

**MINUTES OF THE PUBLIC SESSION OF THE
APRIL 28, 2020
COMMISSION MEETING
OF THE JOINT COMMISSION ON PUBLIC ETHICS
VIA WEBEX**

Chair: Michael K. Rozen (WebEx)

Members: Robert Cohen (WebEx audio only)
James E. Dering (WebEx)
Colleen C. DiPirro (WebEx audio only)
William P. Fisher (WebEx)
Daniel J. Horwitz (WebEx)
Marvin E. Jacob (WebEx audio only)
Gary J. Lavine (WebEx audio only)
James W. McCarthy (WebEx)
David J. McNamara (WebEx)
George H. Weissman (WebEx)
James A. Yates (WebEx)

Staff: Monica J. Stamm, General Counsel
Martin L. Levine, Deputy General Counsel
Stephen J. Boland, Director of Administration
Keith C. St. John, Director of Ethics
Emily Logue, Acting Director of Investigations and Enforcement
Walter J. McClure, Director of Communications and Public Information Officer
Carol Quinn, Deputy Director of Lobbying Guidance
Melinda Funk, Deputy Director of Financial Disclosure
Patrick E. Coultry, Chief Investigator
Lori A. Donadio, Principal Investigative Analyst
Kelly A. McCready, Confidential Clerk

I. CALL TO ORDER

Chair Rozen called the April 28, 2020 meeting to order, and gave the following statement:

Welcome to the April meeting of the New York State Joint Commission on Public Ethics. I want to thank everyone for joining today with everything going on in the world and I hope all of you and your families are healthy and safe during this difficult time. Due to the social distancing orders, JCOPE's physical offices continue to be closed, so this meeting is being held using video conferencing technology. The public session is accessible on

JCOPE's website to watch via livestream. For that, I appreciate all the efforts made by staff and the Commissioners to ensure that this meeting could happen. Additionally, in recognition of the circumstances, we have taken steps to ensure that people and businesses can devote their energy to navigating the health and financial crises by deferring filing and training deadlines and temporarily suspending audits. We will continue to evaluate the circumstances to determine whether further accommodations are needed. Please contact the Commission staff if you need assistance. Although staff is working from home, they continue to be available to provide ethics and lobbying guidance, aid with public disclosure filings, ethics trainings, and other mandated services. Finally, to conduct this meeting smoothly, I will be monitoring the video and will do my best to recognize anybody who wishes to speak. Staff will be assisting me, so you can text Monica, Martin, or Walt during the meeting if you need to be recognized. It is important that only one person speak at a time. In addition, I ask that when you speak, you identify yourselves, so we have a clear record. We will need to take votes by roll call to ensure that everyone is counted. Otherwise, please mute your phone when you are not planning to speak. Thank you.

II. APPROVAL OF MINUTES – PUBLIC SESSION

February 25, 2020

A motion was made by Commissioner Weissman, seconded by Commissioner Dering, to approve the minutes from the Public Session of the February 25, 2020 Commission Meeting. The motion was approved by a vote of 9-0-1. Commissioner McCarthy abstained from voting. Commissioners Cohen and DiPirro were not present for the vote.

III. REPORT FROM STAFF

End of Year Financial Report

Director of Administration Stephen Boland gave the 2019-2020 fourth quarter and end of year financial report. For personal services, the Commission spent almost \$997,000, for a year-to-date total of almost \$4,487,000, which is 97.1 percent of the Commission's cash disbursement ceiling. For non-personal service, the Commission spent \$234,000, for a year-to-date total of \$731,000, which is 80.3 percent of the cash budget. The total spent

for the fourth quarter was almost \$1,230,000, for a year-to-date total of \$5,117,000, or 94.3 percent of the Commission's cash allowance.

2020-2021 Budget Appropriation

The appropriation for the 2020-2021 budget is the same as last year.

