

NEW YORK STATE
JOINT COMMISSION ON PUBLIC ETHICS

=====
Commission Meeting of October 27, 2020
=====

Appearances: Michael K. Rozen, Chair

Commissioners:

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

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
Carol Quinn, Deputy Director of Lobbying
Stephen J. Boland, Director of Administration
Michael Sande, Deputy Director of Ethics
Megan Mutolo, Associate Counsel
Lori A. Donadio, Principal Investigative Analyst

IT Staff - Tanya Smith
OGS Media Services - Amaury Corniel

1 Walter McClure: Okay Mr. Chair we are in public
2 session.

3 Chair Rozen: Thank you. Good morning everybody.
4 Welcome to the October meeting of the New York State Joint
5 Commission on Public Ethics. As we have done for the past
6 number of months during the coronavirus pandemic, this meeting
7 is being held using video conferencing technology. The public
8 session is accessible on JCOPE's website to watch via
9 livestream. As a reminder, it is important that only one person
10 speak at a time. In addition, I ask that when you do speak to
11 identify yourself, so that we have a clear record. We will
12 take votes by a modified role call today to ensure that
13 everyone is counted. Martin will call for votes in favor of
14 the motion and record everyone he can see on the screen or in-
15 person. The remaining Commissioners will be recorded by roll
16 call. Please remember to mute your phone when you're not
17 planning to speak. Let's move to item two on the agenda,
18 approval of the minutes from the Public Session in September
19 behind attachment A. Any questions or comments. If none, can
20 I have a motion to approve?

21 Commissioner Weissman: So moved.

22 Chair Rozen: Thank you, Commissioner Weissman.
23 Second?

24 Commissioner Dering: I'll second, Dering.

25 Chair Rozen: Thank you Jim, Martin.

1 Martin Levine: On the motion on the minutes, all on
2 the screen or in-person in favor please raise your hand, just
3 hold it up. Okay and then for the remaining.

4 Commissioner Cohen?

5 Commissioner Cohen: Yes.

6 Martin Levine: Commissioner DiPirro?

7 Commissioner DiPirro: Yes.

8 Martin Levine: Commissioner Jacob?

9 Commissioner Jacob: Yes.

10 Martin Levine: Commissioner Lavine?

11 Commissioner Lavine: Yes.

12 Martin Levine: And Judge McCarthy?

13 Commissioner McCarthy: Yes.

14 Martin Levine: Thank you. Just to be clear, everyone
15 else I affirmed a positive vote visually, so we have 12-0.
16 Motion carried.

17 Chair Rozen: Thank you. Item three, report from
18 staff.

19 Monica Stamm: Yes, one second, sorry. First up is
20 the outreach update. JCOPE held its annual CLE event with
21 CityLaw and New York Law School on Tuesday, October 13. More
22 than 250 people participated, and have we received a lot of
23 positive feedback. The topic was "Ethics and Innovation in New
24 York State: Navigating Conflicts When Government is A Partner".
25 We had panelists from SUNY and the SUNY Research Foundation

1 talk about Public Officers Law implications in conducting
2 research and developing intellectual property. The panelists
3 from Empire State Development and Olympic Regional Development
4 Authority talked about business development, grants, and
5 sponsorships. Deputy General Counsel Martin Levine moderated.
6 I just want to thank Martin, and Director of Public Information
7 Walter McClure, for their work in putting together this really
8 successful event.

9 In addition, on December 10, we are planning to hold
10 an ethics officer forum to discuss the Public Officers Law
11 implications for state agencies who use contractors, in some
12 cases, located at the state offices performing work similar to
13 what state employees do, so we want to talk that through with
14 other Ethics Officers and understand what the practices are,
15 determine/develop best practices, and work through some of the
16 ethics issues. If there aren't any questions, I will turn it
17 over to the Director of Administration.

18 Chair Rozen: Hang on, I heard somebody, I heard
19 somebody, Monica.

20 Dan Horwitz: It's me, Dan Horwitz. I just want to
21 say, Mr. Chairman, that I attended the CLE that we put on with
22 New York Law School and I want to commend the staff because I
23 thought it was an excellent presentation, and I also want to
24 thank New York Law School for their partnering with us on this,

1 and I am impressed that so many people participated. It's a
2 great outreach, it's a great program, and I would encourage the
3 other Commissioners if they didn't participate this time, to
4 participate when it is offered again. Thank you, Mr. Chairman.

5 Chair Rozen: Thank you. Okay, let's move on, Monica.

6 Monica Stamm: Again, Director of Administration Steve
7 Boland will give the second quarter financial Report.

8 Steve Boland: Good morning everybody. This is the
9 second quarter financial report for fiscal year 2020-21, as of
10 September 30. During the quarter, we, the Commission, spent
11 almost \$1,132,000 on personal service, and non-personal
12 service, almost \$150,000, for a total spending of the quarter
13 \$1,281,000. Year to date for personal service, we spent
14 \$2,254,000, or 48.8 percent of our budget, and on non-personal
15 service, we spent \$271,000, or almost 30 percent of our budget,
16 for overall spending of \$2,526,000, or 45.7 percent of our
17 budget. Does anyone have any questions? Thank you.

18 Chair Rozen: Thank you.

19 Monica Stamm: Okay, and so then last report from the
20 report from staff, attachment B is the meeting schedule. We
21 didn't hear about any conflicts from anyone, so this schedule
22 will be posted on our website, after the meeting. This is for
23 the first half of 2021.

1 Chair Rozen: Okay, thank you. Let's move on to the
2 Lobbying Regulations behind attachment C.

3 Martin Levine: Thank you, Mr. Chairman.
4 Commissioners, the proposal in your books, at Tabs C and D,
5 covers recent changes to the lobbying and source of funding
6 regulations. Staff requests today is for a motion to commence
7 a revised rulemaking, and as these proposed changes are
8 substantive, they will trigger a new 45-day notice and comment
9 period under the administrative procedure act. We do intend to
10 bring these back to you for an emergency adoption, so that they
11 are in effect for the lobbying registration period beginning
12 on the first of the year 2021. As mentioned at the last
13 meeting, and before that, we've been continuing to look at some
14 of the filing issues surrounding coalitions, or as we define
15 them, groups that form for the primary purpose of engaging in
16 lobbying. Carol Quinn, who heads up our lobbying division, is
17 going to review those changes in more detail, but the essence
18 of the changes is that we're going to move from a system where
19 the coalition elects whether or not, excuse me, elects whether
20 it or the members disclose lobbying activity, to one where
21 there are objective criteria that will dictate how the filing
22 has to occur. Our hope is that this change leads to more clarity
23 for filers, better data for the public, and a generally smoother
24 filing process for everyone.

1 As I said, Carol is going to discuss that with some
2 additional detail but before I turn it over to her, I want to
3 quickly review a new proposal on the rules governing the use
4 of equity or stock as lobbying compensation. This is on Page
5 18 of the draft behind tab C. As you know, the Commission and
6 its predecessors have long held that paying a lobbyist in stock
7 instead of in cash would violate the Lobbying Act's prohibition
8 on contingent fees. The advisory opinion that governs held that
9 the lobbying in that case would affect the value of the stock
10 of the company, thus making the value of the lobbyist's
11 compensation contingent on the outcome of the lobbying. So that
12 was precedent for many years. When we promulgated the regs
13 originally in 2018, we tried to update this to allow for
14 smaller, generally startup entities, who might be low on
15 liquidity, to have better access to lobbying. We created a
16 general presumption against the use of stock as lobbying
17 compensation, but we established criteria that would be used
18 to potentially overcome that presumption. As it turned out,
19 unfortunately, the criteria really only went to situations
20 where large companies could qualify, so it sort of defeated the
21 purpose of our efforts. We still think the policy is right,
22 and that is that it should generally not be used as
23 compensation, but we just haven't been able to properly tailor
24 the regulations to that right set of criteria. The draft in
25 front of you looks closer, as opposed to looking at the client

1 and its characteristics, we are looking at the lobbying itself.
2 And so, between those two factors we think we can help sort of
3 triangulate in and assess the impact of the government action
4 on the value of the company. So, in addition, like I said to
5 looking at the client, we are now going to look at the type of
6 lobbying. Is it a regulation that they are seeking? A statutory
7 change? A governmental procurement? We are going to look at the
8 significance of the government action, not only to the client
9 or as also to its competitors. If it is a procurement that they
10 are seeking, has the client done something like this before?
11 Something of this size? We might look at it whether the client
12 has multiple business lines, and is the lobbying focused on
13 something that would impact one or many of these business lines?
14 So, these are some of the additional questions we are going to
15 ask that we think might help us zero in on a better answer.
16 While the proposal maintains the presumption against using
17 stock as lobbying compensation, we think this takes at least a
18 more focused look at the facts to make an accurate assessment
19 of whether the lobbying really would have an impact on the
20 value of the lobbyist compensation.

