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Volume 8, Issue 1 / Spring 2011

Municipal Websites.

Many municipalities maintain websites which offer valuable information about municipal events, elections, voting, contact information for municipal officials, boards and committees, regulations and permit requirements, and many other facets of municipal operations.

Municipal websites vary significantly in what they provide. However, there are several things which all municipalities should consider when creating and maintaining a municipal website.

One important consideration is whether the website's content subjects the municipality to a First Amendment argument that the website has become a public forum. This issue was addressed in Sutcliffe v. Town of Epping, 584 F.3d 314 (1st Cir. 2009). In that case, a citizens group challenged the Town's decision not to place the group's website link on the Town's website while permitting certain



other links. *Id.* at 324. The citizens' group argued that by permitting a link to the website for Speak Up, Epping!, a forum facilitated by the UNH Cooperative Extension designed to encourage civic discourse, the Town "turned its website into a designated public forum" and that even if it were not a public forum, "the Town engaged in viewpoint discrimination." *Id.* The Court ultimately rejected these arguments, finding that

under the circumstances of this case, the Town included only government speech on its website despite allowing third party hyperlinks because the decision to add the hyperlinks was "independent of the specific content of the websites." *Id.* at 331. The Court further concluded that the Speak Up, Epping! website was itself "government-sponsored" and therefore the inclusion of its hyperlink on the Town's web-

DTC Meredith Office Announcement

In a continuing tradition of over 25 years of dedication to clients across New Hampshire, DTC is pleased to announce it will be officially opening its Meredith office on April 4, 2011. Located at 56 NH Route 25, this office will provide a location for all 16 of DTC's lawyers to service our existing and growing client base of municipalities in the Lakes Region and North Country. Attorney Chris Boldt will be our Partner in residence at the Meredith office, while continuing to serve the Firm's existing clients throughout the State. Chris is a member of the Firm's Executive Committee and is frequent lecturer on planning and zoning issues for the Local Government Center, the NH Office of Energy and Planning, the NH Bar Association and the NH Land Surveyors Association.

Municipal Websites cont.

site did not create a public forum. *Id.*

Despite the Court's final ruling, this case provides an important warning to municipalities regarding the content of their websites. To avoid First Amendment arguments,



municipalities should consider adopting a website policy which: includes a purpose such as to "convey information about itself to its citizens and others"; provides that all content on the website must support or advance that purpose; provides that hyperlinks to "partisan political speech" will not be permitted on the municipal website, regardless of the viewpoint expressed; and provides that all third party website hyperlinks must be reviewed and approved by the governing body (such as the Board of Selectmen). *Id.* at 331, 334.

Municipalities also must be careful about offering legal advice on their websites. Any

information regarding local or state laws and regulations should contain a disclaimer that the information is not offered as legal advice, that the Town cannot give legal advice and that readers are encouraged to consult an attorney for legal advice.

In addition, municipal officials should ensure that the rules and regulations that are posted on the municipal website are up-to-date. The pages which contain the rules and regulations should contain a date that the page was last updated. To ensure the accurate dissemination of information to citizens and to encourage use of the municipal website, the information contained on it should be updated frequently. This applies to all aspects of the website, including municipal events and the names and contact information of municipal officials.

Municipalities must also remember that anyone and everyone can access the municipal website at any time.



Individual private information that may be considered as protected by the Right to Privacy, such as social security numbers, as well as any other type of confidential information, should not be posted on the municipal website.

Finally, Boards and Commissions subject to the Right-to-Know law must be careful not to conduct discussions, via posts or blogs, which might be considered as communications subject to the Right-to-Know law. Meetings cannot be conducted online because the public does not have the ability to contemporaneously listen and comment.

For additional information or questions, please contact **Attorney Keriann Roman.**

Evergreen Law—Update.

New Hampshire's Evergreen Law (RSA 273-A:12,VII) has been repealed, effective March 1, 2011. The original law took effect in 2008. It effectively applied

gaining agreement did not contain an evergreen clause as part of its terms. If the collective bargaining agreement has such a clause as part of its terms, the repeal of the Ever-

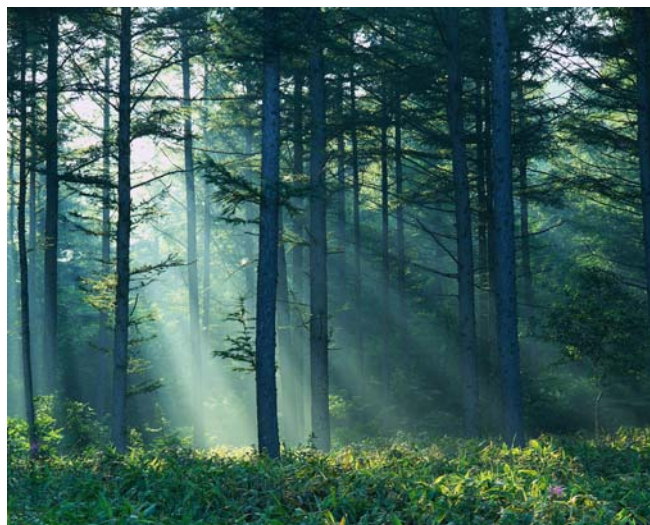
municipalities are still governed by New Hampshire case law that mandates protecting the status quo after a contract has expired, which includes not altering wages or benefits following the expiration of a collective bargaining agreement.

For additional information or questions, please contact **Attorney Douglas M. Mansfield**.



an evergreen clause to every collective bargaining agreement involving public employees. The law ensured that, in cases where a collective bargaining agreement expired without a replacement agreement, public employees would still receive automatic step increases. The law did not apply to cost of living increases. The repeal of the Evergreen Law took effect prior to annual school meetings and town meetings, so its impact will be felt immediately in cases where voters rejected the financial terms of proposed collective bargaining agreements. The impact will only be felt in those cases where the expired collective bar-

green Law will not alter the terms of the agreement. The terms of the evergreen contract clause will still govern. In addition, even with the repeal of the Evergreen Law,



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