
IN THE MATTER OF AN INVESTIGATION
INTO GOVERNOR DAVID A. PATERSON'S
ACQUISITION OF WORLD SERIES TICKETS

**NOTICE OF
REASONABLE CAUSE**

INTRODUCTION

On October 28, 2009, Governor David A. Paterson attended the first game of the 2009 World Series at Yankee Stadium, with his son, his son's friend, David Johnson, a Senior Aide, and Mark Leinung, Deputy Director of State Operations. On October 30, 2009, in the late afternoon, the New York State Commission on Public Integrity ("Commission") hand delivered a "fifteen day" letter to Governor Paterson advising him that the Commission had received information indicating that he may have violated Public Officers Law §§73(5) and 74(3)(d), (f) and (h) when he solicited, accepted and received five complimentary tickets to the first game of the World Series and affording him an opportunity to submit a written response within fifteen days. Peter Kiernan, Counsel to the Governor, submitted a timely response to the fifteen day letter, essentially maintaining that the Governor attended the game in his official capacity and that obtaining the remaining four other tickets was lawful because the Yankees were immediately reimbursed for them.

The Public Officers Law prohibits a State officer or employee, such as the Governor, from directly or indirectly soliciting, accepting or receiving anything of more than nominal value if it is reasonable to infer that the gift was intended or could reasonably be expected to influence or reward him or her in the performance of his or her official duties. Public Officers Law §73(5)(a). A companion provision prohibits a State officer or employee from directly or indirectly soliciting, accepting or receiving anything of more than nominal value from a lobbyist or lobbying client unless it is not reasonable to infer that the gift was intended to influence the State officer or employee. Public Officers Law §73(5)(b). As an indication of how seriously the law treats gift ban violations, a State officer or employee who violates it is subject to a civil penalty of \$40,000 and the value of any gift, the highest financial penalty authorized for a Public Officers Law violation. In lieu of a civil penalty, a violator may be prosecuted criminally. Similarly, the State Code of Ethics prohibits a State officer or employee, such as the Governor, from using or attempting to use his or her official position to secure unwarranted privileges for himself or herself or others. Public Officers Law §74(3)(d). A State officer or employee who knowingly and intentionally violates this provision is subject to a civil penalty of \$10,000. The Code of Ethics also makes it unlawful for a State officer or employee to act in a manner that gives the appearance that he or she is engaged in conduct in violation of his or her trust. Public Officers Law §74(3)(f) and (h).

There is reasonable cause to believe based on the record evidence the Commission has adduced in its investigation that Governor Paterson solicited, received and accepted an unlawful gift in violation of Public Officers Law §§73(5)(a) and (b), and misused his official position to secure free tickets to Game One of the World Series for himself, two members of his staff, his son and his son's friend in violation of Public Officers Law §§74(3)(d), (f) and (h).¹

JURISDICTION OF THE COMMISSION

The Commission is authorized by Executive Law §94(12)(a) to commence inquiries into possible violations of Public Officers Law §§73, 73-a or 74. Pursuant to Executive Law §94(16)(d), the Commission is authorized to conduct any investigation necessary to carry out the provisions of Executive Law §94. Pursuant to this power and duty, the Commission may administer oaths or affirmations, subpoena witnesses, compel their attendance and require the production of any books or records that it may deem relevant or material.

When the Commission determines there has been a violation of Public Officers Law §73(5), Public Officers Law §73(18) authorizes the Commission to assess a civil penalty in an amount not to exceed \$40,000 and the value of any gift, compensation or benefit received in connection with the violation. In lieu of a civil penalty, the Commission may refer a violation of Public Officers Law §73(5) to an appropriate prosecutor which, upon conviction, shall be punishable as class A misdemeanor. Where the Commission finds a violation of Public Officers Law §74(3)(d), Public Officers Law §74(4) provides that the Commission may assess a civil penalty in an amount not to exceed \$10,000 and the value of any gift, compensation or benefit received as a result of the violation. The Public Officers Law does not provide for a civil penalty for violations of Public Officers Law §§74(3)(f) and (h).

Executive Law §94(12)(b) provides that if the Commission determines that there is reasonable cause to believe that a violation of Public Officers Law §§73 or 74 has occurred, the Commission shall send a notice of reasonable cause: (i) to the reporting individual; (ii) to the complainant, if any; (iii) in the case of a statewide elected official, to the Temporary President of the Senate and the Speaker of the Assembly; and (iv) in the case of a State officer or employee, to the appointing authority for such person.

POWERS AND DUTIES OF THE OFFICE OF THE GOVERNOR

Article IV, Section 1 of the New York State Constitution provides that the "executive power shall be vested in the governor, who shall hold office for four years" Article IV, Sections 3 and 4 set forth the Governor's powers and duties, including the power to convene the Legislature, or the Senate only, on extraordinary occasions, and serving as commander-in-chief of the military and naval forces of the State. The Governor also has the power to grant reprieves, commutations and pardons after conviction for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as the Governor

¹ The Commission will pursue additional charges, including charges against any person who was not named in this Notice, if warranted.

may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons.