21 Finally, we did clarify that in-house or employee
22 lobbyists are generally eligible to receive stock as part of
23 their overall compensation package, as long as the nominal size
24 of the equity that they are being offered or the number of
25 shares isn't itself contingent on the success of the lobbying.

1 We think the risk factors are different for an in-house
2 employee, especially in light of compensation that is often
3 structured for companywide as opposed to specific individuals.
4 Unless there are questions about that proposal, I will turn it
5 over to Carol to talk about coalitions.

6 Commissioner Yates: Before you get to coalitions,
7 Martin, we had talked about a small language change that you
8 said you agreed to. Are you going to discuss that or is that
9 later?

10 Martin Levine: Carol is going to cover that in her
11 brief.

12 Commissioner Yates: And my one other question is,
13 does the statute say anything about stock or equity as
14 constituting a banned contingent fee one way or the other?

15 Martin Levine: It does not. The treatment that we
16 had only seen, the only treatment that we had seen, was this
17 advisory opinion that pre-dated JCOPE that held in that case
18 that it was impermissible and that has been the holding applied
19 across the board until the regulations in 2018. Any other
20 questions, if not, Commissioner Weissman.

21 Commissioner Weissman: Martin what, have the
22 regulations taken a look at the question of whether an owner
23 of a small startup who then becomes a lobbyist for it, how that
24 would be treated? Because they would be, they may be a
25 substantial minority or even a majority holder.

1 Martin Levine: Sure, I think, while the regulations
2 don't address that specific situation, I think they would be
3 covered by the changes that talk about employee lobbyist. So,
4 regardless if you are the owner or a staff member or a minority
5 partner, if you are an employee or an owner of the business and
6 you lobby, you'd be considered an employee lobbyist. And so,
7 you'd be covered by this sort of presumption in favor.

8 Commissioner Weissman: Okay, thank you.

9 Martin Levine: Plus, they wouldn't be able to give
10 themselves additional shares based on the success of the
11 lobbying. So that risk would be avoided. Like I said, it is
12 sort of a nominal question, as long as, for the owner or
13 employee, as long as their interests aren't specifically
14 contingent on specific legislative changes or executive. Carol
15 Quinn is going to talk more about coalitions as well as the
16 change to designated lobbyist, as Judge Yates mentioned.

17 Carol Quinn: Okay, thank you Martin. So first, I
18 would direct your attention to page 5 and 6 which is definition
19 of a designated lobbyist. So, at the top of page 6, we are
20 going to address Judge Yates's concern and avoid any ambiguity
21 whatsoever with respect to board members. So, sub two will
22 read, a board member, director, or officer of a client, whether
23 compensated or uncompensated, here is where the change is, it
24 will say selected, appointed, named or otherwise chosen to
25 lobby on such client's behalf. So, it carried through the

1 language which is really at the very beginning of the
2 definition. And that is just to avoid any ambiguity with
3 respect to board members. So that line is not in front of you,
4 but it would be included if we are allowed to proceed with the
5 revised rulemaking. Are there any questions on that? Okay,
6 so moving on to coalitions, which those sections start on page
7 59, and as Martin mentioned, we have continued to look at
8 provisions relating to coalitions in order to address any
9 confusion. We tried to consider all options and we ended up
10 making some significant changes to the coalition section. Our
11 goal always is to provide clear requirements that are easy to
12 follow and still shine the light on coalitions. Currently, I
13 think Martin mentioned some of this, but I will just go through
14 it for everyone's benefit. Currently, 943 provides filing
15 options for coalitions, so you can choose to file as coalition
16 or, if the coalition chooses not to file, then the coalition
17 members disclose their contributions to coalitions in their own
18 filing. That option, that choice, allowing that choice, really
19 has created lots of confusion in the regulated community. It
20 has also led to double reporting, which occurs if a coalition
21 is filing as the coalition and yet its members also report in
22 their own filing whatever their contributions they might have
23 been. There is a decent amount of double reporting going on
24 and that type of confusion in reporting is affecting the quality
25 of the data in our system. So, in order to address these issues,

1 hopefully make everything much more clear, we are making
2 significant changes. So, the changes we are going to create
3 like a bright line, based on objective criteria. There is no
4 longer a choice, no longer discretion. If a coalition meets
5 certain criteria, it has to file as a coalition. There is no
6 longer a choice, and if it doesn't, then the members disclose
7 their contributions to the coalition in their own report. I
8 will get into that in a little more detail in a second. So
9 yesterday, we also received an additional comment suggestion
10 from Commissioner Weissman that we like, and we plan to
11 incorporate into the text of what you have in front of you. It
12 will help further clarify and simplify, hopefully, the
13 coalition provisions and make it crystal clear when a coalition
14 must file as the coalition versus when the members have to
15 handle that. So, the suggestion really is just a label. We are
16 going to label coalitions as either structured coalitions or
17 unstructured coalitions. And I will get into what that means
18 in a second. But we are hoping that also just makes it easier
19 to read, easier to follow simply by adding that label. So, the
20 criteria, again, which hopefully will create this bright line
21 on whether a coalition has to file as a coalition or not, is
22 whether the coalition has a president, treasurer, or some
23 individual acting in that type of capacity. That is what we
24 would consider a structured coalition, that is the type of
25 coalition that has no discretion; it has to file as a coalition.

1 Either that president, that treasurer, or that person acting
2 in that kind of capacity, that is the person, one of those
3 people would have to be the responsible party for the coalition
4 filing, so that is the bright line test. If the coalition does
5 not have those individuals, not that criteria, we will label
6 that an unstructured coalition. Those coalitions cannot file
7 as a coalition. The members instead will disclose the
8 contributions to the coalition in the members' filing. Again,
9 this is all towards trying to create this bright line.
10 Structured coalitions file as a coalition, just like other
11 organizations. Unstructured coalitions, they can't file as a
12 coalition, and instead the members disclose it in their own
13 filings. And we really hope and think that that will create
14 this bright line, removing the choice that is currently in the
15 regulations. Coalitions and members of coalitions will be clear
16 on who should report the activities and how. Hopefully, that
17 will prevent double reporting that has been going on and improve
18 the reliability of the data that is in our system relating to
19 coalitions. That's it in a nutshell, and I guess I am available
20 for questions on coalitions or anything else.

21 Martin Levine: If there are no questions staff would
22 request a motion to commence a revised rulemaking.

23 Commissioner DiPirro: Commissioner DiPirro, so moved.

24 Chair Rozen: Yeah, I just got totally cut off, no
25 team connected, no nothing.

1 Walter McClure: Chair, you are back on.

2 Commissioner DiPirro: Commissioner DiPirro will make
3 a motion to move it.

4 Martin Levine: Yes, we did Commissioner DiPirro we are
5 giving the Chair a second to reconnect.

6 Chair Rozen: Oh okay, I am back.

7 Monica Stamm: And just to be clear, Commissioner
8 DiPirro, your motion is with respect to both sets of
9 regulations, the comprehensive lobbying regulations and the
10 source of funding regulations.

