

**MINUTES OF THE PUBLIC SESSION OF THE
OCTOBER 27, 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 audio only)
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

I. CALL TO ORDER

Chair Rozen called the October 27, 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 a modified roll call.

II. APPROVAL OF MINUTES – PUBLIC SESSION

September 22, 2020

A motion was made by Commissioner Weissman, seconded by Commissioner Dering, to approve the minutes from the Public Session of the September 22, 2020 Commission Meeting. The motion was approved by a unanimous vote.

III. REPORT FROM STAFF

Outreach Update

General Counsel Monica Stamm stated that the Commission held its annual CLE event with the Center for New York City Law and New York Law School on Tuesday, October 13. Over 250 people participated via webinar and staff received a lot of positive feedback. The topic was “Ethics and Innovation in New York State: Navigating Conflicts When Government is A Partner”. The Commission had panelists from SUNY and the SUNY Research Foundation who talked about Public Officers Law implications in conducting research and developing intellectual property, as well as panelists from Empire State Development and the Olympic Regional Development Authority who talked about implications in business development, grants, and sponsorships.

On December 10, staff is planning to hold an ethics officer forum to discuss the Public Officers Law implications for state agencies that have “embedded contractors,” contractors who are located at the same offices and are performing the same work as state employees, and how to develop best practices.

Second Quarter Financial Report

Director of Administration Stephen Boland reported that in the second quarter, the Commission spent approximately \$1,131,000 on personal services and \$150,000 on non-personal services. The year-to-date total is \$2,526,000, which is 45.7% of the total cash allocation for the year.

Meeting Schedule

General Counsel Stamm stated that the meeting schedule for the first half of 2021, Attachment B, will be finalized and posted to the website.

IV. REGULATIONS

Proposed Amended Comprehensive Lobbying Regulations

Deputy General Counsel Martin Levine explained that because the Proposed Amendments made to the Lobbying and Source of Funding Regulations are substantive, they will trigger a new 45-day notice and comment period under the State Administrative Procedure Act. These proposed regulations will dictate how coalition lobbying activity should be reported to provide clarity for filers, obtain better data for the public, and achieve a smoother filing process. The proposal also includes changes to the rules that govern the use of equity as lobbying compensation. This draft focuses on the nature of the lobbying effort, in addition to the client, to assess the impact of the government action on the value of the company.

Commissioner Weissman confirmed with Deputy General Counsel Levine that under the proposed regulations, an owner of a small start-up company could continue to hold equity in a firm while engaging in lobbying on behalf of the firm.

Deputy Director of Lobbying Guidance Carol Quinn presented additional details regarding changes to the proposed regulations. She explained that in order to address a concern raised by Commissioner Yates, staff made edits to the definition of a designated lobbyist to clarify that it would include a board member, director, or officer of a client, whether compensated or uncompensated, selected, appointed, named or otherwise chosen to lobby on such client's behalf. With respect to coalitions, the proposed amendments would move from a system where coalitions can elect how to file, and instead provide bright-line objective criteria to determine whether a coalition or its members must disclose the lobbying activity. This change will eliminate confusion and the risk of double reporting. Commissioner Weissman had suggested, which staff will incorporate, definitions of coalitions as either structured or unstructured coalitions. A structured coalition has a president, treasurer, or someone acting in that capacity, and must file as a coalition. An unstructured coalition, which does not have a president, treasurer, or someone acting in that capacity, cannot file as a coalition. Its members must disclose contributions in their own lobbying reports.

A motion was made by Commissioner DiPirro, seconded by Commissioner Weissman, to approve the Proposed Amended Comprehensive Lobbying Regulations. The motion was approved by unanimous vote.

Proposed Source of Funding Regulations

A motion was made by Commissioner Fisher, seconded by Commissioner Dering, to approve the Proposed Amended Source of Funding Regulations. The motion was approved by unanimous vote.

V. NEW AND OTHER BUSINESS

Executive Order 202.6

Commissioner Lavine asked if staff reached out to the Executive Chamber to ascertain certain information requested at the last Commission meeting regarding its Executive Order 202.6. Commissioner Horwitz stated that the Executive Order was not under the Commission's jurisdiction, the Chamber is not obligated to answer JCOPE's inquiries, and that the matter is a waste of the Commission's time. He further stated that the Commission has a full docket of other matters that are under its jurisdiction and questioned why the Legislature is not being asked for similar information. General Counsel Stamm confirmed that a request had been made to the Chamber as to whether it has a process in place to document determinations covered by Executive Order 202.6, as directed by the Chair at the last meeting, but no response has been received to date. Commissioner Lavine renewed the motion he made at the last meeting to direct staff to request information from the Chamber concerning who is covered by Executive Order 202.6 and what if any recusal policies have been put in place.

Commissioner Yates asked whether the Executive Order exempts people from filing financial disclosures with JCOPE or from all provisions in the Public Officers Law. General Counsel Stamm stated that the Chamber interprets its Executive Order, but based on a plain reading, it appears that a volunteer assisting in the COVID-19 emergency response is not a state officer or an employee subject to the Public Officers Law. Accordingly, volunteers under the Executive Order would not be subject to filing a

financial disclosure statement or the conflicts and post-employment provisions. General Counsel Stamm stated that there are additional provisions in Executive Order 202.6 that relate to the solicitation of aid in response to the COVID-19 health crisis. It also addresses the application of the post-employment restrictions to former state employees who want to assist the state as a contractor. Commissioner Yates stated that he agrees that the Governor can suspend certain laws under the current circumstances and that it is not the time to be concerned about financial disclosure and post-employment restrictions, but he is concerned about the suspension of conflicts of interest provisions. General Counsel Stamm stated that 202.6 also includes a requirement that volunteers abide by a recusal policy if their appointing authority determines it to be necessary. Commissioner Lavine withdrew his motion to await a response from the Chamber based on the Commission's last request.

