

**MINUTES OF THE PUBLIC SESSION OF THE
JANUARY 29, 2019
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)
Colleen C. DiPirro (ALB)
William P. Fisher (ALB)
Julie A. Garcia (ALB)
Daniel J. Horwitz (NYC)
Marvin E. Jacob (WebEx)
Gary J. Lavine (WebEx)
George H. Weissman (WebEx)
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
Pei Pei Cheng-de-Castro, Director of Investigations and Enforcement
Walter J. McClure, Director of Communications and Public Information Officer
Carol Quinn, Deputy Director of Lobbying Guidance
Emily A. Logue, Deputy Director of Investigations and Enforcement
Melinda Funk, Deputy Director of FDS
Michael Sande, Deputy Director of Ethics Guidance
Meghann Hennigan-Cohen, Deputy Director of Education
Erin Lynch, Special Counsel for Lobbying
Kavita Bhatt, 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
Erica Davis, Intern

I. CALL TO ORDER

Chair Rozen called the January 29, 2019 meeting to order. Chair Rozen welcomed Commissioners Horwitz and Lavine back to the Commission, and welcomed Commissioner Fisher to the Commission.

II. APPROVAL OF MINUTES – PUBLIC SESSION

December 18, 2018

A motion was made by Commissioner Cohen, seconded by Commissioner Dering, to approve the minutes from the Public Session of the December 18, 2018 Commission Meeting. The motion was approved by a vote of 9-0-2. Commissioners Fisher and Horwitz abstained from voting.

III. REPORT FROM STAFF

Outreach Update

Executive Director Seth Agata stated that staff has developed and is beginning to present specialized Comprehensive Ethics Training Courses for unpaid and per diem commission and board members. This group has unique issues, and the education staff created a specialized curriculum. Staff will continue to tailor ethics training to individual groups and departments.

A workshop for Ethics Officers to review the FDS form and filing process is scheduled for February 7.

Update on Lobbying Application

Deputy Director Quinn reported that the new lobbying application is active and accepting registrations and reportable business relationship filings. The JCOPE website offers instructions, how-to videos, and guidance documents to assist users with the new system. Executive Director Agata stated that staff is receiving a lot of questions, as well as a lot of positive feedback on staff's assistance and guidance.

SFY 2019-20 Proposed Executive Budget/Article VII Bill

Executive Director Agata stated that the Executive's proposed appropriation for JCOPE for the 2019-20 fiscal year is the exact same appropriation as the agency received for 2018-19, but that there are a number of executive legislative proposals that would create additional work for staff and require more resources, which has not been factored into the budget. These proposals are available through the Division of Budget website, as well as the public Legislative Retrieval System website. Deputy General Counsel Martin Levine presented the proposals contained in S.1510/A.2010 that would impact the Commission.

Regarding lobbyists and clients, the following proposals have been made:

- Part M: would amend the Election Law to prohibit registered lobbyists from making loans to campaigns of elected officials or candidates.
- Part O: would require registered lobbyists to disclose all campaign fundraising and bundling activities for elected officials and candidates. Reports would be filed with JCOPE bimonthly and include compensation and expenses, contracting, candidate name, and amount raised.
- Part P: would prohibit both lobbying and political consulting with a common public official.
- Part Q: amends disclosure requirements implemented in 2018 related to certain disclosure of sources of funding from 501(c)(3) and 501(c)(4) organizations. Reports that the law originally required to be filed with the Office of the Attorney General and forwarded to JCOPE for posting would now be filed with JCOPE. The exemption request process would also be handled by JCOPE.
- Part R: would amend the threshold of what is defined as a reportable business relationship from \$1000 down to \$500, and also lower the overall threshold for lobbying registration and filing from \$5000 to \$500. The \$500 threshold change would start in the 2021-22 reporting period. This amendment could result in a dramatic increase in the number of lobbying organizations (lobbyists and clients) who file with JCOPE, and could create a significant drain on existing resources without additional appropriations.

- Part S: would amend the law by adopting a series of legislative recommendations of the Commission in recent years and those recommendations would increase monetary penalties and potential for debarment from lobbying for failure to timely file a report and false filings. It also would impose additional penalties for failing to comply with a lobbying audit and for providing false information with intent to defraud the State in a lobbying report.

Regarding Public Ethics, the following legislative proposals have been made:

- Part T: would amend the Post-Employment Restrictions for:
 - State officers and employees, by expanding the two-year bar to five years, prohibiting registration as a lobbyist for the five years, and applying the lifetime bar to only Financial Disclosure Statement (FDS) filers;
 - members and staff of the legislature, by expanding the two-year bar to five years, but only apply it to those who filed FDS reports, and ban lobbying during the five years; and
 - employees and officers of the Executive Chamber, by expanding the special restriction from two years to five years, which would only apply to FDS filers. It would also prohibit registration as a lobbyist during the five-year bar.
- Part U: would bar an officer or employee of an elected official from volunteering for that elected official's campaign under Civil Service Law § 107 (Little Hatch Act).
- Part V: would require certain local municipal officers to file an FDS with JCOPE. Municipalities can request that JCOPE authorize the municipality to use its existing FDS form.
- Part W: would create a lobbying code of conduct to establish a duty for a lobbyist to avoid conflicts, or have a client waive conflicts; with a waiver, the lobbying target must be notified. The code would also mandate that lobbyists provide truthful information to public officials and clients (to the best of their knowledge, information, and belief). This section creates a civil penalty for violating the code of conduct.

Commissioner Yates stated that most proposals are consistent with Commission proposals, with some exceptions. He noted the Executive proposed to vest certain source of funding disclosure decisions with the Executive Director. He asked for the status of the proposed modification of blanket confidentiality rules in Executive Law § 94(9-a) to allow the Commission to better inform the public about the status of matters so as not to create the misimpression that we are inactive when in fact we are considering a matter. Executive Director Agata stated that there has not been any conversation with the Executive or Legislature regarding this proposal, but that the proposal regarding the confidentiality provision is still on the JCOPE website, and, at the request of several commissioners, he agreed to reach out to the Executive and the Legislature to request discussions on the legislation. Commissioner Horwitz stated that the Commission should also consider proposing legislation that would make enforcement hearings public again. Commissioner Horwitz questioned why the Legislature put a cloak over enforcement hearings and stated that the public confidence in the Commission would improve if hearings were conducted publicly.

IV. NEW AND OTHER BUSINESS

N/A

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

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

VI. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

Chair Rozen stated that in Executive Session, the Commission discussed litigation matters, approved five settlements, commenced five Substantial Basis Investigations, approved steps in several investigative matters, and discussed several other investigative matters.

VII. MOTION TO ADJOURN THE PUBLIC MEETING

Upon motion made by Commissioner Horwitz, seconded by Commissioner Cohen, the Public Session was adjourned by unanimous vote.