11 Commissioner DiPirro: Absolutely.

12 Martin Levine: So, we actually, there are separate
13 rule makings, so we are going to treat them as two motions if
14 the Commissioners don't mind. We have a motion, we do not have
15 a second. Commissioner Weissman has seconded. This would be
16 the motion on the lobbying regulations alone. Is that
17 acceptable, Commissioner DiPirro?

18 Commissioner DiPirro: Yes, it is.

19 Martin Levine: Thank you, all in favor. Okay I see
20 Commissioner Dering, Fisher, Weissman, Horwitz, McNamara,
21 Yates, and Rozen, no I do not see Rozen, so I will hold on
22 that. And the remaining, Commissioner Cohen?

23 Commissioner Cohen: Yes.

24 Martin Levine: Commissioner DiPirro?

25 Commissioner DiPirro: Yes.

1 Martin Levine: Commissioner Jacob? I'll come back.
2 Commissioner Lavine?
3 Commissioner Lavine: Yes.
4 Martin Levine: Judge McCarthy?
5 Commissioner McCarthy: Yes.
6 Martin Levine: Commissioner Jacob again.
7 Commissioner Jacob: Yes.
8 Martin Levine: Thank you, and Chair Rozen?
9 Chair Rozen: Yes.
10 Martin Levine: That is 12 in favor, the motion
11 passes. I need a motion on the source of funding regulations.
12 Those changes would just carry through from lobbying, they are
13 nothing you haven't seen before.
14 Commissioner Fisher: Fisher makes a motion.
15 Martin Levine: Thank you Commissioner Fisher, is
16 there a second?
17 Commissioner Dering: Dering seconds.
18 Martin Levine: Commissioner Dering seconds. All in
19 favor please raise your hands, again I see Dering, Fisher,
20 Weissman, Horwitz, McNamara, Yates, remaining, Commissioner
21 Cohen?
22 Commissioner Cohen: Yes.
23 Martin Levine: Commissioner DiPirro?
24 Commissioner DiPirro: Yes.
25 Martin Levine: Commissioner Jacob?

1 Commissioner Jacob: Yes.

2 Martin Levine: Commissioner Lavine?

3 Commissioner Lavine: Yes.

4 Martin Levine: Judge McCarthy?

5 Commissioner McCarthy: Yes.

6 Martin Levine: Chair Rozen?

7 Chair Rozen: Yes.

8 Martin Levine: Motion passes, 12-0.

9 Chair Rozen: Can you see me, Martin?

10 Martin Levine: Now I can, I can see you now. Okay,
11 Thank you. We will commence that rule making.

12 Chair Rozen: Okay, let's move on to new and other
13 business, item five.

14 Commissioner Lavine: If I may, Mr. Chairman.

15 Chair Rozen: Go ahead.

16 Commissioner Lavine: Can you hear me sufficiently?

17 Chair Rozen: That's fine.

18 Commissioner Lavine: At the last meeting, there was
19 a discussion about an Executive Order issued during the public
20 health emergency by the Governor, which I will paraphrase. So-
21 called volunteers assisting and advising the state are exempt
22 from the public officer's law, which has the practical impact
23 of exempting those individuals from filing a financial
24 disclosure statement with us. I believe where we left off the
25 discussion, an inquiry was going to be made by staff to the

1 executive chamber. The inquiry specifically attempting to
2 elicit whether there is actually a list of these individuals
3 who fall within the ambit of the executive order provision. And
4 what their associations or potential conflicts are and whether
5 any recusal arrangements have been made with respect to those
6 conflicts or potential conflicts. Does the staff have a report?

7 Commissioner Horwitz: Mr. Chairman?

8 Chair Rozen: Yes, go ahead.

9 Commissioner Horwitz: Yeah, this is Dan Horwitz. I
10 am going to repeat what I said at the last meeting. We have
11 been advised, and it is not in dispute, that we don't have
12 jurisdiction over this issue, and this is just a waste of our
13 valuable time. We don't have jurisdiction. We don't ask the
14 legislature to give us reports on their statistics. You know,
15 this is just another cynical attempt to raise an issue, where
16 again, we just don't have the jurisdiction. You know,
17 respectfully, I don't know what the answer to the question is,
18 frankly, I don't really care because we don't have
19 jurisdiction. Let's focus on the things that we actually have
20 jurisdiction. We have a big book, we have a lot of things to
21 do today, let's get to them. And if we are going to start asking
22 these kinds of questions, then let's start asking them of the
23 legislature. How come we don't ask the legislature for
24 statistics on the things that they do, and they track? We don't
25 do it. I don't hear Commissioner Lavine asking for those

1 things. As I have said, I think this is a waste of time,
2 respectfully. So, I will stop, I have made my point. Let's try
3 to move on. Thank you, Mr. Chairman.

4 Chair Rozen: Thank you, Commissioner.

5 Commissioner Lavine: Mr. Chairman, if I may renew the
6 inquiry I believe where the discussion left off last meeting,
7 staff was going to make an inquiry. Was the inquiry made?

8 Monica Stamm: So I just, this is Monica Stamm, I just
9 want to clarify that what you described was what your proposed
10 inquiry was and that the resolution of that discussion was
11 that I would merely inquire whether or not there is a process
12 in place. And I made that inquiry, and I do not have a response
13 as of today.

14 Commissioner Horwitz: Mr. Chairman, may I be heard
15 for one more moment please?.

16 Chair Rozen: Sure.

17 Commissioner Horwitz: Monica, have we ever made a
18 similar request for that kind of statistical information from
19 the legislature? Have we ever done that? Has any Commissioner
20 ever asked to do that? Have we done that?

21 Monica Stamm: No, we have never discussed it, and I
22 have never done it.

23 Commissioner Horwitz: And in your view, if we ask
24 the legislature for information that they're not obligated to

1 give us, your experience, do you think the legislature would
2 give us that information?

3 Monica Stamm: No, I mean, the Legislative Ethics
4 Commission has the exclusive purview to give guidance and
5 advice to the legislature and they will not disclose to us the
6 guidance that they give, or information relating to the
7 guidance that they give.

8 Commissioner Horwitz: I see. Thank you. Mr. Chairman,
9 can we now get back to regular order and try to do some business
10 where we, again, actually have some jurisdiction? Thank you,
11 Mr. Chairman.

12 Commissioner Lavine: If I may, Mr. Chairman, put an
13 inquiry to our general counsel. Would you identify, can you
14 hear me?

15 Chair Rozen: Yup, go ahead.

16 Commissioner Lavine: Would you identify, madame
17 general counsel, to whom you made this inquiry, whatever it
18 was, however it was characterized with respect to the subject
19 in the executive chamber?

20 Monica Stamm: I made the request to counsel in the
21 executive, in the chamber's office.

22 Commissioner Lavine: And there was no response
23 whatsoever?

24 Monica Stamm: Not as of today, no.

1 Commissioner Lavine: Okay, let me reiterate, Mr.
2 Chairman, what I stated at the last meeting. In any crisis, the
3 governor ought to have advising him or assisting him anyone he
4 deems appropriate to serve the public interest, even if there
5 is a conflict. My point, however, is that there ought to be
6 disclosure of who falls within the ambit of this exception and
7 I renew my motion of the last meeting. Staff be directed to
8 pursue who is on the list that falls within the ambit of the
9 executive order exemption.

10 Chair Rozen: Are you asking that we, well, are you
11 asking that we vote on that motion? One second, Commissioner
12 Horwitz. Gary, are you actually moving that?

13 Gary Lavine: I will move it if I discern correctly
14 that staff has determined that there will be no further inquiry
15 made of the executive chamber on the subject of the exemption.
16 If the staff is just going to await the word from counsel in
17 the executive chamber, then I am very happy to be patient until
18 the November meeting.

