

**MINUTES OF THE PUBLIC SESSION OF THE  
SEPTEMBER 22, 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 (Albany)  
Colleen C. DiPirro (WebEx audio only)  
William P. Fisher (Albany)  
Daniel J. Horwitz (WebEx)  
Marvin E. Jacob (WebEx)  
Gary J. Lavine (WebEx audio only)  
James W. McCarthy (WebEx audio only)  
David J. McNamara (WebEx)  
George H. Weissman (Albany)  
James A. Yates (WebEx)

**Staff:** Monica J. Stamm, General Counsel  
Martin L. Levine, Deputy General Counsel  
Walter J. McClure, Director of Communications and Public Information Officer  
Keith St. John, Deputy Counsel and Director of Ethics  
Michael Sande, Deputy Director of Ethics  
Stephen Boland, Director of Administration  
Carol Quinn, Deputy Director of Lobbying Guidance  
Megan Mutolo, Associate Counsel  
Lori A. Donadio, Principal Investigative Analyst  
Kelly McCready, Confidential Clerk  
Timothy Willox, Intern  
Alexandrea Nuwer, Intern

**I. CALL TO ORDER**

Chair Rozen called the September 22, 2020 meeting to order and noted that the meeting was being held using video conference technology, and that the public session is accessible on JCOPE's website to watch via livestream. He also noted that all votes would be taken via roll call.

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

**August 11, 2020**

A motion was made by Commissioner Dering, seconded by Commissioner Weissman, to approve the minutes from the Public Session of the August 11, 2020 Commission Meeting. The motion was approved by a vote of 11-0-1. Commissioner Horwitz abstained from voting.

### **III. REPORT FROM STAFF**

#### **Outreach Update**

General Counsel Monica Stamm stated that at the last meeting, the Commission issued Advisory Opinion 20-01, which has been posted on the website and distributed to all agency Ethics Officers. The opinion applied the principles in Advisory Opinion 18-01 concerning the lifetime bar to a long-term project and concluded that based on the specific circumstances, the lifetime bar did not prohibit the former employee from working on a different aspect of the project.

General Counsel Stamm stated the Commission is holding its annual CLE event with CityLaw and New York Law School on Tuesday, October 13. The topic is “Ethics and Innovation in New York State: Navigating Conflicts When Government is A Partner”. This year, staff is conducting one panel, and it will be virtual. The Commission also issued its Spring/Summer newsletter. Also, in response to timely questions concerning volunteering in connection with the election, staff issued an Ethics Reminder regarding serving as a poll worker.

#### **2021-2022 Budget Request**

General Counsel Stamm reported that staff expects to receive the annual call letter from the Division of Budget in the next few weeks. Typically, there is a quick turnaround for the Commission to submit its proposal, which will likely be due before the next meeting. Commissioner Weissman requested that Commissioners be notified upon receipt of the call letter.

### **IV. ADVISORY OPINION**

#### **Advisory Opinion on Gifts to Third Parties**

General Counsel Stamm reminded the Commission that staff last presented this proposed Advisory Opinion in February, but to avoid creating any delays or confusion about donations and support during the health crisis, delayed presenting this matter again until now. The Commission previously made changes to address concerns raised by individual Commissioners, and at the February meeting, Commissioner Yates raised additional concerns. In response to those concerns and in consultation with Commissioner Yates, staff added footnote six to the proposed Advisory Opinion.

A motion was made by Commissioner Dering, seconded by Commissioner Weissman, to approve the Advisory Opinion on Gifts to Third Parties. The motion was approved by unanimous vote.

V. **NEW AND OTHER BUSINESS**

**Proposed Meeting Schedule**

General Counsel Stamm requested that Commissioners review the proposed meeting schedule for January-June 2021 and advise staff if they have any conflicts.

Commissioner Lavine asked staff to address the implication of the Executive Chamber's Executive Order 202.6, which he believes exempts volunteers or others retained by the state for the COVID-19 crisis from following statutory or regulatory protocols, including the Public Officers Law. Deputy General Counsel Martin Levine explained that Executive Order 202.6 excluded those assisting with the COVID-19 crisis from the Public Officers Law definition of state employee, which in effect exempts them from financial disclosure requirements and post-employment restrictions, among other things. Deputy General Counsel Levine also clarified that Executive Order 202.7 limited the exemption to only volunteers or those hired for nominal salaries.

Commissioner Lavine opined that the Governor should be able to appoint whomever he wants to assist with the COVID-19 crisis, but that the Order had removed the Commission from its role as ethics regulator, and because of the void created, requested that staff be directed to contact the Executive Chamber to ascertain if there is a list of individuals that

the Order applies to, what their circumstances are, and what recusals have been identified. Commissioner Fisher stated that as a practical matter, it would be useful to know which filers Commission staff should not be seeking disclosures from. Commissioner Horwitz noted that no one is disputing the legality of the order, and that the Commission has no jurisdiction over the Executive Order, or the affected individuals, as they are outside the Public Officers Law and the Commission's jurisdiction. Commissioner Horwitz questioned the need for this assignment and the value of devoting limited staff resources to this when staff has infrequently, if ever, been directed to question the Legislative Branch or the Legislative Ethics Commission for similar information under its purview. Commissioner Dering agreed and also questioned the appropriateness of the Commission questioning the Order, since the Executive Order is outside of the Commission's jurisdiction. Chair Rozen requested that General Counsel Stamm ask the Executive Chamber whether there is a process regarding the EO, and to report back to the Commission.

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

A motion was made by Commissioner Dering, seconded by Commissioner Fisher, to enter into Executive Session. The motion was approved by unanimous vote.

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

[Chair Rozen was not present for the remainder of Public Session; Commissioner Dering served as Chair for the remainder of the meeting. Commissioner Horwitz was also not present for the remainder of Public Session.]

General Counsel Stamm stated that in Executive Session, the Commission discussed litigation and personnel matters, commenced one substantial basis investigation, authorized steps in several investigative matters, closed four matters, and discussed several other investigative matters.

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

Upon motion made by Commissioner Fisher, seconded by Commissioner Weissman, the Public Session was adjourned by unanimous vote.