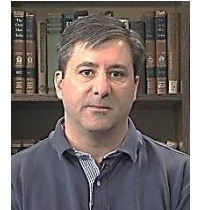
Lee Beckerman-2015  
 Nick Besink-2015  
 Sharon Colucci-2014  
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 Stephanie Gibbons-2014  
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## *Your Municipal Communication Resource*

### Connecting Your Town to Your Residents

## PRESIDENT'S MESSAGE

Bob Duthaler, President



April 1 is coming fast and that means two deadlines you need to know are coming. The early bird conference registration discount will end and nominations for the Municipal Excellence Award will close.

The cost of registration is the best bargain as it covers all your food. That's eight buffet meals across three days: Meet and Great, two breakfasts, two lunches, two PM breaks, and the partners' banquet. Those using purchase orders need to get them approved prior to the March 31 so you can register before midnight.

The Municipal Excellence Award is an opportunity for you to have your Mayor recognized for their support of your town's television facility. This award allows you a forum to explain to your colleges the value your station is playing as a communication tool used to keep your residents informed.

Send your nomination and an explanation as to why they would be a great candidate for consideration of this award today. The executive board will choose the recipient.

We are also very happy to welcome MassAccess as a conference partner. Many of you may remember Bob Kelly, the MassAccess Chair who both was a guest speaker and workshop panelist at last year's conference, we have been talking about how JAG and MassAccess might find ways to work together. We are pleased that JAG will have the opportunity to welcome the MassAccess membership to our conference. MassAccess also will be developing some of the conference workshops and host the Meet and Greet. Plan on a buffet and a taste of Boston. This will be a great opportunity to get to know the people responsible for the very strong community media in Massachusetts.

The conference workshops are beginning to be announced. The committee has come up with an amazing group of workshops. Both the Municipal and Legislative Workshops represent topics that are effecting communications in your town are in place and the descriptions are available in the issue. I would urge all of you to get this information to your communication and IT staff. Many of the workshops will be of interest to them. CEU credits will be posted shortly.

Check out our web site. Dave Grab has been hard at work updating the content making it a valuable asset to our membership. Keep checking back often.

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## Meeting Schedule

**Jan. 29-** East Brunswick  
Presentation-JVC

**Feb. 26-** Piscataway  
Presentation-TelVue

**Mar. 26- Oradell**  
**Presentation-Azzurro**

**Apr. 30-** Verona  
Presentation-TBA

**May 28-** Asbury Park  
Presentation-TBA

**Jun. 25-** South Orange  
Presentation-TBA

**Sept. 24-** Montclair  
Presentation-TBA

**Oct. 29-** Metuchen  
Speaker-Steve Traylor

**Nov. 26-** Essex College  
Presentation-TBA

**Dec. -** TBA  
Holiday Party

## **Social Media After 10 Years:**

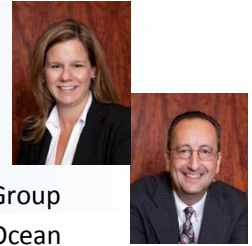
### **Free Speech and Employee Use of Social Media Sites in 2014**

*This article appeared in the March issue of the NJ League Magazine.*

By Nancy Rodgers, Partner, Kissinger & Fellman, P.C. & Ken Fellman, Esq. Partner, Kissinger &

Fellman, P.C.; member, FCC Intergovernmental Advisory Committee and legal advisor, Jersey Access Group

2004 was the year of NASA's Mars Rover, Janet Jackson's "wardrobe malfunction," the deadly Indian Ocean tsunami, and Governor Jim McGreevey's resignation.



It is hard to conceive that these events occurred without contemporaneous Tweets, Facebook posts, Instagram pictures, or YouTube videos. 2004 was the dawn of social media, and brought us Facebook, Flickr, and Digg. MySpace was a toddler site. YouTube was preparing to launch, and podcasting began. According to Pew Research Center, by the end of 2013, 73% of U.S. adults were currently use social networks.

The public increasingly relies on social media for local government news and information, including police activity, emergency and weather alerts, project development updates, road closures notices, and event announcements.

As a platform for government interaction and communication, social media triggers some common legal issues related to free speech, discrimination, copyright/trademark, privacy, and open meetings/open records laws. Careful consideration of these legal issues, even as the law develops, should help municipalities effectively address and hopefully avoid social media predicaments.