The office of the Governor is known as the Executive Chamber (Executive Law §2). Executive Law §30 provides that the Governor is the head of the Executive Department, which is one of the 20 civil departments provided by Article V, Section 2 of the Constitution.² The Governor may appoint such subordinates and employees as may be necessary for the exercise of his powers and the performance of his duties as the head of the Executive Department. The Governor may also prescribe their duties and fix their compensation within the amounts that are appropriated.

PRINCIPAL FINDINGS OF FACT

There is reasonable cause to believe that the Governor solicited, received, and accepted tickets for himself, his son, and his son's friend, from the New York Yankees, a registered lobbyist, to Game One of the World Series in violation of Sections 73(5)(a) and (b) and 74(3)(d), (f) and (h) of the Public Officers Law.

There is reasonable cause to believe that the Governor falsely testified under oath that he had always intended to pay for the tickets for his son and his son's friend, and that before attending the game he had handwritten a check for \$850 for ultimate delivery to the New York Yankees as payment for the tickets, when, in fact, the Governor's intention was to receive and accept the tickets for himself, his son and his son's friend without paying for them, until a press inquiry after the receipt of the tickets caused the Governor to submit a backdated check as payment for the tickets.

STATEMENT OF FACTS

On October 25, 2009, the New York Yankees ("Yankees") won the American League Championship, securing their appearance in the World Series. Game One of the World Series ("Game One") was scheduled for October 28, 2009 at Yankee Stadium.

The next day, on October 26, 2009, Matthew Nelson, Director of Scheduling for Governor David A. Paterson, emailed David Johnson, a senior aide to the Governor, to inquire whether the Governor intended to go to Game One. Johnson responded to Nelson: "I think that he should. I will reach out [sic] to Randy Levine. [sic] President of the Yankees." EC-161.³

² The 20 civil departments are Executive, Audit and Control, Law, State, Agriculture and Markets, Banking, Civil Service, Correctional Services, Economic Development, Education, Environmental Conservation, Health, Insurance, Labor, Mental Hygiene, Motor Vehicles, Public Service, Social Services, Taxation and Finance, and Transportation.

³ Documents the Commission obtained by subpoena from the Executive Chamber are cited as "EC" and numbered consecutively. The Commission conducted sworn interviews of six individuals. The transcripts, where available, are cited by the name of the person interviewed. The Governor's response to the fifteen day letter is cited as GDAP. Public documents filed with the Commission that we have used as handwriting exemplars are cited as CPI. All cited documents are incorporated by reference.

The Governor testified that during approximately the same time, he decided that he should attend Game One. Paterson Tr. p. 8. He further testified that he directed Johnson to obtain tickets from the Yankees and that the request should include tickets for his son and a friend of his son.

In subsequent email exchanges between Johnson and Nelson, Johnson directed Nelson to contact the Yankees' Chief Operating Officer Lonn Trost ("Trost"), to see if the Yankees were "willing to give us 5 or 6 tickets." EC-161. At approximately 4:00 PM on October 26, 2009, Nelson informed Johnson that Trost stated that there was "no problem" and that Nelson would "find out what the deal is with getting the tickets and let you know." EC-184. Johnson responded to Nelson: "GDAP [Governor David A. Paterson] is coming in a ceremonial capacity WSC. Yankees the only sports franchise that give us problems. We may have to have Peter Kiernan send that [sic] waivers form so it is not seen as a gift. Looping Peter in." EC-184.

The day before Game One, on October 27, 2009, the Yankees contacted Johnson and asked him where to submit an invoice for the five tickets. Smith Tr. p. 15. Based upon the representations that Johnson made, the Yankees did not expect payment for any tickets because the tickets were for official business. They then requested a letter from the Governor's Counsel confirming that the tickets were for official business.⁴ Smith Tr. pp. 15, 19. On October 28, 2009, at 3:41 PM, Johnson's assistant forwarded a letter from Kiernan that the Governor was attending the game in his official capacity. EC-250. Then, without having received any payment, the Yankees released five tickets for the game.

The Governor attended Game One with his son, his son's friend, Johnson and Deputy Director of State Operations Mark Leinung. The Governor did not participate in opening ceremonies, which involved the throwing out of the first pitch by a "Wounded Warrior," accompanied on the field by First Lady Michelle Obama and Second Lady Jill Biden. He was not announced to the crowd by name. At no time prior to, during or after the game did the Governor meet with the First Lady, Mrs. Biden or members of the Yankees organization.

The following day, October 29, 2009, at 9:52 AM, a reporter from the *New York Post*, Frederick U. Dicker, emailed the Governor's Director of Communications Peter Kauffmann, inquiring how the Governor and his aides obtained tickets to Game One and "who, if anyone, paid for them." EC-316. At 9:56 AM, Kauffmann forwarded Dicker's email to Larry Schwartz, Secretary to the Governor, and Kiernan stating: "I am sure he paid for the seats, so we're all good???" EC-558. At 10:45 AM, Kauffmann emailed Johnson informing him that Dicker was asking questions about who attended the game and how the tickets were paid for. EC 438.