19 Chair Rozen: Commissioner Horwitz, go ahead.

20 Commissioner Horwitz: I was just going to say it is
21 premature, I'd say a motion, that we don't need, but that motion
22 would be out of order because again, we don't have jurisdiction.
23 I mean, there are things that we have the power to do; this is
24 not one of them. And Commissioner Lavine knows that. He is just
25 trying to score some points here, he is trying to get another

1 headline in the Times Union. You know, truly, I would ask that
2 we, you know, return to the business where we actually have
3 jurisdiction. We have a lot of things to do, we have a big
4 book. Look, Mr. Chairman, here is our big book of things that
5 we that have to do where we actually have jurisdiction. Not
6 things that we don't have jurisdiction over that, frankly,
7 Commissioner Lavine, again, I don't know what is in his head
8 but you know, there is now a track record, you know, I can only
9 imagine what his motivation to see yet another article in the
10 Times Union. Here is one that we don't have jurisdiction and
11 I would ask again, why don't we ask the legislature for this
12 kind of information. I mean, the reason is because we don't
13 have jurisdiction and as Monica said, if we ask the Legislative
14 Ethics Commission or the legislature for this information, they
15 would tell us, no, we don't have jurisdiction over you, you are
16 not entitled to that information, and Commissioner Lavine knows
17 that. Thank you, Mr. Chairman.

18 Chair Rozen: Thank you. Commissioner Yates?

19 Commissioner DiPirro: Mr. Chairman, this is
20 Commissioner DiPirro.

21 Chair Rozen: One moment, Commissioner DiPirro.
22 Commissioner Yates go ahead.

23 Commissioner Yates: Okay, thank you. Colleen, I will
24 defer to you at any point but if you don't mind, I will go
25 ahead.

1 Commissioner DiPirro: No problem.

2 Commissioner Yates: Thank you. I just want some
3 clarifications, so I know exactly what the issue is that we are
4 talking about. As I understand it, the executive law last
5 spring was amended with a temporary empowerment to the
6 governor. And it said in there, one of the provisions is that
7 he could suspend certain laws or directives, but it also says
8 no suspension shall be made that is not in the interest of the
9 health or welfare of the public and which is not reasonably
10 necessary to aid in the disaster effort. Now what I am trying
11 to understand here is there is a directive which we don't have
12 in front of us, I guess, which says that certain people are
13 exempt from, and this is my question to Monica or Martin, are
14 exempt from, does the directive say they are exempt from filing
15 or they're exempt entirely from the public officers conflict
16 of interest laws and other ethics rule and from our purview?
17 I just want to understand because I am trying to think about
18 it if the Order that we are talking about fits within the
19 legislative authorization and that is that it is in the interest
20 of health or welfare and necessary for the disaster effort.

21 Monica Stamm: This is Monica. To answer your question
22 as best as I can, again, this is based on the plain reading of
23 the executive order, and it is executive order 202.6, which was
24 modified by 202.7, but it basically says that a volunteer that
25 is assisting in the COVID-19 emergency response is not a state

1 officer or an employee subject to the public officers law. In
2 other words, they are not within the definition of state officer
3 or employee within section 73 and 74 of the public officer's
4 law. So, there is several effects of that, and that would be
5 that they do not have to file a financial disclosure statement.
6 That they are not subject to the conflict's provisions of the
7 public officer's law. They are not subject to post-employment
8 restrictions when they leave state service. There are other
9 provisions in 202.6 which relate to the solicitation of aid in
10 response to the COVID-19 health crisis and to the application
11 of the post-employment restrictions to people who have left
12 state service and want to continue to assist the state as a
13 contractor. So, there are different provisions. But that is how
14 this reads, and then 202.7 clarifies that the provisions that
15 are not subject to the public officer's law are for people who
16 are volunteers or paid a nominal salary, probably per-diems.

17 Commissioner Yates: A lot of that makes sense to me.
18 You know, you've got someone rushing in as a volunteer to help
19 temporarily during a crisis and we should encourage that and
20 not encumber them with rules about filing financial disclosure
21 forms etcetera or be bound by post-employment restrictions,
22 that all makes sense to me. The only one that sort of raises
23 an antenna for me a little bit is the conflicts of interest
24 issue, and has there been any discussion by staff or with staff

1 and other people about the whole idea of a volunteer coming and
2 being exempted from any conflict of interest provision?

3 Monica Stamm: I should clarify, Commissioner Yates,
4 that in one of the provisions they do reference that there
5 needs to be a recusal policy in place and that these individuals
6 will have to adhere to that recusal policy. So, it sort of left
7 it to, I guess, the agencies and the volunteers to set in place
8 a recusal policy that would handle conflicts.

9 Commissioner Yates: Recusal meaning that you would
10 not have a financial interest in some action that you are taking
11 on behalf of the governor.

12 Monica Stamm: I mean, I would assume, or whatever
13 conflicts might apply, the language is provided that any
14 recusals shall be adhered to if it is determined necessary by
15 the appointed entity.

16 Commissioner Yates: So is there a policy or it's a
17 case-by-case determination?

18 Monica Stamm: I can't answer that. This is the
19 chamber's executive order. Again, I have asked the question
20 that I was directed to ask at the last meeting which is, is
21 there a process in place, and I can continue to follow up on
22 that question, but it is really, as far as I'm concerned, it
23 is not for us to interpret and apply the executive order and
24 dictate what it means for the chamber.

1 Commissioner Yates: Just, okay, this will be the last
2 thing I say on that, and that is I half agree with Gary and I
3 half agree with Dan and that is, I agree that, you know under
4 the circumstances, maybe it's not time to be worried about
5 post-employment rules or financial disclosure rules, but I
6 don't think it is quote, outside our jurisdiction, unquote, to
7 ask are people being exempted from conflicts of interest
8 provisions because it is in the interest of the health, welfare,
9 and reasonably necessary to deal with the pandemic effect, or
10 are we being told not to look at conflicts of interests in
11 cases where maybe we shouldn't be exempted or excepted. That's
12 all I want to say about that.

13 Chair Rozen: Okay, Gary, are you making a motion?

14 Commissioner Lavine: Well, thank you, Mr. Chairman.
15 If I understand correctly, the inquiry has been made, as has
16 been characterized by our general counsel, and that if the
17 staff, or general counsel, is going to renew the inquiry for a
18 response prior to our November meeting, then I will withdraw
19 the motion and simply await the response of the executive
20 chamber.

21 Chair Rozen: Okay, great, so Commissioner DiPirro, I
22 am sorry I forgot you.

23 Commissioner DiPirro: That's okay. As long as the
24 motion's been withdrawn, I will hold my comments.

25 Chair Rozen: So, anything else before we move on?

1 Commissioner Lavine: Yes, Mr. Chairman, I have another
2 topic I would like to address with the staff.

3 Chair Rozen: Alright.

4 Commissioner Lavine: This is the provision 932.5 sub
5 B, which addresses approval by the Commission, outside activity
6 by constitutional officers and state agency heads. Now do I
7 understand correctly that the practical approach that has been
8 taken is that these advisory opinions are being rendered by
9 staff without a vote of the Commission?

10 Monica Stamm: I just want to make sure I understand
11 what your question is. This is for the last, for the existence
12 of JCOPE and our predecessor agencies, this approval process
13 in the outside activity regulations has been part of the
14 authority that has been delegated by the Commission to staff
15 and then no vote of the Commission has been required.

16 Commissioner Lavine: Yes, but the regs state that
17 outside activity for a constitutional officer or a state agency
18 head shall be on approval of the Commission.

19 Monica Stamm: It does.

20 Commissioner Lavine: So, it's the position of staff
21 that we have in effect abrogated our own authority to approve
22 these outside activity arrangements?

