

**MINUTES OF THE PUBLIC SESSION OF THE
DECEMBER 19, 2017
COMMISSION MEETING
OF THE JOINT COMMISSION ON PUBLIC ETHICS
HELD AT
540 BROADWAY
ALBANY, NEW YORK**

Acting Chair: Michael K. Rozen (WebEx)

Members: Robert Cohen (NYC)
James E. Dering (ALB)
Marvin Jacob (NYC)
Seymour Knox, IV (FaceTime)
Gary J. Lavine (WebEx)
J. Gerard McAuliffe, Jr. (ALB)
Barry C. Sample (ALB)
Dawn L. Smalls (NYC)*
George H. Weissman (ALB)
James A. Yates (NYC)

Members

Absent: None

Staff: Seth H. Agata, Executive Director
Monica J. Stamm, General Counsel
Martin L. Levine, Deputy General Counsel
Keith C. St. John, Director of Ethics
Andrew Bechard, Director of Lobbying
Carol Quinn, Deputy Director of Lobbying Guidance
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
Meghann Hennigan-Cohen, Deputy Director of Education
Michael Sande, Deputy Director of Guidance
Erin Lynch, Associate Counsel
Patrick E. Coultry, Chief Investigator
Peter J. Smith, Investigator
Richard Coraggio, Investigator
Lori Donadio, Principal Investigative Analyst
Katherine Santandrea, Secretary to the Commission

* Commissioner Smalls was present starting at item VII

I. CALL TO ORDER

II. APPROVAL OF MINUTES – PUBLIC SESSION

November 28, 2017

A motion was made by Commissioner Weissman, seconded by Commissioner McAuliffe, to approve the minutes from the Public Session of the November 28, 2017 Commission Meeting. The motion was approved by unanimous vote.

III. REPORT FROM STAFF

Update on Outreach Activities

Executive Director Agata explained that since the last Commission meeting, a forum was held for Ethics Officers on Permissible Political Activities. In November, two Commission Directors attended the annual COGEL conference. The JCOPE newsletter was also distributed. Director of Lobbying Andrew Bechard recently conducted trainings with colleges concerning Reportable Business Relationships. Specialized trainings have also been held for the Council on the Arts and SUNY Downstate.

Update on New Website

General Counsel Stamm explained that staff has been working to redesign the JCOPE website with ITS. For the past six months, staff, led by Director of Communications and Public Information Officer Walter McClure and Assistant Director Marlana Diaz, have been working full time on the content for the new website. Staff hopes to have the rollout before the next Commission meeting.

Update on New York City and Albany Leases

General Counsel Stamm explained that the Albany office lease and New York City office lease are expiring in April 2018 and early 2019, respectively. Staff is working with the New York State Office of General Services (OGS) on either staying in the current space in Albany or moving to another space in downtown Albany. The New York City lease is a larger project, because the current building houses several government agencies, with

whom OGS is working, to determine if those offices should be renovated or relocated. Staff will keep the Commission updated.

IV. REGULATIONS

Proposed Comprehensive Lobbying Regulations

This matter was presented in the meeting book materials. Executive Director Agata stated that the Regulations are in the formative stage, and we are still in the process of articulating the answers to the questions posed by the Commission and others. Staff will present four principal areas in the draft regulations for further discussion.

Deputy Director of Lobbying Carol Quinn explained that based upon the discussion at last month's meeting, staff suggests keeping the original proposed language on coalitions (regarding disclosure of those members who exceed the \$5,000 lobbying threshold) while adding a provision that allows the Coalition to use, and rely upon in good faith, a questionnaire it can send to Coalition members to determine whether such member meets the threshold and therefore must be listed in a lobbying statement or report as a Beneficial Client. The interpretation of what constitutes a "Beneficial Client" in the Coalition context would carry through to the application of the gift and contingent fee prohibitions, as well as source of funding disclosure requirements. In other words, only those coalition members that expend more than \$5,000 in a year on lobbying would be subject to the gift and contingent fee prohibitions.

With respect to billboards (page 19 of the draft), §943.6, the regulations currently provide that Direct Contact for purposes of Direct Lobbying may include "public communications... broadcast to more than just a Public Official when the clear intent is to reach a Public Official, including, for example, a billboard placed on a highway exit leading in to the Capitol or a rally held outside the Capitol." After receiving comments on this provision, staff is suggesting deleting this provision from Direct Lobbying. Rallies and billboards are covered more appropriately under Grassroots Lobbying.

With respect to “Lobby Days” (page 22 of the draft), §943.6(b)(4), the regulations clarify that an employee of an organization holding a Lobby Day is engaged in direct lobbying and must be identified by such organization as an Individual Lobbyist only if such employee, as part of his/her job duties, makes direct contact with a Public Official and speaks on behalf of the organization at the Lobby Day.

Commissioner Jacob asked why, with respect to Lobby Days, if an employee makes direct contact with a public official and speaks on behalf of the organization, is that person not designated as a lobbyist, that is to say, why does it need for it to be part of the job duties to be reportable, and thus if it is not part of the job description, it would not be reportable. Executive Director Agata stated that the language can be amended so that there is no loophole.

Proposed Amended Source of Funding Regulations

The Amended Source of Funding Regulations will be handled as a separate regulatory issue, apart from the Comprehensive Lobbying Regulations. Staff is requesting a vote on whether to include a definition of (and if so, how to define) the term “substantial likelihood,” which is used as the threshold for an exemption from reporting an organization’s sources of funding. The Commission instructed staff to define it, but subsequent to that direction, there has been some discussion by Commissioners and staff whether there is a need to define it. Commissioner Dering stated that it would make sense to define it. Commissioner McAuliffe asked whether an attempt at defining is providing clarification or further confusion. Commissioner Weissman stated that JCOPE represents two branches of government, the two branches agreed on substantial likelihood, there have been no successful challenges, and believes it is better to apply it as the Commission has applied it in the past, and if the Commission is challenged, it will be dealt with. A motion was made by Commissioner Dering and seconded by Commissioner Yates that the term “substantial likelihood” as used in the Source of Funding should be defined in regulation. The vote on the motion was 4/6/1. Commissioners Cohen, Dering, Sample, and Yates voted in favor of the motion. Chair Rozen, Commissioners Jacob, Knox, Lavine,

McAuliffe and Weissman opposed the motion. The motion did not carry. The term “substantial likelihood” will not be defined in the regulations.

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 McAuliffe, seconded by Commissioner Sample, 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

Executive Director Agata announced that during Executive Session, pursuant to Executive Law §94(19)(b), the Commission discussed several litigation and investigative matters, commenced a Substantial Basis Investigation, authorized the issuance of subpoenas, authorized actions in investigation matters, and voted to refer a matter to the New York City Conflicts of Interest Board.

VIII. MOTION TO ADJOURN THE PUBLIC MEETING

A motion was made by Commissioner McAuliffe, seconded by Commissioner Dering, to adjourn the Public Meeting. The motion was approved by unanimous vote. Commissioner Jacob was not present for the vote.