

**MINUTES OF THE PUBLIC SESSION OF THE  
JANUARY 31, 2017  
COMMISSION MEETING  
OF THE JOINT COMMISSION ON PUBLIC ETHICS  
HELD AT THE COMMISSION'S OFFICE LOCATED AT  
540 BROADWAY  
ALBANY, NEW YORK**

**Acting Chair:** Michael K. Rozen (NYC)

**Members:**

Robert Cohen (NYC)  
Marvin Jacob (Webex)  
Seymour Knox, IV (BUF)  
Hon. Eileen Koretz (NYC)  
Gary J. Lavine (ALB)  
J. Gerard McAuliffe, Jr. (ALB)  
David A. Renzi (Webex)  
Hon. Renee R. Roth (NYC)  
Dawn L. Smalls (NYC)  
George H. Weissman (Webex)  
Hon. Penny M. Wolfgang (BUF)

**Members**

**Absent:**

**Staff:**

Seth H. Agata, Executive Director  
Monica J. Stamm, General Counsel  
Martin L. Levine, Deputy General Counsel  
Stephen J. Boland, Director of Administration  
Walter J. McClure, Director of Communications and Public Information Officer  
Pei Pei Cheng-deCastro, Director of Investigations and Enforcement  
Emily A. Logue, Deputy Director of Investigations and Enforcement  
Patrick E. Coultry, Chief Investigator  
Peter J. Smith, Investigator  
Erin R. Lynch, Associate Counsel  
Stephanie Blattmachr, Associate Counsel  
Carol C. Quinn, Deputy Director of Lobbying Guidance  
Leah Ramos, Deputy Director of Financial Disclosure Compliance  
Lori Donadio, Investigative Analyst  
Deborah Novak, Secretary to the Commission

**I. CALL TO ORDER**

Acting Chair Michael Rozen called the January 31, 2017 Commission Meeting to order. Acting Chair Rozen welcomed new Commissioners, Robert Cohen and Judge Penny Wolfgang.

**II. APPROVAL OF MINUTES – PUBLIC SESSION**

**December 20, 2016**

A motion was made by Commissioner McAuliffe, seconded by Commissioner Koretz, to approve the Minutes from the Public Session of the December 20, 2016 Commission Meeting. The motion was approved by unanimous vote of Acting Chair Rozen and Commissioners Cohen, Jacob, Knox, Koretz, Lavine, McAuliffe, Renzi, Smalls, Weissman and Wolfgang. Commissioner Roth was not present for the motion.

**III. REPORT FROM STAFF**

**Third Quarter Financial Report**

Director of Administration, Stephen Boland stated that in the third quarter ending December 31, 2016, disbursements for personal service were just over \$1,055,000, with a year-to-date total of \$2.9 million or 65% of the cash budget. The total for non-personal services was \$213,000, totaling \$776,000 year-to-date or 70% of the budget. Total third quarter expenditures were \$1,269,000 for a year-to-date total of \$3,675,000 or 66% of the budget.

**2017 Legislative Proposals**

Executive Director Seth Agata explained that once reviewed by the Commission, the Legislative Proposals could be posted on the Commission's website for the public, Legislature and Executive to examine, without the Commission necessarily endorsing them. The Commission could also consider and endorse individual proposals and/or suggest other proposals. If the Commission votes to endorse some or all of the Proposals, it is suggested that the Proposals be presented to the Legislature, the five conferences,

and to the Executive and that the Commission offer them a session in which to explain each proposal.

The general areas that the proposals cover are technical fixes which address inconsistencies, increasing openness and providing the Commission more investigative and enforcement authority.

Executive Director Seth Agata briefly summarized each of the 2017 Legislative Proposals that have been generated by staff for consideration. Among others, the proposals include: authorizing the Commission to make information more publicly available and subjecting the Commission to the Open Meetings Law and Freedom of Information Law; mandating electronic filings related to lobbying and financial disclosure statements; requiring disclosure of PACs and political activities by lobbyists; broadening the availability of penalties for violations of the Code of Ethics; and creating accomplice liability for violations of Public Officers Law, Civil Service Law and Legislative Law. In addition, as a fix to the problem with the FDS client exemptions, the Proposals would authorize OCA to disclose the names of clients on applications for exemption from disclosure on the financial disclosure statements to JCOPE after the issuance of a subpoena.