23 Monica Stamm: Absolutely not. The position of staff
24 is that the statute authorizes the Commission, if a vote is not
25 required by law, the Commission can delegate the authority to

1 the staff, and there is nothing about 932 that requires a vote
2 of the Commission. It is the same language that is in all of
3 the Executive Law 94 that the Commission shall, and lays out
4 the various powers of the Commission in 94(9), most of which
5 have been delegated to staff to be able to run the day-to-day
6 operations of the Commission between meetings, with the
7 exception of those provisions of the statute that require a
8 vote of the Commission. And those provisions are explicit, when
9 they require a vote of the Commission, as in 94.13 and 14 for
10 example, as in the appointment of an executive director, for
11 example. Everything else is what the Commission shall do, and
12 it is covered by the delegation that was done in 2012 and
13 carried over between executive directors. And is based on the
14 same delegation of authority that was done by our predecessor
15 agency.

16 Commissioner Lavine: I certainly understand, madame
17 general counsel, the proposition that certain administrative
18 functions, as a practical matter, can and should be delegated
19 to the executive director, or in the current circumstance it
20 would be the co-acting executive directors, but if I am not
21 mistaken, the regulations state outside activity by a
22 constitutional officer or an agency head shall be approved by
23 the Commission. Doesn't that imply that we should take a vote?

24 Monica Stamm: I do not agree it implies a vote is
25 required. Again, the statute talks about where a vote is

1 required. This language for what, eight or nine years, has
2 never been interpreted to require a vote of the Commission, our
3 predecessor never interpreted the outside activity regulation
4 requiring a vote of the Commission and as I have said, 94(9)
5 says the Commission shall, same thing, and then, these aren't
6 just administrative functions, we grant and deny exemptions,
7 that's been delegated to staff with respect to financial
8 disclosure statements. We send 15-day letters that's by staff,
9 the Commission shall, but there are many more functions that I
10 think are more than administrative that have been delegated to
11 the Commission. I don't think the word "shall" implicitly means
12 a vote is required. I think when the law says, a vote is
13 required, it is expressed, and these are regulations, not even
14 the law, and there has never been a discussion that the
15 Commission would vote on outside activities. And again, that
16 is not how we have been proceeding for the last several years.
17 So, I am not really sure why now, you're reading the word shall
18 to mean it requires a vote, but regardless, the statute doesn't
19 require a vote and the outside activity regulations fall under
20 the guidance that has traditionally been delegated as a staff
21 function.

22 Commissioner Lavine: Well, Mr. Chairman, if I may, I
23 don't want my participation in this colloquy to imply that I
24 am challenging the validity of prior advisory opinions. I will
25 say, however, emphatically if I might, I believe this is a bad

1 policy, a bad practice, a bad protocol. Therefore, I move, on
2 a prospective basis, all applications or request from agency
3 heads or constitutional officers for outside activity be
4 presented to the Commission for a vote. My motion.

5 Commissioner Weissman: Mr. Chair, may I ask
6 Commissioner Lavine a question regarding that motion?

7 Chair Rozen: Go ahead.

8 Commissioner Weissman: If I understand your motion,
9 Gary, when you speak to constitutional officers, it would also
10 include all members of the legislature.

11 Commissioner Lavine: We don't have the jurisdiction
12 over the legislature, I have been advised by counsel, for this
13 purpose. It would be confined to the governor, the lieutenant
14 governor, the attorney general, the comptroller, and agency
15 heads. The application is made, it should be presented to the
16 full Commission, and there should be a vote by the Commission
17 per our reg. That's my motion.

18 Commissioner Weissman: Is that, to our general
19 counsel, is that the way the statutes work currently that
20 outside activity requests go to the Legislative Ethics
21 Commission?

22 Monica Stamm: I don't know that outside activity
23 approval is required for legislative staff and members of the
24 legislature, but JCOPE does not provide guidance to the
25 legislative staff and members of the legislature. We only

1 provide guidance, on request, to members of the executive
2 branch, employees, and officers, and so I don't know what the
3 requirements are for legislators with respect to getting pre-
4 approval. And again, this falls under guidance and it's meant
5 to be a way to run through conflicts in advance of someone
6 engaging in an outside activity. As we have discussed multiple
7 times, this isn't, not following the outside activity procedure
8 is not a violation of public officers' law 74. It is meant to
9 be sort of a review process to prevent potential conflicts in
10 advance.

11 Commissioner Weissman: Thank you. I am going to
12 second Commissioner Lavine's motion. I just wanted to be able
13 to ascertain, and probably respond, to Commissioner Horwitz's
14 comments regarding the legislature that occurred earlier in
15 this colloquy.

16 Commissioner Horwitz: Mr. Chairman?

17 Chair Rozen: Go ahead.

18 Commissioner Horwitz: Yeah, I have a question of the
19 staff. Can you, because we have had a lot of technical details
20 here, this rule, that rule, and I guess the takeaway is that
21 the staff's position is, and apparently it has been the position
22 of the Commission and our predecessor agency, that we have the
23 authority to delegate and, unless is explicitly permitted by
24 the statute. Can you explain what the policy is behind this
25 delegation of authority, like what is the policy, as a

1 Commission or a predecessor agency, delegating these kinds of
2 decisions to the staff and how that plays in terms of the day-
3 to-day operations of the Commission?

4 Monica Stamm: With respect to just guidance, or
5 everything?

6 Commissioner Horwitz: Well, generally everything,
7 but guidance as well.

8 Monica Stamm: Well, okay, well with respect to all
9 of the various powers that have been delegated to staff, you
10 know we have a full staff, we have lots of activities and
11 operational concerns that take place every single day, many of
12 which include exercises of discretion, and rely on the
13 expertise of things that both our filing specialists in the
14 lobbying area, filing specialists in the financial disclosure
15 statements, our auditors, our investigators, all of those
16 daily operations are covered in the statute and are part of the
17 delegation. With respect to guidance, the principal that has
18 been established is that, you know, we get, what, 30-40 requests
19 for guidance just on the ethics side alone every month, and
20 that includes requests relating to can someone accept a gift,
21 can someone engage in an outside activity, can someone take a
22 job based on post-employment concerns, if someone is coming
23 into state government, what do I do about these particular
24 conflicts that I might have from my prior work. And the concept
25 is these questions need timely answers, they need these

1 considerations. We have the authority to answer their questions
2 if there is Commission precedent on point. If it is a novel or
3 new question, then we bring it to the Commission. But if there
4 is already precedent about these issues and questions and how
5 to analyze them, then we follow that precedent that has been
6 set by the Commissioners over the last 30 years and we apply
7 it and we give that advice and guidance in a timely way. We
8 tend to turn around those requests within a week, if not a few
9 days, because people need answers in a timely basis. And our
10 staff, some of whom have been working for the agency since
11 2012, are very familiar with our precedent and what the law is
12 and how we have been answering those questions over the years,
13 and how our predecessors have answered those questions, and so
14 we give that guidance, what we call internally, informal
15 guidance, rather than the formal guidance that it is in the
16 form of an advisory opinion. So that has traditionally been
17 delegated to staff so that we can do our job on a timely basis
18 and that the state officers and employees who are trying to do
19 the right thing can receive the guidance that they need and be
20 able to conduct themselves accordingly with the law.

21 Commissioner Horwitz: Ok, thank you. So I heard you
22 say a number of times that in addition to the volume of
23 requests, that there is often a need for a timely response, and
24 part of that, I guess, if I understand what you are saying, is
25 that the staff has this authority that's been delegated to the

1 staff because we as the Commission, we couldn't possibly keep
2 up with the requests that are made in a timely basis, given A,
3 our meeting schedule, which is basically once a month, and the
4 volume of other work that we have to do, is that another
5 consideration for the delegation?

6 Monica Stamm: Yes, I mean the Commission meets monthly
7 from 10:30-1:30 or 2:00, and we have full agendas for each
8 meeting. Staff puts a lot of time and thought into how much
9 we can actually fit into any one agenda. We often have to carry
10 over items to the next meeting, so to the extent that we get,
11 like I said, 40,41 requests, and not all of those relate to
12 agency heads or elected officials but often they do, and so it
13 would be a lot of additional work to present those to the
14 Commission with all the precedent and the advisory opinions
15 that they are based on and what we have done with this in the
16 past.