The Governor's Testimony

The Governor testified that he believed he attended the World Series game in his official capacity, and that he always intended to pay for the tickets of his son and his son's friend. Specifically he testified that on October 28th, while at his residence, he wrote out a check for

⁴ During the Commission's investigation, Yankees representatives testified that when a public official requests tickets to a Yankees game, it is Yankees' policy to either obtain payment for the tickets or to obtain a letter from the public official's counsel stating that the tickets are for official business. The Yankees representatives further testified that payment or the letter must be received prior to tickets being released.

\$850 including the date and the amount in numbers and words, and signed the check. Paterson Tr. p. 47, line 10 and 11. He testified he did not fill out the payee section on that date because he did not know who the payee was, and left that section blank. Paterson Tr. p.40, line 19-21; p.42, lines 3-19; p. 40, line 22-24. He then took the incomplete check with him in his pocket to the game so he could pay while he was at the game. Paterson Tr. p. 41, lines 4-6. When he had no opportunity to pay while at the stadium, the Governor testified that he gave the check to Johnson and asked him to send the check to the Yankees. Paterson Tr. p. 41, lines 7-24. The letter to the Yankees with the check was postmarked October 30th. When asked about the fact that the check was dated October 27th, the Governor indicated he had written the check on the day of the game, October 28th. Paterson Tr. p. 6.

Factual analysis

The testimony of the Governor that on October 28th, a full day before the inquiry by Frederick U. Dicker, he intended to pay for the two boys' tickets and acted in furtherance of that intent by writing and signing a check is not credible and is contradicted by evidence adduced in the Commission's investigation of the matter.

1. Kauffman's testimony⁵

On October 29, 2009, Dicker contacted Kauffmann asking about the Governor's attendance at Game One, who attended with the Governor and whether anyone paid for their tickets. Kauffmann testified that after receiving Dicker's inquiry, he had a series of discussions with both the Governor and Johnson. Kauffmann testified that he estimates that he had approximately five to ten conversations with the Governor and Johnson regarding Game One tickets and that some of these conversations were sometimes with both the Governor and Johnson simultaneously and sometimes with each of them individually. According to Kauffmann's testimony, the first conversation Kauffmann had with the Governor following Dicker's inquiry was with the Governor alone. In this conversation, the Governor indicated that he was invited to the game by Randy Levine, President of the Yankees and a law school classmate of the Governor. During this conversation, the Governor said nothing to Kauffmann about his intention to pay for the tickets for his son or son's friend, nor did the Governor mention anything about having previously written a check for \$850 and giving it to Johnson as payment to the Yankees. When Kauffmann first spoke with the Governor, it was his advice from a press perspective that the tickets should be paid for. Kauffmann further testified that, based on conversations with the Governor, the Governor had indicated that no tickets needed to be paid for because he had attended Game One in his official capacity. Kauffmann's testimony is corroborated by his noon email to Schwartz, Kiernan and other members of the Executive Chamber, which was his proposed response to Dicker. EC-316. This draft response stated: "The Governor was invited by the Yankees to attend the opening game of the World Series in his official capacity, to represent the State of New York at a ceremonial occasion attended by First Lady Michelle Obama." The email further said that the Governor did not pay for any tickets.

⁵ The Commission interviewed Peter Kauffman, Director of Communications, on March 2, 2010. The transcript is not yet available. Thus, this Notice of Reasonable Causes summarizes the sum and substance of certain parts of Kauffman's testimony.

At 1:26 PM, Kauffmann emailed Leinung to give him a “heads up” that Dicker was asking questions about whether any of the Governor’s guests paid for the tickets and that the “answer is no, no one paid, everyone was a guest of the Yankees” EC-182. At 1:44 PM, Leinung responded to Kauffmann’s email stating: “Thanks Peter.” EC-174. Prior to receiving Leinung’s response, at 1:33 PM, Kauffmann emailed Dicker stating: “The Governor was invited by the Yankees to attend the opening game of the World Series in his official capacity, to represent the State of New York at a ceremonial occasion.” EC-444. Kauffmann also testified that Dicker called Kauffmann back and informed him that the Yankees were disputing the Governor’s account and that Levine had never invited the Governor to the game. Kauffmann testified that he relayed this conversation to the Governor, who then conceded to Kauffmann that Levine had not explicitly invited him to Game One. Kauffmann further testified that at one point in the conversations with the Governor and Johnson, the Governor clearly contended that he did not have to pay for any of the tickets because they were all covered by the letter which had been written by Kiernan. And at no time did Johnson convey to Kauffmann that he was in possession of a check from the Governor for two tickets. Kauffmann then testified that in a subsequent conversation with Leinung, Leinung stated that he intended to pay for his ticket. Kauffmann further testified that when he informed the Governor that Leinung intended to pay for his ticket, the Governor informed Kauffmann, for the first time, that he would pay for the tickets for his son and son’s friend.