Within the last year, developments in the law have clarified issues involving free speech, and access to employees' social media accounts.

#### **Free Speech**

In 1997, the U.S. Supreme Court held that online speech is entitled to the same level of protection as other speech. *See Reno v. ACLU* (U.S. 1997). A recent federal decision confirms that the First Amendment protects social media comments and even Facebook "likes." *Bland v. Roberts* (4th Circuit, 2013). However, it is not yet clear what level of Constitutional protection is afforded to social media posts. The government's authority to control speech in public places depends upon the type of forum, or place, the speech occurs: a traditional public forum (like a park), a designated or limited public forum (like council chambers), or a nonpublic forum (like a military base).

There is no definitive court decision establishing what category of forum governmental *social media* sites fall into. In examining government websites, courts have held that interactive tools, open communication, and permission to express opinions and freely exchange ideas on the website results in the creation of a limited public forum. These rulings indicate that social media sites, which are inherently interactive, are limited public forums or, if access is not limited in any way, a traditional public forum

There has been one case addressing the deletion of social media comments. In *Hawaii Defense Foundation v. Honolulu* (2012), individuals filed suit after their comments critical of the Honolulu Police Department (HPD) were removed from the police department's Facebook site and they were banned from the site. The plaintiffs argued HPD's Facebook page was a traditional public forum and their right to free speech was infringed. The case ended quickly when the HPD changed its Facebook policy, lifted the ban, and allowed plaintiffs to again comment on the site.

A municipality could utilize privacy settings so its social media site is not open for endless public commentary but instead is simply a limited platform to discuss certain topics. The municipality could reserve the right to remove off-topic posts or posts inconsistent with the site's purpose. Restrictions, imposed after careful consideration, must be viewpoint-neutral and, for traditional public forums, narrowly tailored to serve a significant government interest. In limited public forums, the restrictions must be viewpoint-neutral and reasonable in light of the site's purpose. However, increased restrictions may decrease the benefits of an *interactive* social media site. Conversely, few restrictions may result in critical, cruel, inappropriate and irrelevant comments that degrade the site's purpose.

#### **Free Speech and Public Employees**

In *Bland v. Roberts* (4<sup>th</sup> Cir. 2013), the Court held that a Facebook "like" was speech. In *Bland*, reelected Sheriff Roberts

terminated 6 employees for supporting his opponent, as shown by “likes” and photos on the opponent’s Facebook page. After determining the actions were speech as well as symbolic expression, the Court found that the employees’ speech was protected speech made as private citizens on a matter of public concern. The case has been remanded for a determination of whether that speech was a motivating factor for the terminations.

Courts will use traditional First Amendment analysis when faced with a free speech claim arising from social media activity. Municipalities should refrain from imposing restrictions or taking action on social media statements or activities that it would not take had the activity occurred on paper or at a public meeting.

### **Access to Employees’ and Applicants’ Social Media Accounts and Passwords**

Don’t ask: Fourteen states, including New Jersey, have social media password protection laws. New Jersey’s law, effective December 1, 2013, prohibits employers (not including State or local law enforcement agencies) from asking or requiring applicants or employees to disclose user names or passwords for, or provide the employer access to, a personal social media account.

The prohibition includes “shoulder surfing” to see social media content, intimidation, mandating social media connections or reduced privacy settings. New Jersey’s law also prohibits retaliation based on the employee’s refusing to comply with a request. The law is limited to personal social media accounts. Social media accounts used “for business purposes of the employer or to engage in business-related communications” are not covered.

The law has an exception for investigating work-related misconduct arising from social media activity. It provides for civil penalties of up to \$1,000 for the first violation and \$2,500 for subsequent violations, and does not create a private right of action.

“Et tu, Brute?” The law does not prohibit employers from obtaining *publically available* social media information or information volunteered by a person who has full access to an employee’s or applicant’s social media account. A New Jersey District Court decision, *Ehling v. Monmouth-Ocean Hospital Service Corp.* (2013), concerned one employee’s disclosure to management of another employee’s Facebook comments chiding paramedics who saved a gunman, now a patient of the hospital, and the guards who didn’t kill him. Management disciplined the posting employee, who then sued based on privacy rights. In finding for the employer, the court found there was no coercion by the employer to get access to the information. The plaintiff voluntarily disclosed her posts to her Facebook friends, including her co-worker and management did not pressured the co-worker to share the plaintiff’s comments.