17 Commissioner Horwitz: Okay, let's talk about a couple
18 points. I'm sorry, if can you just indulge me a bit more because
19 this is a very serious motion and I think that there is a lot
20 behind it, it's complicated, and we haven't considered this
21 before, so I think it is important to get the details. So does
22 the staff, with respect to, so first of all, you know one sort
23 of framing question, which is, to the extent that the staff who
24 makes a decision and gives advice to a state employee, if the
25 state employee then violates the public officers law, the fact

1 that there has been a delegation and the staff has given advice,
2 that doesn't take away our jurisdiction to enforce violations.
3 In other words, if we give an opinion to a public employee,
4 whoever that is, you know, somebody who mows the lawn at a
5 state park or the governor or the comptroller, or the attorney
6 general, if they don't follow the advice or they engage in
7 conduct that violates the public officers law, we still have
8 jurisdiction to pursue an enforcement action, isn't that right,
9 Monica?

10 Monica Stamm: Yes, and I would add to that if it
11 turned out that any of the representations that were made in
12 seeking the request for guidance turned out to be inaccurate,
13 or that they were omitted from the request, that would also
14 call the guidance in respect to the guidance into question,
15 which that has happened, and we have pursued enforcement
16 actions under those circumstances in the past.

17 Commissioner Horwitz: Yes, I recall a number of those
18 instances over my years on the Commission where we did pursue
19 enforcement actions against individuals, who, notwithstanding
20 the good advice that we gave to them, they went ahead and
21 violated the public officers law. One other thing, Monica, I'm
22 assuming that the staff keeps track of the requests that the
23 Commission gets for advice and the advice that it gives, whether
24 it's formal or informal, isn't that right?

1 Monica Stamm: Yes, there is a log that is kept by the
2 ethics group, and that anyone who gives advice and guidance
3 enters into the log all of these, both formal and informal
4 guidance, is tracked there, and then all of the written
5 responses and materials received are saved on our central
6 drive. In addition, at the request of some Commissioners, we
7 have been providing a list of guidance that is given to certain
8 individuals. We started providing that to the Commission, I
9 think, within a few months ago.

10 Commissioner Horwitz: Wait, I'm sorry could you say
11 that again, I missed that, I didn't hear that, what did you say
12 about other Commissioners?

13 Monica Stamm: At the request of Commissioners
14 starting two months ago, we started providing a certain subset
15 of our full log that involves guidance given to the individuals
16 that they specified, we now provide that to the Commission, so
17 that can see the sort of description of the guidance that we
18 have provided.

19 Commissioner Horwitz: Great, so I see some of us are
20 already tracking the advice that has been given. So Mr.
21 Chairman, I have to say, and there is a motion and it's been
22 seconded so I appreciate everybody's indulgence in my asking
23 these questions, which I felt were important for me to
24 understand the answers, and understanding the policy so I can
25 make an informed decision about whether this actually makes

1 sense and whether it is a meaningful proposal or whether is it
2 just another cynical proposal dressed up in sheep's clothing
3 to take away authority from the staff and perhaps unfairly go
4 after certain members of the public employ, so I am going to
5 oppose this motion, because, what we've have heard is, we've
6 heard a number of things. One, that this is a practice that's
7 longstanding, this delegation, and it certainly predates JCOPE,
8 number one. Number two, there is a tremendous amount of effort
9 and thought given by our professional staff, the experts who
10 know the public officers law. Now, while some of us, over time,
11 and maybe not so much over time, you know, have become
12 knowledgeable about the public officers law, I don't think
13 there is a single Commissioner who would say that their
14 judgment, their experience, and their knowledge of the public
15 officers law is better or more informed then the men and women
16 who form our professional staff, number two. Number three,
17 given the volume and the nature and the timeliness of the
18 requests and the other business, a delegation of authority for
19 these kinds of issues makes eminent administrative and
20 efficient sense. To the extent that Commissioners like
21 Commissioner Lavine or Commissioner Weissman or anybody else
22 have a concern about whether a public officer, again, be that
23 person the governor, the attorney general, or somebody mowing
24 the lawn in the state park, if they have complied or not
25 complied with the public officers law, there is no way that we

1 are divesting ourselves of jurisdiction if our staff gives
2 advice. And as Monica said, there is countless instances where,
3 not countless but there are numerous instances where we have
4 engaged in enforcement actions against public employees who ,
5 notwithstanding our advice, have violated the public officer's
6 law. For all of those reasons, I am going to oppose this motion.
7 Thank you, Mr. Chairman, and thank you Commissioners for
8 indulging me in asking my questions. Thank you so much.

9 Chair Rozen: Thank you, Commissioner Horwitz.
10 Commissioner Weissman?

11 Commissioner Weissman: Yeah, as a general rule, I
12 think both Commissioner Lavine and I agree with the delegation
13 to staff, okay, and I am not going to call a person mowing the
14 lawn a constitutional officer, nor am I going to call him the
15 head of a state agency. I think what is driving this here is
16 the inability, at times, for Commissioners to get information
17 on advice provided by staff, pure and simple, and that to me
18 causes a problem. Now, it appears possibly, prospectively, we
19 have dealt with this, but it sits very uneasily within me that
20 questions asked went unanswered and told they would not be
21 answered where Commission staff had information and it was not
22 provided to Commissioners. Thank you, Mr. Chair.

23 Chair Rozen: Commissioner Dering.

24 Commissioner Dering: I just want to say that, echo
25 some things that happens in terms of, I think when people need

1 advice from JCOPE, they need it quickly. The staff at JCOPE,
2 from my view, they're outstanding. They're the experts, they
3 provide it on a timely basis, and the delegation has been
4 working for years, including with JCOPE's predecessor, and I
5 just don't see the reason why we would change that.

6 Chair Rozen: Thank you. Commissioner Yates, are you
7 interested in chiming in here?

8 Commissioner Yates: Yeah, thank you. I have two
9 questions really. First of all, I look at the statute, and the
10 statute, under subdivision 9, says that the Commission can
11 delegate authority to the executive director between meetings,
12 assuming we have done it in writing, specific powers, but cannot
13 delegate decisions that require a vote of the Commission. Then,
14 there is another provision about advisory opinions at 16, and
15 it says that a person can, on written request, can ask for an
16 advisory opinion, and then the Commission shall render a
17 written advisory opinion that may be relied upon by that person.
18 So my two questions are this, I am assuming for the moment that
19 the prior resolution, which I didn't see because it predated
20 me, gave authority for this, that might be an open question,
21 but for my purposes I will assume that, and that is, I am
22 looking at the statute, and does an advisory opinion, it says
23 an advisory opinion by the Commission, so would an advisory,
24 it can be delegated, or it can't be delegated if it is something
25 that requires a vote of the Commission, so does an advisory

1 opinion by the Commission require a vote of the Commission,
2 because if so, we can't delegate that, that is number one. And
3 then number two, when I look at the advisory opinions section,
4 it talks about that person who requested the advisory opinion
5 being able to rely upon it in good faith. I am totally for
6 that, I mean, of course, a person who gets an opinion from the
7 Commission, or by the staff if they're authorized to do it,
8 should be able to rely upon it, but my question is does that
9 mean it is binding upon us even if it wrong in future similar
10 situations? And I know we have had one or two situations where
11 staff gave advice and then the Commission didn't agree with it
12 later. And so, the question is, does that mean then we are
13 bound because staff went ahead and gave advice, and the
14 Commission or the majority of the Commission doesn't agree with
15 it, that somehow or other implicitly we took a vote on that,
16 authorized it, under 16? Those are my two questions and I will
17 simplify it again because I know it went on for a bit. My two
18 questions are, number one, does an advisory opinion require a
19 vote of the Commission under subdivision 16, because if it
20 does, we can't delegate that, and my question number two is,
21 is it binding upon us for any other similarly-situated person
22 beyond the specific person who asked for advice?