In sum, it is a fair description of Kauffmann’s testimony that the Governor’s initial response to Dicker’s inquiry was that none of the tickets needed to be paid for because the Governor had attended the World Series in his official capacity. Only when the Governor was confronted with inconsistencies in his accounting of events and was told Leinung was paying for his ticket did he relent and decide to pay for the tickets for his son and son’s friend.

2. Handwriting

A review of the handwriting on the Governor’s check reveals that only one person completed the entire check. Similarly, the handwriting on the check that Johnson forwarded to the Yankees as payment for his ticket to Game One reveals that the same person who wrote and signed the Governor’s check also wrote and signed Johnson’s check. To this end, the Commission searched its own records to determine whether it was in possession of any documents submitted by the Governor or Johnson that contained their respective handwriting or signatures.

The Commission has within its custody and control the Governor’s “release of annual statement(s) of financial disclosure to the employee” (CPI 9), which contains the Governor’s signature; Johnson’s 2005 handwritten financial disclosure form (CPI 6, 7, & 8); and a 2007 check submitted by Johnson to the Commission (CPI 5). A comparison of the handwriting and signatures on these documents with the handwriting and signature on the Governor’s check supports reasonable cause to believe that the Governor did not write the check sent to the Yankees.

3. Internal Communications

Kauffmann's testimony is supported by the contemporaneous emails, including an October 29, 2009 email he sent to Schwartz, Kiernan and other members of the Executive Chamber at 12:00 PM, which was his proposed response to Dicker. EC-316. This draft response stated: "The Governor was invited by the Yankees to attend the opening game of the World Series in his official capacity, to represent the State of New York at a ceremonial occasion attended by First Lady Michelle Obama." The email made clear that the Governor did not pay for any tickets. Before issuing a written response to Dicker, Kauffmann also emailed Leinung to give him a "heads up" that Dicker was asking questions about the Governor's attendance at Game One and whether anyone paid for their tickets. EC-182. Kauffmann further advised Leinung that the answer was "no, no one paid, everyone was a guest of the Yankees" EC-182.

4. Johnson's statements

Prior to the Yankees releasing the tickets, the Yankees telephoned Johnson and inquired about payment. Johnson informed the Yankees that payment was not required because all five tickets were being used for official State business. The Yankees, pursuant to its protocol, requested a letter from the Governor's Counsel stating that the tickets were for official business. The Yankees indicated in their testimony that they were unaware who would be using the five tickets. Trost Tr. p. 25 line 21 through p. 26 line 3. On October 28, 2009, Johnson's assistant emailed to the Yankees a letter signed by Kiernan stating that the Governor would be attending in his official capacity. EC-250 and EC-1. Based upon Johnson's representation that the tickets were being used for official business and Kiernan's letter, the Yankees released five free tickets for the Governor.

Johnson's statements to the Yankees do not support the Governor's assertion that he told Johnson that he would be paying for two of the tickets.

5. Missing Payee information on the check dated October 27th

The Governor testified he left blank the payee line on the check he gave to Johnson on October 28th and never subsequently filled in the payee line. Paterson Tr. p. 5 line 14-16. The Governor further testified that he assumed Johnson completed the payee section of the check. Paterson Tr. p. 6, line 13 through 18. But it appears that the entire check was made out by the same individual. This supports the conclusion that the Governor did not, in fact, write the check.

6. Past Practice: The Governor Did Not Pay For His Son's Tickets To Opening Days

Finally, the Governor's past practices undermines his assertion that he intended to pay for the tickets for his son and son's friend. Specifically, the Governor attended the April 19, 2009 Opening Day at Yankee Stadium with his son. The record and testimonial evidence reveals that the Governor's staff secured free tickets from the Yankees for the Governor, members of his staff and his son. Ex. 1; Paterson Tr. p. 37, line 17 through 19. The Governor did not pay for his

son's ticket in April 2009, or at any time since. Similarly, the Governor attended the April 13, 2009 Opening Day at Citi Field with his son. The Governor testified that he did not pay for his ticket or his son's ticket. Paterson Tr. p. 46, lines 4 through 8.

The Governor attempted to explain away this discrepancy when he testified that in April 2009 he was advised by his Counsel that his son could attend the Opening Day games for free because the Governor was attending in his official capacity. Paterson Tr. p. 36, lines 13 through 22. The Governor further testified that the advice changed, but he could not remember with any specificity when the advice changed other than that the change occurred before Game One. Paterson Tr. p. 36, line 19 through p. 37, line 16. Thus, the Governor's explanation is not credible.

