

**MINUTES OF THE PUBLIC SESSION OF THE
MAY 22, 2018
COMMISSION MEETING
OF THE JOINT COMMISSION ON PUBLIC ETHICS
HELD AT
540 BROADWAY
ALBANY, NEW YORK**

Chair: Michael K. Rozen (NYC)

Members: Robert Cohen (NYC)
James E. Dering (ALB)
Marvin Jacob (NYC)
Seymour Knox, IV (ALB)
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: David J. McNamara

Staff: Seth H. Agata, Executive Director
Monica J. Stamm, General Counsel
Martin L. Levine, Deputy General Counsel
Stephen J. Boland, Director of Administration
Keith C. St. John, Director of Ethics
Walter J. McClure, Director of Communications and Public Information Officer
Pei Pei Cheng-de-Castro, Director of Investigations and Enforcement
Emily A. Logue, Deputy Director of Investigations and Enforcement
Stephanie Blattmachr, Deputy Director of FDS
Michael Sande, Deputy Director of Ethics Guidance
Meghann Hennigan-Cohen, Deputy Director of Education
Carol Quinn, Deputy Director of Lobbying
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

I. CALL TO ORDER

Chair Rozen called the May 22, 2018 meeting to order.

II. APPROVAL OF MINUTES – PUBLIC SESSION

April 24, 2018

A motion was made by Commissioner Yates, seconded by Commissioner Weissman, to approve the minutes from the Public Session of the April 24, 2018 Commission Meeting. The motion was approved by unanimous vote of 9-0-2. Commissioner Cohen and Commissioner Smalls were not present for the vote.

III. REPORT FROM STAFF

Outreach Update

Executive Director Seth Agata stated that he had recently participated in a CLE presentation at the New York State Bar Association on the topic of Financial Disclosure Statements. He also recently took part in a panel discussion at the Nassau County Bar Association titled *Restoring Public Confidence in Government: Global, State & Local Perspectives*; the panel included the United Nations Chief Ethics Officer.

Executive Director Agata stated that JCOPE is preparing for a half-day CLE in New York City in conjunction with New York Law School this October to look at lobbying and may offer one in Albany as well. Last year, JCOPE presented a half-day CLE (also with New York Law School) on ethics issues.

Legislative Proposals

Executive Director Agata presented three 2018 legislative proposals for discussion, as well as background on the 2017 staff legislative proposals. Notably, of the 2017 proposals, three were introduced in the Assembly by Assemblymember Buchwald (A.7161, A.7162, and A.7163).

Executive Director Agata stated that these bills are still live in the Assembly in the Government Operations Committee, though they have not been introduced in the Senate.

Last year, the relevant staff from the legislature and the executive had been invited to discuss these proposals, but no discussions have taken place this year; the proposals remain out for public comment.

[Commissioner Cohen and Commissioner Smalls joined the meeting at 25 Beaver Street.]

This year, there are three proposals for Commission discussion and comments:

- Reform E, which requires that lobbyists disclose political consulting and fundraising activities (similar to a requirement under the New York City Charter);
- Reform F, similar to A.7162, creating accomplice liability for individuals who aid in committing violations that are subject to JCOPE jurisdiction; and
- Reform K, which raises penalties under the Lobbying Act, including expanded periods of debarment from lobbying and an extended look-back period for repeat violators.

Commissioner Yates asked a question regarding political consulting and how it overlaps with in-kind contributions that are reported under the Election Law. Deputy General Counsel Martin Levine stated that the reporting requirements are based on the definition of “political consulting” in the proposal, and whether they would normally be compensated for such activities; whether it is reportable as an in-kind contribution under the Election Law has no bearing on this requirement. Executive Director Agata stated that the political consulting activities do not necessarily have to relate to a campaign or an election; they could be simply rendering advice to an elected official.

Commissioner Yates asked about the proposal regarding accomplice liability, and whether an individual, e.g., counsel, would be liable under the proposal when the individual provides advice to a public official that is followed and results in illegal activity. Executive Director Agata noted that the accomplice would have had to be acting knowingly and willfully. If someone is outside of JCOPE’s jurisdiction and they are helping engage in fraud, that would be covered, but merely getting advice from counsel who is not part of a scheme would not be covered.

Commissioner Yates also sought clarification of the applicability of Reform K to not-for-profit entities and public corporations.

IV. REGULATIONS

Proposed Amended FDS Exemption Regulations, FDS Client Disclosure Exemption Regulations, Adjudicatory Proceedings and Appeals Regulations, and FDS Extension of Time Regulations

General Counsel Stamm presented proposed regulations that were previously subject to a public comment period as required under the State Administrative Procedure Act, and stated that the Commission has not received any comments. The regulations relate to Financial Disclosure Statements, generally, and the process of applying for exemptions from disclosing certain information. The Commission clarified that the Executive Director will make the determination about whether the exemption will be granted and with such decision subject to an appeal in certain circumstances to the full Commission if the Executive Director denies an exemption application. General Counsel Stamm stated that this vote is to make the regulations final; the regulations are currently in effect on an emergency basis.

General Counsel Stamm stated that there are two minor changes to be included, which do not trigger a revised rulemaking and public comment period: 935.2, page 7, paragraph 5, “The Executive Director shall provide the Commission with information regarding the nature and number of Exemption applications received” – “and dispositions thereof” will be added after this. In 942, page 9, paragraph F, the same change will be applied.

A motion was made by Commission Dering, seconded by Commissioner Yates, to adopt the regulations with the amendments noted above. The motion was approved by unanimous vote.

V. NEW AND OTHER BUSINESS

N/A

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

A motion was made by Commissioner McAuliffe, seconded by Commissioner Jacob, 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

Chair Rozen summarized that in Executive Session, the Commission discussed a number of litigation matters, commenced an investigation, authorized several investigative steps, discussed several investigative matters, and closed one matter.

VIII. MOTION TO ADJOURN THE PUBLIC MEETING

Upon motion made by Commissioner Yates, seconded by Commissioner Smalls, the Public Session was adjourned by unanimous vote.