Commissioner Fisher asked if there have been any reductions to that budget. Director Boland stated that while there have been some news articles suggesting restrictions on state spending, he has not heard officially about any reductions from the Department of Budget.

Update – Annual Report

General Counsel Monica Stamm gave an update on the annual report, explaining that in light of the health crisis and the development of the new lobbying application, staff is experiencing a delay in finalizing the annual report. Staff expects to have an updated timeline by the next meeting and is working towards having a draft for the Commission sometime in June.

Update – FDS Filings

General Counsel Stamm gave an update on FDS filings. Staff is currently working on compliance for state office candidates with respect to the June 23, 2020 primary and monitoring what elections will take place at that primary. The FDS filing deadline for these candidates was earlier this month and staff is coordinating with the Legislative Ethics Commission and the Board of Elections. If necessary, staff will send failure to file notices timely so that, if needed, the notices of delinquency will be posted well in advance of the election.

Earlier this month, due to the COVID-19 crisis, the Commission found justifiable cause to provide an additional 90 days for filers to submit their Financial Disclosure Statements, making the new deadline Monday, August 17, 2020. The filing notices were sent to filers, and new forms and the new guide are available on the Commission's website. Staff is also available to answer questions.

Update on Proposed Revised Lobbying Regulations

Deputy General Counsel Martin Levine gave an update on the Revised Lobbying Regulations. Consistent with the discussion held at the February meeting, staff is presenting a copy of the proposed revisions to both the lobbying regulations and the source of funding regulations. The proposed regulations have not been changed since the last meeting. Staff is proposing to start an informal notice and comment period on the staff drafts because we are striving to have the changes in place for the lobbying registration period that begins on January 1, 2021. The informal preliminary comment period provides ample time for input on the proposed changes from the public, as well as the regulated community, before starting a rulemaking under the State Administrative Procedure Act, which has its own mandatory notice and comment period. Although there are open questions about substantive issues, staff anticipates a healthy debate after the informal public comments and before the Commission votes to proceed with a rulemaking under SAPA.

Commissioner Yates stated he wants to make it clear that the drafts are staff proposals and not Commission proposals, since they were not fully discussed or approved by the Commission. Commissioner Yates also wanted to bring to the attention of the regulated community the change in the definition of a designated lobbyist. He believes that there is a difference between advocacy and lobbying and doesn't believe that the Commission has jurisdiction over advocacy nor should be regulating, defining, limiting, or exposing advocacy. Commissioner Yates further stated that the proposed definition of designated lobbyist is any board member, director, or officer of a client, whether or not they were designated by the client to act on behalf of the client. Commissioner Yates stated that there are not-for-profit board members who are public-spirited citizens, who receive no compensation, but by this new definition, for the first time, would become a lobbyist, even if there is no communication between the board member and the client. Commissioner Yates further stated that in most cases, boards, especially not-for-profit boards, are very careful to delineate and limit who speaks on their behalf because becoming a lobbyist has consequences: you are listed in the statement of registration and the bi-monthly reports; there are limitations on who you can give gifts to and who you can do business with, unless

it is reported publicly. Commissioner Yates explained that typically, board members have jobs where they may not be permitted to lobby as a condition of their employment.

Commissioner Horwitz asked if there was precedent for the process that staff is recommending and asked what the rationale was for the proposed amendments to the regulations. Deputy General Counsel Levine stated that this process is the same process that was used in the 2017-2018 promulgation of the regulations. At that time, staff found that having the informal process, along with the formal SAPA rulemaking, was very beneficial to both the public and staff.

Deputy General Counsel Levine further stated that staff's goal was not to change any aspect of the provision relating to unpaid board members of not-for-profit organizations. The changes that were proposed to the definition of designated lobbyists were intended to clarify that individuals who spend money on lobbying can be considered lobbyists on their own behalf. Staff's position on board members has not changed from the initial regulations and the proposed changes were not intended to effectuate a change. The rationale for the position in the existing regulations is that when an organization is spending money to lobby on an issue, and a member of their board who is privy to their discussions and strategy, that is publicly known as a member of the board and speaks with the imprimatur of the board, when that board member engages in a lobbying activity on that same issue, it is impossible to distinguish their personal activity from that of the organization. It was not meant to discourage participation or stifle speech, but there needs to be transparency of those communications.