On October 29, 2009, Johnson called the Yankees to inquire where to send payment for tickets to Game One. A check dated October 27, 2009, drawn on the Governor's personal account in the amount of \$850, payable to Irfran Kirimca, Senior Director of Ticket Operations for the Yankees, was mailed from Manhattan. On the memo line of the check, it was noted that the check was payment for the Governor's son and his son's friend, noting their names. EC-165. Included with the check was a letter on the Governor's official stationery dated October 29, 2009, thanking the Yankees for their invitation to Game One. EC-3. The envelope was postmarked on October 30, 2009. Ex. 3.

Leinung mailed his personal check dated November 1, 2009 in the amount of \$425 payable to Kirimca. EC-167. Included with his check was a letter dated November 2, 2009 on official stationery thanking the Yankees for their invitation to Game One. CPI 24.

Johnson mailed his personal check dated October 30, 2009 in the amount of \$425 payable to Kirimca. CPI 27. His cover letter on official stationery was dated October 30, 2009, but not postmarked until November 7, 2009, thanked the Yankees for their invitation to Game One. CPI 26.

Factual Conclusion

Based on the record evidence, there is a reasonable cause to believe that the Governor did not, and did not intend to, pay for the tickets for himself or his son and his son's friend before the call from Frederick Dicker on October 29, 2009.

SOLICITATION OF TICKETS BY GOVERNOR PATERSON: PUBLIC OFFICERS LAW §73(5)

Ticket for Governor Paterson

BACKGROUND

In order to ameliorate the risk of improper influences that may affect the actions of State officers and employees in the performance of their official duties, Public Officers Law §73(5) imposes restriction on the solicitation, offering and receipt of gifts. In pertinent part, the statute

provides:

No statewide elected official, state officer or employee⁶ ... shall, directly or indirectly:

(a) solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, ... or in any other form, under circumstances in which *it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part....* [or]

(b) solicit, accept or receive any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law *unless under the circumstances it is not reasonable to infer that the gift was intended to influence him....*(Emphasis supplied).

Legislative Law §1-c(j) provides, in pertinent part: “The term ‘gift’ shall mean anything of more than nominal value given to a public official in any form” Legislative Law §1-c(j) then identifies eleven situations that “are excluded from the definition of a gift[,]” including complementary attendance at a “widely attended event.”

The Legislative Law also places restriction on gift giving by registered lobbyists and clients, and Section 1-m provides, in pertinent part, as follows:

No individual or entity required to be listed on a statement of registration pursuant to this article shall offer or give a gift to any public official as defined within this article, *unless under circumstances it is not reasonable to infer that the gift was intended to influence such public official.* No individual or entity required to be listed in a statement of registration pursuant to this article shall offer or give a gift to the spouse or unemancipated minor child of any public official as defined within this article under circumstances where it is *reasonable to infer that the gift was intended to influence such public official.* No spouse or unemancipated minor child of an individual required to be listed on a statement of registration pursuant to this article shall offer or give a gift to a public official under circumstances where it is reasonable to infer that the gift was intended to influence such public official... (Emphasis supplied).

In general, the Commission evaluates, on a case by case basis, three factors to determine whether the gift to a State officer or employee is permissible: 1) the donor’s identity; 2) the value of the gift; and 3) the circumstances surrounding the offering, solicitation or receipt of a gift. The Commission will consider each of these factors in light of the evidence presented.

⁶ Section 73(5) is applicable to the Governor and employees of the Executive Chamber.

1. The Donor's Identity

With respect to the donor's identity, the Commission determines whether the donor is a "disqualified source." A "disqualified source" is an individual who, on his or her own behalf or on behalf of a non-governmental entity, or a non-governmental entity on its own behalf, is engaged in certain activities. The Commission identifies six categories of disqualified sources, which includes, for example, entities that are regulated by, regularly negotiates with, does business with, seeks to contract with or has contracts with the State agency with which the State officer or employee is employed. One category identified by the Commission as a disqualified source in Advisory Opinion No. 08-01 is an individual or entity that:

(2) is required to be listed on a statement of registration [footnote omitted] as required by the Legislative Law, or is the spouse or unemancipated minor child of an individual who is required to be listed on a statement of registration.

This category of disqualified sources is distinguished from the other five categories insofar as the requirement that the disqualifying activity of the individual or entity does not have to be before the State agency with which the State officer or employee is employed in order to be considered a disqualified source. Here, the mere fact of being listed on a Statement of Registration renders an individual or entity a disqualified source to any State officer or employee without regard to the agency that the individual or entity may be lobbying. The rationale for excluding the otherwise limiting language is found in the Legislative Law § 1-m, which prohibits an individual or entity who is required to be listed on a Statement of Registration from offering or giving a gift "to any public official."

Here, the Yankees were "required to be listed on a statement of registration," thus, were prohibited by Legislative Law § 1-m from "delivering [a] gift" to a public official.⁷ Similarly, since the Yankees were registered lobbyists and clients of registered lobbyists, it was unlawful for the Governor, directly or indirectly to solicit, accept or receive a gift, as defined in the Legislative Law, from the Yankees.