23 Monica Stamm: So, Chair, if I could address
24 Commissioner Yates's questions, this is Monica.

25 Chair Rozen: Go ahead.

1 Monica Stamm: So, I just want to break this down,
2 but advisory opinions have been interpreted by this Commission
3 to be the formal advisory opinions that we post on the website.
4 Those require a Commission vote. What has been delegated to
5 staff is in the delegation, it reads pursuant, to executive law
6 94.16 and legislative law section 1-d(f), to issue informal
7 letter opinions when the response to an inquiry is based solely
8 on Commission precedent. So, what has been developed in
9 practice over the years by JCOPE and all of its predecessors
10 is this practice of providing informal guidance. And that is
11 based on what has been done in advisory opinions over the years,
12 and so we follow our precedent and apply it to the questions
13 that we are asked. If we get a question that is unprecedented
14 or raises a new issue that we think needs to be addressed or
15 clarified by the Commission, we bring it to the Commission. But
16 that is the way the statute has been applied and interpreted.
17 So the guidance that staff has given is called informal and it
18 doesn't require a vote, and that is the majority of the guidance
19 that is provided, because over the years, most of the questions
20 about interpretation of the law have been addressed by this
21 Commission and the Commission on Public Integrity and the State
22 Commission on Ethics, they have addressed a lot of the
23 questions, so that is how the law is interpreted and applied.

24 Commissioner Yates: So I have to follow up on that,
25 I'm sorry, respectfully, I don't think my two questions were

1 really answered, and that is the statute talks about advisory
2 opinions by the Commission, but you are saying not written in
3 the statute is a practice of informal advisory opinions that
4 are not authorized necessarily by the statute but not barred
5 by the statute, one way or the other. And then number two, you
6 didn't answer my question, respectfully, about how binding is
7 that upon similarly-situated people.

8 Monica Stamm: Well, the informal guidance is not
9 public, so it only applies to the individuals who requested
10 it, but how binding is it on others, I am not sure, they are
11 not binding on others, but if what your question is when the
12 Commission disagrees with informal guidance, I think then the
13 Commission can decide how it wants to act, but once someone has
14 sought guidance on something, and if they've acted in
15 accordance with that guidance and the representations that they
16 made were accurate, then, you know, the Commission would have
17 to consider what, if any, action it might take with respect to
18 it. For example, are you going to pursue someone for violating
19 public officers' law when they sought guidance and followed it?
20 If someone takes a job based on guidance, are you going to then
21 find that they can't take that job after the fact? Someone has
22 taken on other obligations or legal obligations or an outside
23 activity, so I think that would always be the question. People
24 get this guidance so that they can conduct themselves
25 accordingly, and they rely on it and they take steps. People

1 leave jobs, people take jobs, people undertake obligations, and
2 so, that really would be a question for the Commission if the
3 Commission comes a time where they think that something is
4 potentially engaging is a conflict, and so far, we have been
5 able to work through those issues when they arise. And I should
6 also mention when something high profile comes in, we do notify
7 the Commission, so the Commission is aware of it. That has been
8 our practice as well. Did I answer your questions this time?

9 Commissioner Yates: I have a lot more questions, but
10 I don't want to, I want to let other people speak, so I will
11 shut up for the moment.

12 Chair Rozen: Is there anybody else who wants to opine
13 on this?

14 Martin Levine: Commissioner Weissman would like to
15 be heard.

16 Commissioner Weissman: Chair, I have one very quick
17 question for our general counsel. Commissioner Lavine's motion,
18 how many requests for guidance would fall within that motion
19 within the last six months?

20 Monica Stamm: I am sorry. I am trying to go to the
21 log. I don't know the answer.

22 Commissioner Weissman: Well can you...

23 Monica Stamm: The last six months is a little skewed
24 because of COVID so, you know, we didn't receive as many

1 requests as we normally do, but we normally get 40 to 41
2 guidance requests a month...

3 Commissioner Weissman: No, no, no, Monica, that is
4 not the question. The motion that I believe Commissioner Lavine
5 made went to constitutional officers, we have determined those
6 don't include the legislature, and state agency heads. Those
7 two categories, let's say over the last year, that may be a
8 broader period, how many requests have you gotten from those
9 two categories?

10 Monica Stamm: I've got to check. I just don't know
11 the numbers off the top of my head, but again, I think all of
12 2020 is kind of skewed because of the shutdown and restrictions
13 on travel and the way people are operating, but I think, and
14 Keith or Michael, correct me if you think I am wrong, but I
15 would estimate that we get at least, I don't know, four or five
16 a month, and you are only talking about outside activities as
17 opposed to we requests about reimbursements for travel, we get
18 conflicts requests, we get gift requests.

19 Commissioner Weissman: No, we are only speaking to
20 the outside activity.

21 Monica Stamm: Only outside activities. Yeah, outside
22 activities, I think we were estimating, I think, four to five
23 a month, pre-COVID. I am trying to look at the older charts.

1 Commissioner Weissman: And that would be from the
2 state agency heads and constitutional officers? On only outside
3 activities?

4 Monica Stamm: Again, I am, I don't have it at my
5 fingertips, for 2019 is what I am trying to look at, it is just
6 not searchable at this time (inaudible).

7 Commissioner Weissman: Mr. Chair, may I ask
8 Commissioner Lavine to withdraw his motion until such time that
9 we can get an accurate number, I mean, and again as a general
10 rule, I believe staff should be doing these types of activities,
11 but with Commissioner Lavine has put a motion forward, which
12 may or may not have a limited effect, and I think we should
13 know what we are voting on, yay or nay, before moving forward.

14 Commissioner Lavine: Seems reasonable to me. I have
15 operated on the assumption, and I want to be disabused of the
16 premise if I am incorrect, that the number or requests for
17 outside activity emanating from the four constitutional
18 officers and the agency heads would be a very tiny subset of
19 the total requests that are received from the tens of thousands,
20 hundreds of thousands of state employees, potentially, but if
21 I am wrong with that premise I want to be informed of that.
22 Happy to put the motion over to the next meeting, Mr. Chairman.

23 Chair Rozen: Okay, anybody else on this?

24 Commissioner Lavine: Well, I want to say one more
25 time, and I will reiterate it at the next meeting. I want to

1 address the proposition, if I heard it correctly and am
2 characterizing it accurately, staff has a greater capability
3 of discernment than the Commissioners. We have an outstanding
4 staff but the logical extrapolation of that proposition is, why
5 bother to have a Commission deliberation, and the regulation,
6 may I end with where I began, says, with respect to the four
7 constitutional officers and the agency heads the application
8 shall be made to us, the Commissioners, and shall be subject
9 to our approval or disapproval, but I will wait to hear from
10 staff at the next meeting.

11 Chair Rozen: Yes, Commissioner Fisher?

12 Commissioner Fisher: I would like to make a motion
13 to put this back on the table so I can vote against it because
14 it is a waste of our time. This is just a waste of our time.
15 We have more important things to do and so does staff, so is
16 there a way to to call a vote today so we don't have to hear
17 this again?

18 Commissioner Horwitz: Mr. Chairman, I will second
19 that motion. Well said, Commissioner Fisher. Let's vote, let's
20 not waste any more time. Take a vote right now.

21 Chair Rozen: Hold on, hold on, Commissioner Fisher,
22 at the risk of offending you, which I do not intend to do, was
23 your motion serious?

24 Commissioner Fisher: Yeah, I'm serious. I would like
25 to call a vote and I intend to vote against it.

1 Chair Rozen: Okay, there is then a seconded motion,
2 so if you don't mind, please restate the motion so we know what
3 we are voting on.

4 Commissioner Fisher: I did not record what
5 Commissioner Lavine's motion was, but if it was recorded and
6 can be read back, please?

7 Martin Levine: There was a motion to require that
8 outside activity requests from the four statewide elected
9 officials and agency heads be brought to the Commission for a
10 vote. I will say, in effect, what you would be doing is amending
11 the delegation resolution with respect to that point, but that
12 was not how it was framed. I am just telling you how it would
13 be effectuated.