### **Conclusion**

Social media law continues to develop. Municipalities, even those not currently using social media, are best served by examining and creating policies and best practices for social media use, including use by employees. If you have existing policies, they should be reviewed on an annual basis to account for developments in the law. Social media tools can benefit municipalities and, with appropriate policies and planning, the benefits will outweigh the potential risks and drawbacks.

*Thanks to Ken Fellman and Nancy Rodgers for providing this article and for their continued support of JAG.*

## **Bits & Bytes**

- Azzurro will present a demonstration at the March 26 meeting. Azzurro will demonstrate its full remote control of live TV Studio functionality. A single operator can control camera, audio, lighting, and multi-camera production switching from a PC or laptop with an internet connection. When paired with an IP streaming encoder and decoder, municipal officials can easily capture and broadcast live remote events or produce emergency announcements with little to no technical staff on-site.
- **Conference early bird registration ends April 1, 2014.** Those using purchase orders for conference registration should submit them ASAP to allow for processing and insure they are approved and ensure registration at the early bird rates.
- **JAG Award Nominations closes April 1.** Members are asked to submit an email outlining the reasons their nominee should be considered for this award. *Nominations are open to any elected municipal official.*
- NATOA eNATOA webinars can be seen by members at METV. Reservations required do to limited space. Details: <https://www.natoa.org/events/enatoa.html> . Next eNATOA: April 7, 2014, 2pm *Franchise Renewal in an IP World.*
- Executive board next meeting April 9.

## COMMITTEES CORNER

### CONFERENCE

Rich Desimone, Chair



### Conference Highlights

#### May 7, 2014

Pre-Conference workshops  
Meet and Greet

#### May 8, 2014

Breakfast with the Vendors  
Vendor presentations  
Municipal workshops  
Welcome luncheon  
PM energy break  
Partners Banquet

#### May 9, 2014

Networking Breakfast  
Municipal, Technology and  
Operational Workshops  
Keynote luncheon  
Vendor prize give away

#### Conference Partners

HB Communication

TelVue

NATO

NJ League of Municipalities

Shadowstone

MassAccess

NJEdge

New Bay Media

#### Conference Sponsors

HB Communication

Comcast

Shadowstone

MassAccess

Celebrating Our 10<sup>th</sup> Anniversary

## Early Bird Ends April 1

### Update

Municipal and legislative workshop will address current communication issues that will impact municipalities.

### Municipal Workshops Announcements May 8, 2014

**FirstNet** – Get the latest on FirstNet and the proposed nationwide interoperable public safety wireless broadband network. Find out what opportunities exist for local communities to use their expertise and infrastructure to help build-out the network and improve their public safety communications services.

**Cybersecurity: What Every Local Government Needs to Know** – Local governments maintain a vast array of personal data, including health information, student education records, and criminal history data. All of this information should be protected against unauthorized access and disclosure. But is it? Learn about compliance standards, network audits, and what steps you should take to protect your network against internal and external threats.

### Legislative Workshops Announcements May 9, 2014

**Connectivity/Broadband** – The momentum toward gigabit fiber networks has accelerated over the past year, as Google and a range of municipalities have announced new construction in many American communities. Are there ways you can influence your community's broadband future? In this session, community broadband experts will suggest a range of strategies for how localities can build themselves or work with private partners to build local broadband networks.

**IP Transition: What It Means for Local Governments and their Residents** – Everyone's talking about the "IP transition." But what is it? And what does it mean for local governments and their constituents? As we become more dependent on broadband networks and IP-enabled services, what legislative and regulatory changes will be needed to ensure the transition proceeds smoothly? And how do we ensure consumers' needs and expectations are met?

**Broadband Acceleration and the FCC** – There's no argument there's a growing need for more wireless broadband infrastructure. But how do we balance industry's need for fast deployment with local governments' duty to manage the public rights-of-way and protect the public health and safety? This session will examine the recent FCC proceeding that could fundamentally alter the role local governments play over wireless siting.

## CEU CREDITS TO BE ANNOUNCED

Get all the conference details and updates at [www.powerofpartners.org](http://www.powerofpartners.org)

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New Jersey Chapter of NATOA and New Jersey League of Municipalities Affiliate

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