As previously stated, the Governor as head of the Executive Department appoints the heads of the civil departments, among other agencies. In addition, the Governor approves the program agenda for each agency and recommends an Executive Budget.⁸ Therefore, given the fact that the Yankees' lobbyist was registered to and reported that, in fact, it did lobby the Executive Branch and the Executive Chamber,⁹ "it could reasonably be inferred that the gift was

⁷ According to the Commission's publicly available records, Yankees Partnership LLC (NY) is listed as a registered lobbyist. The records identify Randy Levine, Brian Smith and Lonn Trost as lobbyists. Yankees Partnership LLC is listed as a client of Powers & Company, and is identified as a third party client of The Mirram Group, LLC and Brian R. Meara Public Relations, Inc.

⁸ It should be noted that Public Officers Law § 73(8)(a)(iv) prohibits a former Executive Chamber employee from appearing before any State agency within two years after leaving State service.

⁹ The Yankees Partnership LLC, as a registered lobbyist, lists "New York State Executive," among others, as an entity expected to lobby, and includes the "Executive Branches" most recently in May-June 2009 bi-monthly

intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part ...,” and “under the circumstances it is reasonable to infer that the gift was intended to influence [the Governor]....” Public Officers Law §73(5)(a) and (b). That such inferences are reasonable is enough to proscribe the Governor’s solicitation, receipt or acceptance of any gift of more than nominal value from the Yankees.

2. Value of the Gift

Here, the five tickets that constituted the unlawful gift had an aggregate face value of \$2,125, which is far more than nominal.¹⁰

3. The Circumstances Surrounding the Offering, Solicitation and Receipt of a Gift

There are limited circumstances in which the offering or solicitation of a gift may be permissible. In Advisory Opinion No. 08-01, the Commission determined that the exceptions set forth in the Legislative Law 1-c(j)(i) – (xi) would be considered “permissible gifts” when offered to a State officer or employee by a disqualified source. Therefore, one permissible gift is complimentary attendance at a widely attended event set forth in Legislative Law §1-c(j)(ii), specifically:

Complimentary attendance, food and beverage offered by the sponsor of the event that is widely attended or was in good faith intended to be widely attended, when attendance at the event is related to the attendee’s duties and responsibilities as a public official, or allows the public official to perform a ceremonial function appropriate to his or her position.

a. Ceremonial Function

The Governor’s response to the 15-day letter indicates that his “attendance in support of this event was intended to be ceremonial.” GDAP 1-3. The question posited in the Governor’s response is “whether the Governor’s complimentary attendance at a sporting event of national impact and significance that generated tens of millions of dollars to the City and State is appropriate.” The proper question, however, is whether the Governor’s solicitation of

report to the Commission. Powers & Company identifies “Executive Branches” as a body expected to be lobbied, and includes the Executive Branch as a body it lobbied in its bi-monthly reports to the Commission from September 2009-February 2010. The Mirram Group, LLC has filed only one bi-monthly report with the Commission, and indicated it lobbied the “Executive Chamber” from January – February 2009. Brian R. Meara Public Relations, Inc. identifies the “Executive ... Branches of Government,” and includes the same on its bi-monthly reports from July 2009 through December 2009.

¹⁰ Moreover, there is reasonable cause to believe that when the tickets were solicited, which was one day prior to Game One, and when they were received and accepted, which was the day of the game itself, the market value of the tickets far exceeded face value.

complimentary attendance to Game One of the World Series would be considered a “permissible gift.”

In assessing whether a gift may be permissible, the Commission considers the draft proposed regulations, which have been approved by the Commission and posted on the Commission’s website since January 9, 2009. Draft proposed 19 NYCRR 933.3(a) states that, notwithstanding the general prohibition on soliciting or receiving a gift, “the following gifts given under the following circumstances are permitted to be solicited, offered, accepted, received and or given.” (Emphasis added.) One category of permissible gifts is complimentary attendance at a widely attended, officially related event if such attendance “furthers the State agency’s program and operations and is related to the attendee’s duties and responsibilities as a State officer or employee, or allows the State agency head ... to perform a ceremonial function appropriate to his or her position.” (Draft proposed 933.3(c)(1)).

An event is considered to be “widely attended” if, in part, it is “open to a large number of persons from a given industry or profession, including invitees who represent a broad and diverse range of interests in a given subject matter.” (Draft proposed 933.1[t].) While the Yankees did not “invite” all of the spectators to Game One, it can be said that Game One has met these two criteria.

However, in order to accept complimentary attendance, the draft proposed regulations, consistent with Legislative Law §1-c(j)(ii), provide that the State agency head “is to perform a ceremonial function appropriate to his or her position.” GDAP 1-3. In the view of the Commission, the Governor’s actions do not, individually or cumulatively, constitute “perform[ing] a ceremonial function” appropriate to the office of Governor. The Governor testified that he did not speak at the opening ceremonies (Paterson Tr. p. 17, line 11), nor was he recognized by name during the public address announcement that recognized public officials (Paterson Tr. p. 17, line 20-23). The Governor exchanged greetings with Mayor Bloomberg (Paterson Tr. p. 18, line 7 – 8) and former Mayor Giuliani (Paterson Tr. p. 18, line 18-19), and responded to sports questions from the press (Paterson Tr. p. 19, lines 6 – 10).