Several Commissioners had comments. Among other things, with respect to Reform D, Commissioner Lavine suggested revisiting the FDS protocols, including reducing the number of filers who are required to file the long form, and revise the form itself. With respect to Reform E, Commissioner McAuliffe, raised concerns regarding amendments to Lobbying Act 1-u(a)(ii) that would expand the definition of a lobbyist to include spouse, domestic partner and un-emancipated children of the lobbyist, even if just for the purpose of disclosing political activities. Commissioner Smalls suggested that the amounts of contributions raised and or given by lobbyists to campaigns be included in the amendment. With respect to Reform I, Commissioner McAuliffe noted that the standard “knowingly and willfully fails to comply with requests for the productions of documents” is arguably very general and broad and suggests that the term “reasonable” or another

qualifying term be utilized. With respect to Reform P, Commissioner Smalls raised concerns about tolling the timeframe to conduct an investigation and believes it is against fundamental fairness to a subject.

Executive Director Agata acknowledged the concerns raised by the Commissioners and indicated that staff would reexamine the proposals in light of such concerns and recommend changes accordingly. Commissioner Weissman stated that he has a number of drafting, procedure and substantive comments that he would like to address with staff between meetings.

A motion was made by Commissioner Roth, seconded by Commissioner Smalls, to post the 2017 Legislative Proposals on the Commission's website with a disclaimer that the drafts were prepared by staff. The vote on the motion was 9-3. Acting Chair Rozen and Commissioners Cohen, Knox, Koretz, Lavine, Renzi, Roth, Smalls and Wolfgang voted in favor of the motion. Commissioners Jacob, McAuliffe and Weissman were opposed to the motion. The motion carried.

#### IV. **REGULATIONS**

##### **Source of Funding Regulations**

Deputy Director of Lobbying Carol Quinn stated that the Commission has not received any comments on the proposed regulations. A motion was made by Commissioner Koretz, seconded by Commissioner Cohen, to adopt the Source of Funding Regulations (previously approved by the Commission) by way of a Notice of Adoption and Notice of Emergency Adoption. The motion was approved by unanimous vote.

##### **Staff Draft of Comprehensive Lobbying Regulations**

In continuing the discussion of general issues raised by the staff-generated Comprehensive Lobbying Regulations, Deputy General Counsel Martin Levine explained that the relationships between lobbyist and clients, including the contractual client, and the beneficial client, in most cases are one in the same. Handouts were provided to the Commissioners that explain that lobbying is "any attempt to influence governmental

action” but includes only specified governmental actions that are outlined in §1-(c)(c) of the Lobbying Act. What are governmental activities and what are not governmental activities will be outlined at next month’s Commission meeting. Commissioner Smalls requested that the handout be posted on the Commission’s website.

**V. NEW AND OTHER BUSINESS**

None

**VI. MOTION TO ENTER INTO EXECUTIVE SESSION PURSUANT TO EXECUTIVE LAW §94(19)(b)**

A motion was made by Commissioner Roth, seconded by Commissioner McAuliffe, to enter into Executive Session pursuant to Executive Law §94(19)(b). The motion was approved by unanimous vote.

**VII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION**

Acting Chair Rozen announced that, during the Executive Session, pursuant to Executive Law §94(19)(b), the Commission discussed litigation matters, including dismissal from federal suits brought by the ACLU and Citizens Union and a court decision in the November Team litigation in which the court abstained from deciding the matter (but retained jurisdiction) to permit a state court to consider the issues in the first instance. The Commission approved three settlement agreements and commenced investigations, discussed several other investigative matters, and approved steps to be taken in other investigative matters.

**VIII. MOTION TO ADJOURN THE PUBLIC MEETING**

A motion was made by Commissioner Roth, seconded by Commissioner Koretz, to adjourn the Public Meeting. The motion was approved by unanimous vote.