Approval of Outside Activities

Commissioner Lavine asked if the provision in 19 NYCRR Part 932.5, which addresses approval of outside activities for constitutional officers and state agency heads, is being rendered by staff without a vote of the Commission. General Counsel Stamm stated that throughout the existence of JCOPE, and its predecessor agencies, the approval of outside activities has been delegated to staff and no vote of the Commission is required. She further stated that the Commission can delegate to staff its statutory authority over the day-to-day operations of the agency with the exception of those provisions of the statute that explicitly require a vote of the Commission. Commissioner Lavine stated that it is a bad practice for staff to render certain outside activity approvals.

A motion was made by Commissioner Lavine, seconded by Commissioner Weissman, that all outside activity requests from agency heads or constitutional officers, on a prospective basis, be brought to the Commission for a vote.

Commissioner Horwitz asked for clarification on the policy behind the delegation of authority. General Counsel Stamm stated that the delegation in general includes a wide array of day-to-day discretionary decisions and operational activities, relying on the expertise of the professional staff in lobbying, ethics, financial disclosure, auditing, and

investigations. In the guidance unit, staff receives approximately 30-40 requests per month that include questions about gifts, outside activities, post-employment restrictions and conflicts of interest. Under the delegation, if there is a novel question, staff brings the matter to the Commission for a vote, but if there is already precedent, staff can quickly respond to the request. Over the last 30 years, the Commission and its predecessors have issued formal Advisory Opinions covering most questions relating to the applications of the ethics and lobbying laws. General Counsel Stamm stated that outside activity approvals are informal guidance given in advance to help state officers determine whether there are potential conflicts of interest to be avoided. In addition to relying on staff's expertise in interpreting and applying Commission precedent, the delegation policy reflects the need to respond to guidance requests on a timely basis. Staff generally responds within a week. Given the Commission's limited meeting schedule and the additional time and resources it would take for the Commission to carefully and thoroughly consider these matters, which would include review of the relevant facts and laws and the applicable precedent, it would be a big undertaking for the Commission. Commissioner Horwitz asked if the Commission can pursue enforcement action against an individual who has received guidance from Staff but failed to follow it. General Counsel Stamm stated that if an individual fails to comply with the guidance, or if representations made by the individual in seeking guidance were inaccurate or incomplete, the Commission could, and has, pursued enforcement. Commissioner Horwitz asked if staff tracks the incoming requests. General Counsel Stamm stated that all requests, and the guidance given, are documented on a log and saved in the shared network drive. In addition, for the last two months, at the request of the Commission, log entries relating to certain officials have been provided to Commissioners with their meeting book materials. It also has been the long-standing practice of staff to advise the Commission of high-profile guidance requests.

Commissioner Weissman stated that he generally agrees with delegation to staff but the driving factor of this inquiry was the inability for Commissioners to get information on advice provided by staff on a particular matter. Commissioner Dering stated that since people need advice quickly, the JCOPE staff are the experts, and the policy has been working for years, it should not be changed. Commissioner Yates stated that section 94(16)

of the Executive Law says that the Commission shall render a written advisory opinion that may be relied upon by the requestor and shall be binding upon the Commission. He asked if that meant that the Commission is bound by staff's advice. General Counsel Stamm explained that formal Advisory Opinions are voted on by the Commission and posted on the JCOPE website. The delegation to staff includes issuing informal letter opinions when the inquiry is based solely on Commission precedent. While the Commission could reconsider guidance issued by staff for purposes of conduct going forward, it would be complicated to the extent the requestor took action relying on the guidance -- started a new position, undertook an outside activity, or accepted a gift -- and certainly it would be a defense in an enforcement action. A discussion was held between several Commissioners for and against the current policy. Commissioner Weissman asked for statistics on the number of outside activity requests that were received from statewide elected officials and agency heads. General Counsel Stamm stated she would have to report back with those numbers. Commissioner Weissman requested that Commissioner Lavine withdraw his motion until staff report back with the numbers and Commissioner Lavine agreed.

A motion was made by Commissioner Fisher, seconded by Commissioner Horwitz, to require that outside activity requests from the four statewide elected officials and agency heads be brought to the Commission for a vote. Commissioner Yates stated that he had continuing concerns about the ability to delegate authority to the staff and bind the Commission under the Executive Law. Commissioners Lavine, Jacob, McCarthy, McNamara, Weissman, and Yates voted in favor of the motion. Commissioners Cohen, Dering, DiPirro, Fisher, Horwitz, and Chair Rozen opposed the motion. The motion did not carry by a vote of 6-6.

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

A motion was made by Commissioner Dering, seconded by Commissioner DiPirro, to enter into Executive Session. The motion was approved by a vote of 11-0-1. Commissioner Yates was not present for the vote.

VII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

[Chair Rozen left the meeting during Executive Session. Commissioner Dering served as Chair for the remainder of the meeting.]

General Counsel Stamm stated that in Executive Session, the Commission approved one settlement agreement, commenced four substantial basis investigations, authorized steps in several investigative matters, closed one matter, and discussed several other investigative matters.

VIII. MOTION TO ADJOURN THE PUBLIC MEETING

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