The Governor testified that there was a ceremony before Game One (Paterson Tr. p. 16, line 14), which is not held before any other game in the World Series, and that this warrants the conclusion that attendance was for “official business.” In the absence of this ceremony, “just to go to a sporting event would not qualify [as an exception to the gift ban] (Paterson Tr. p. 16, line 24-25).” However, we conclude that the Governor did just that: went to a sporting event that did not qualify as an exception to the gift ban. The fact that the Governor’s presence may be “meaningful” because other public officials may be in attendance (GDAP 1-3) does not rise to the level of “ceremonial,” which would qualify Game One as a widely attended event. As the head of the State of New York, these actions do not satisfy the criteria of performing a ceremonial function in order to properly accept complimentary attendance.

b. State Agency Purpose

While the Governor’s response does not maintain that he solicited the complimentary attendance because it was in furtherance of the State agency’s programs, we find that the

Governor's actions would not meet these criteria. In the Commission's draft proposed regulations, the agency Ethics Officer is to make a written finding demonstrating that the employee's participation at the event outweighs the likelihood that such participation may appear to improperly influence the employee, or reward the employee for official action (Draft proposed 933.3[c][4]). Among the factors to be considered are the significance of the event to the employee's agency, the relevance of the event to the employee's duties and responsibilities, and whether the event provides for the opportunity to exchange ideas and opinions among those in attendance (Draft proposed 933.3[c][3]).

The only written determination from the Executive Chamber prior to receipt of the tickets, which was subsequent to the solicitation, was the Governor's Counsel's statement to the Yankees that the Governor's attendance at Game One was "official business." The Executive Chamber has not provided any documentation indicating that any analysis with respect to the permissibility of the solicitation of the gift was undertaken.

Assuming an analysis were undertaken, it is the Commission's view that the Governor's attendance would not "further agency programs and operations." (Emphasis added). The event is a baseball game, albeit an important game to Yankee fans, but it is not an event, in and of itself, that will further the State of New York's programs and operations. The purpose of the event is recreational, and the Commission stated in Advisory Opinion No. 08-01 that "attendance at event at which the activities are substantially recreational in nature shall not be considered to be for a public purpose or related to a State employee's official duties." The Commission did not make an exception for agency heads or statewide elected officials from this statement.

The Governor testified that events such as Game One of the World Series are "high profile" and further stated that problems may result if he does not attend (Tr. p. 48, lines 6 – 24). In such a situation, the Executive Chamber could have paid, before Game One, for the Governor's ticket and for his staff's tickets so that they could attend on "official business." It is the view of the Commission that an event that is properly characterized as a "widely attended event" and is a permissible gift, which Game One of the World Series is not, does not, *ipso facto*, create an entitlement of complimentary attendance for which the State officer or employee may solicit, particularly from an entity that is a disqualified source. The exceptions to the prohibition against the solicitation and acceptance of gifts set forth in Legislative Law §1-c(j)(i) – (xi), which the Commission has applied to State officers and employees as permissible gifts, are "safe harbors" that permit a disqualified source to offer or give "gifts" of more than nominal value in prescribed, limited circumstances. In Advisory Opinion No. 08-01, the Commission reaffirmed the long-standing general rule established by the former New York State Ethics Commission ("Ethics Commission") that "State officers and employees should not, directly or indirectly, solicit a gift of nominal value from a disqualified source, ..." Therefore, whether complimentary attendance is provided to a State officer or employee is in the discretion of the sponsor, and should not be solicited by the State officer or employee.¹¹

¹¹ Brian Smith, Yankees' Senior Vice President of Corporate and Community Affairs, testified that the Governor was the only public official who requested complimentary attendance from the Yankees during the 2009 season. Smith Tr. p. 8, line 7 through p. 9, line 13

The record evidence supports the conclusion that there is reasonable cause to believe that the Governor solicited an impermissible gift from the Yankees, who are a disqualified source. Therefore, there is reasonable cause to believe that the Governor violated Public Officers Law §73(5)(a). As the Yankees are both clients and registered lobbyists, the Commission finds that there is reasonable cause to believe that the Governor violated Public Officers Law §73(5)(b).

TICKETS FOR GOVERNOR PATERSON'S SON AND HIS SON'S FRIEND

The Governor contends that, since he paid for the tickets for his son and son's friend, the tickets are not gifts. Specifically, the Governor testified that after he decided he should attend Game One, he directed Johnson to contact the Yankees and obtain tickets to the game and to speak to the Governor's Counsel about obtaining the tickets the "right way." Paterson Tr. p. 9, line 23-p. 10, line 13. The Governor further testified that he instructed Johnson to obtain tickets for his son and a friend of his son and that the Governor would be paying for those two tickets. Paterson Tr. p. 10, lines 14 - 17.