Commissioner Jacob stated that he felt that the Commission should have additional discussions to make the regulations crystal clear before issuing a staff draft. Commissioner Yates stated that he recommends either going back to the old language that said that a designated lobbyist is a person who acts upon behalf of the client, or the statute which says that you are a lobbyist when you are designated to act as a lobbyist. Commissioner Horwitz stated that the matter should move forward, as outlined by staff, because the regulation is pertaining to an organization that has made a policy determination to lobby State electeds

or officials, and since the Commission tilts toward transparency, the board member should understand the rules. Commission Horwitz stated he does not understand the reluctance for transparency.

General Counsel Stamm stated that the definition of designated lobbyist uses the term “on behalf of”, and staff was not intending to depart from the legislative language or the import of the existing regulations. To the extent that there are concerns with the new language, those concerns, along with the other big issues, can be addressed in the public comments and by the Commission before voting to proceed under SAPA. Staff recommends taking this additional step because it allows staff additional time to address the language and other issues, by receiving and incorporating feedback from the public. This process helps to refine language and clarify points before staff brings it back to the Commission for a vote. Staff recommends beginning the informal public comment period in order to have the regulations effectuated before the next filing deadline of January 2021.

IV. NEW AND OTHER BUSINESS

Report from the Confidentiality Committee

Chair Rozen reported that a committee has been convened to evaluate the Commission’s ability to release more information about its operations and investigations to address the frustration of both the public and the Commission about the lack of transparency and misimpressions about the Commission’s work.

The Committee consists of Commissioners Fisher, Horwitz, Lavine, Yates, and himself, as an ex officio member. The committee has met twice and has engaged in an extensive review of current practices and procedures regarding disclosure of information, the legal issues relating to the relevant statutes, the policies of comparative investigative and regulatory agencies, and potential avenues to move forward that would provide additional flexibility to release information about Commission business, including investigations, financial disclosure statements, and guidance.

The Committee expects to convene again in the next few weeks and hopes to present a detailed plan at the next meeting of the Commission, which will include specific proposals to amend its records access regulations, meeting guidelines, and internal practices to, among other things, provide more information to the public and increase communication with complainants, witnesses, and subjects of investigations.

In addition, the committee will continue to evaluate existing protocols in place to protect against improper disclosure of confidential information, including recommendations made by the Office of the Inspector General.

Meeting Schedule – July through December 2020

General Counsel Stamm stated that the meeting schedule that for July-December 2020 was adjusted to accommodate a scheduling conflict but is now final and will be posted on the Commission's website.

V. MOTION TO ENTER INTO EXECUTIVE SESSION PURSUANT TO EXECUTIVE LAW

§ 94(19)(B)

A motion was made by Commissioner McNamara, seconded by Commissioner McCarthy, to enter into Executive Session. The motion was approved by unanimous vote. Commissioner DiPirro was not present for the vote.

VI. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

General Counsel Stamm stated that in Executive Session, the Commission discussed litigation and personnel matters, denied an appeal from the denial of a request for an exemption from filing an FDS pursuant to Executive Law §94(9)(k), granted two applications for an exemption from the post-employment restrictions pursuant to Public Officers Law §73(8-b), approved one settlement agreement, commenced two substantial basis investigations, authorized steps in several investigative matters, closed one matter and discussed several other investigative matters.

VII. MOTION TO ADJOURN THE PUBLIC MEETING

Upon motion made by Commissioner Dering, seconded by Commissioner Yates, the Public Session was adjourned by unanimous vote. Commissioner Cohen was not present for the vote.