14 Commissioner Fisher: I would like to move that.

15 Monica Stamm: So, Commissioner Fisher is in effect
16 making the motion that he plans to vote against and then
17 Commissioner Horwitz is seconding that motion.

18 Commissioner Yates: Now, I don't understand the
19 motion.

20 Monica Stamm: So the motion, Commissioner, if I
21 understand it, Commissioner Fisher is making a motion to amend
22 the delegation, with respect to outside activities to that the
23 delegation would be revoked with respect to the agency heads
24 and the statewide elected officials, that is the motion, and
25 Commissioner Horwitz, you would be seconding that motion. And

1 then you both stated you are going to vote against your own
2 motion.

3 Commissioner Fisher: Correct.

4 Commissioner Horwitz: Mr. Chairman, can we call the
5 vote, the roll?

6 Chair Rozen: One second, I saw Commissioner Yates'
7 hand up.

8 Commissioner Weissman: Martin is looking up whether
9 it is actually permitted.

10 Martin Levine: I believe it is.

11 Commissioner Weissman: I believe it is too.

12 Martin Levine: It think it just requires a second.

13 Commissioner Horwitz: It is permitted, and there is
14 precedent of the Commission for this.

15 Commissioner Yates: Do I have the floor, or..

16 Chair Rozen: Hold on, one at a time, one at a time
17 everybody. I get that this has gotten a little heated, but one
18 at a time because otherwise no one can understand anything, and
19 we end up spending more time going back over the things that
20 everybody's talked over.

21 Commissioner Yates: Do I have the floor?

22 Chair Rozen: Go ahead.

23 Commissioner Yates: My problem is this. I would hate
24 to see this put to bed permanently, because the statute says
25 that the Commission votes on advisory opinions. The statute

1 says that the Commission cannot delegate something that it has
2 to vote on. The work-around on this apparently, in the past,
3 has been outside of the statute, we have been giving, staff has
4 been giving advisory opinions that are not authorized by the
5 statute explicitly, but they are calling them informal, and
6 somehow or other, they have become binding on the Commission,
7 which is exactly what the statute says we can't do, so without
8 a vote, we couldn't bind ourselves but now we are allowing the
9 staff to bind us? So, I do agree that in the normal course,
10 we need speed and it is a minor matter and it can be quickly
11 resolved and relied on precedent, that informal opinions from
12 staff are a wonderful thing for the individual concerned, as
13 long as it doesn't bind the Commission in subsequent matters.
14 But I am a little concerned that we are going way outside of
15 the statute here by letting the staff do something that we're
16 not allowed to do and give an informal opinion, to give an
17 opinion without a vote. So, I am not necessarily speaking in
18 favor of Gary's motion, because I wanted to know more about it,
19 but I am definitely speaking against the notion that we just
20 walk away from this issue and pretend this doesn't exist as a
21 problem. Which means when all is said and done, I guess I am
22 voting for the motion, reluctantly, even though I don't want
23 to vote for the motion, because if the net result is that we
24 are never going to analyze the statutory problem here, that's
25 just wrong.

1 Chair Rozen: Okay, anyone else?

2 Commissioner Jacob: I am sitting here, hello, Mike?

3 Chair Rozen: Go ahead.

4 Marvin Jacob: Yeah, I am on a telephone and I have
5 to confess I don't know what the motion is with any clarity,
6 there has been so much back and forth.

7 Chair Rozen: I will join you in that, Marvin, I was
8 just going to say the same thing.

9 Martin Levine: Commissioner Fisher, please correct
10 me if I misstate your intentions, but the vote was to amend the
11 delegation of authority to staff to remove the approval of
12 outside activity requests by or on behalf of the four statewide
13 officers and state executive agency heads.

14 Commissioner Fisher: Yes, that is correct.

15 Chair Rozen: So, you are basically re-moving Gary's
16 motion?

17 Martin Levine: Correct.

18 Commissioner Fisher: Yes, correct.

19 Chair Rozen: And Dan, that is what you seconded.

20 Commissioner Horwitz: Correct.

21 Chair Rozen: Okay, is that clear?

22 Commissioner Weissman: What vote I?

23 Chair Rozen: Marvin, is that clear.

24 Commissioner Jacob: Yes.

25 Chair Rozen: Okay, so let's vote then.

1 Martin Levine: On the motion to change the delegation
2 to remove outside activity approval and remand that back to the
3 Commission, all votes in favor please raise your hand. I see
4 Commissioner Weissman, Yates, and McNamara voting in favor, I
5 will call the roll for the remainder. Commissioner Dering?

6 Commissioner Dering: No.

7 Martin Lavine: Commissioner Fisher?

8 Commissioner Fisher: No.

9 Martin Levine: Commissioner Horwitz?

10 Commissioner Horwitz: No.

11 Martin Levine: Chair Rozen?

12 Chair Rozen: No.

13 Martin Levine: Commissioner Cohen?

14 Commissioner Cohen: No.

15 Martin Levine: Commissioner DiPirro?

16 Commissioner DiPirro: No.

17 Martin Levine: Commissioner Jacob?

18 Commissioner Jacob: Yes.

19 Martin Levine: Commissioner Lavine?

20 Commissioner Lavine: Yes.

21 Martin Levine: And Commissioner McCarthy?

22 Commissioner McCarthy: Yes.

23 Martin Levine: That is 3,4,5,6 in favor, and 6
24 against.

25 Monica Stamm: Does not carry.

1 Martin Levine: Correct, motion fails.

2 Chair Rozen: Let's move on please. Item six on the
3 agenda, we need a motion to enter into executive session,
4 please.

5 Commissioner Dering: I'll move.

6 Commissioner DiPirro: So, moved.

7 Martin Levine: I have Commissioner Dering and
8 Commissioner DiPirro. On the executive session motion, all in
9 favor raise your hand please. Visually, I see Commissioner
10 Dering, Fisher, Weissman, Horwitz, McNamara, Yates and Rozen
11 in favor. Commissioner Cohen?

12 Commissioner Cohen: Yes.

13 Martin Levine: Commissioner DiPirro?

14 Commissioner DiPirro: Yes.

15 Martin Levine: Commissioner Jacob?

16 Commissioner Jacob: Yes.

17 Martin Levine: Commissioner Lavine?

18 Commissioner Lavine: Yes.

19 Martin Levine: Judge McCarthy?

20 Judge McCarthy: Yes.

21 Martin Levine: Thank you. Motion carries.

22 [The Commission went into Executive Session]

23 [The Commission returned to Public Session]

24 Chair Rozen: Okay, thank you.

25 Walter McClure: We are back in public session.

1 Chair Rozen: Thank you. Monica.

2 Monica Stamm: Sure. During executive session, the
3 Commission approved one settlement agreement, the Commission
4 commenced four substantial basis investigations, and the
5 Commission authorized steps in several investigative matters,
6 closed one matter, and discussed several other investigative
7 matters.

8 Chair Rozen: Thank you. This concludes the October
9 meeting of the Joint Commission on Public Ethics. Can I have a
10 motion to adjourn please?

11 Commissioner Dering: I'll move.

12 Commissioner Weissman: Second.

13 Chair Rozen: Thank you, Martin.

14 Martin Levine: All in favor please raise your hand.
15 Okay, I see Dering, Fisher, Weissman, Horwitz, McNamara, Yates
16 and Rozen. Cohen?

17 Commissioner Cohen: Yes.

18 Martin Levine: DiPirro?

19 Commissioner DiPirro: Yes.

20 Martin Levine: Jacob?

21 Commissioner Jacob: Yes.

22 Martin Levine: Lavine?

23 Commissioner Lavine: Yes.

24 Martin Levine: Judge McCarthy?

25 Commissioner McCarthy: Yes.

1 Martin Levine: Motion carries.

2 Chair Rozen: See everybody in November. Thank you.

3