While it is correct that a gift does not include anything for which a State officer or employee pays, the Governor did not pay for the tickets prior to accepting the solicited benefit. In Advisory Opinion No. 97-13, the Ethics Commission held that "when an officer or employee receives a gift without having received prior advice," he or she can avoid running afoul of the gift restriction by promptly seeking guidance and taking necessary corrective action. In so holding, the Ethics Commission issued "a note of caution" stating:

"It is a far better practice for officers and employees to seek advice prior to receiving anything of value which might be an unlawful gift... In [certain] situations, the Commission may not find a close connection between the acceptance of the benefit and the request to the Commission or the payment, especially where the time interval is longer. Certainly, a payment made in response to Commission action may not be deemed to be a payment that relieves the recipient from a possible violation. In sum, the Commission is prepared to allow some flexibility where neither payment is made nor advice sought on or before the day the benefit is received, but that flexibility is limited, and determinations will be made according to time and circumstance."

The Governor essentially asserts that he had intended to pay for the tickets prior to Game One, but that logistics prevented him from doing so. The evidence does not support the Governor's assertion that he intended to pay for the tickets for his son or son's friend. This evidence includes: 1) a review of the handwriting on the Governor's check; 2) Johnson's statements to the Yankees prior to Game One; 3) the Executive Chamber's internal correspondence following press inquiries; and 4) the Governor's lack of payment for his son's tickets to Opening Days at Yankee Stadium and Citi Field.

Since the Governor did not even pay for this ticket until after the press questioned whether anyone paid for their tickets, the Governor did not take prompt corrective action warranting relief from liability under Public Officers Law §75(3).

**IMPROPER USE OF OFFICIAL POSITION:
PUBLIC OFFICERS LAW §74**

Public Officers Law §74 contains the Code of Ethics for State officers and employees. The Code is intended to prevent State officers and employees from engaging in activities that present actual or apparent conflicts of interest. The rule with respect to conflicts of interest is set forth in subdivision 2, which provides in pertinent part, as follows:

No officer or employee of a state agency . . . should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

The rule of subdivision 2 is further explained by the standards that are contained in subdivision 3. Of particular relevance are the following standards:

3. Standards.

. . . .

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

. . . .

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

. . . .

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

For all the same reasons that the Governor's solicitation of free tickets to Game One of the World Series is an impermissible gift in violation of Public Officers Law §73(5), the Governor's conduct violates Public Officers Law §§74(3)(d), (f) and (h). But regardless of whether the Governor's solicitation of free tickets violated the gift restrictions, there is reasonable cause to believe that the Governor used his official position to secure tickets to the World Series for himself, his son and others that he could not have obtained at face value but for the fact that he was Governor.

The record evidence demonstrates that after the Yankees secured a playoff appearance, their tickets operation staff decided to "hold some good locations behind the screen just in case Governor Patterson [sic] decides to attend any games." CPI 28. In fact, the Governor's tickets were for seat location 120a (EC-300), which according to the Yankees' stadium map is right behind home plate. The Governor conceded that tickets to the World Series are hard to come by because everyone wants to be there and that he obtained tickets for "good seats." Paterson Tr., pp. 24-25. Additionally, the Commission subpoenaed records from five companies involved in the internet sale of tickets to Game One of the World Series. The Commission compared the average price of tickets for sale through these companies for seats that were comparable to the Governor's seats.¹² While tickets were sold as late as 4:17 PM on the day of the game, the average price through these tickets was approximately \$1,200, well above the \$425 face value the Governor paid per ticket.

In light of this evidence, there is reasonable cause to believe that the Governor, his son and his son's friend would not have been able to obtain the tickets that he obtained for the price that he obtained them at but for the fact that he is Governor and directed his staff to solicit the tickets directly from the Yankees.¹³

CONCLUSION

There is reasonable cause to believe based on the record evidence the Commission has adduced in its investigation that Governor Paterson solicited, received and accepted an unlawful gift in violation of Public Officers Law §§73(5)(a) and (b), and misused his official position to secure complimentary tickets to Game One of the World Series for himself, two members of his staff, his son and his son's friend in violation of Public Officers Law §§74(3)(d), (f) and (h).

¹² In determining what seats were comparable with the Governor's seats, the Commission reviewed the Yankees stadium map and compared seats in sections that the Yankees sell at the same rate as section 120a, the section where the Governor's seats were located.

¹³ During the Commission's investigation, COO Lonn Trost testified that anyone could have obtained tickets to the World Series through the Yankees' box office up until the start of the game. However, based upon the internal email from the Yankees and the sale of tickets in the secondary market for well above the face value, it is highly unlikely that the Governor could have obtained five tickets at face value for section 120a the day before the game but for the fact that he was Governor and directed his staff to obtain tickets.

Dated: March 3, 2010

NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY¹⁴

All Concur:

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John T. Mitchell

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¹⁴ Commissioner Steven C. Krane has recused himself from this matter and has not participated.