

**MINUTES OF THE PUBLIC SESSION OF THE
JANUARY 26, 2021
COMMISSION MEETING
OF THE JOINT COMMISSION ON PUBLIC ETHICS
VIA WEBEX**

Chair: Michael K. Rozen (WebEx)

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

Absent: Daniel J. Horwitz

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, 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 January 26, 2021 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

December 15, 2020

A motion was made by Commissioner Weisman, seconded by Commissioner DiPirro, to approve the minutes from the Public Session of the December 15, 2020 Commission Meeting with Commissioner Weissman's amendment to page four, fourth paragraph, adding "Commissioner Weissman stated that the first amendment argument was a "red herring" The motion was approved by unanimous vote.

III. REPORT FROM STAFF

Third Quarter Financial Report

Director of Administration Stephen Boland reported that in the second quarter, the Commission spent \$960,151 on personal services and \$1,096,051 on non-personal services. The year-to-date total is \$3,622,186, which is 65.5% of the total cash allocation for the year.

Operations Update

Deputy General Counsel Martin Levine explained that the Division of Budget released the proposed appropriations for fiscal year 2021-22. The Commission's budget remained virtually flat; a small increase of \$12,000 was included to accommodate rent for the new location of the Buffalo office. It is expected that Division of Budget will request that agencies continue to reduce cash expenditures by an additional 5% – or approximately \$280,000 in the case of JCOPE. Staff has accounted for this already and expects to be able to meet the reduction, even with plans to fill vacancies on staff.

Operations Update

General Counsel Stamm stated that arising out of the work of the Confidentiality and Records Access Committee, staff has prepared a new monthly operations report, which will be posted and linked to the meeting agenda on the website. It provides the public with information about the Commission's activities, including data on lobbyists and clients, requests for guidance, FDS compliance efforts, audits, and training. This report is just one of many ongoing efforts of the Commission to increase transparency. The committee is continuing to discuss additional ways to be more open within the constraints of the law and plans to meet again in February.

NYC Office Update

General Counsel Stamm provided the Commission with an update on the New York City office. She stated that at the end of February or beginning of March, the New York City Office will be temporarily relocated to the 28th floor (with the entrance on Broad Street). This temporary location will have space to store confidential records and a conference room for confidential discussions. The new permanent space on the 5th floor (with the entrance at 25 Beaver) is expected to be completed in the fall.

IV. REGULATIONS GUIDELINES

Proposed Amended Comprehensive Lobbying Regulations

Proposed Amended Source of Funding Regulations

Deputy General Counsel Levine presented the Proposed Amended Comprehensive Lobbying Regulations and the Proposed Source of Funding Regulations to the Commission. These revisions were adopted on an emergency basis at the December meeting and have been in effect since the submission to the state register. Staff is requesting that the Commission vote on permanent adoption. No public comments were received but staff has had some recent engagement with stakeholders, though no changes are necessary to the regulations. If the Commission adopts the Proposed Amended Regulations, they will be effective upon publication on February 9.

A motion was made by Commissioner Fisher, seconded by Commissioner Weissman, to adopt both the Amended Comprehensive Lobbying and Amended Source of Funding Regulations. The motion was approved by unanimous vote. Commissioner McNamara was not present for the vote.

Proposed Amended Regulations for Access to Publicly Available Records

Deputy General Counsel Martin Levine presented the Proposed Amended Regulations for Access to Publicly Available Records. He explained that the proposed changes reflect the discussion with the Commission and the deliberations of the Confidentiality and Records Access committee. The current regulations mimic Section 94(19) of the Executive Law.

That law provides that the financial disclosure statement itself is a public document. These regulations would make public general information about a specific FDS filing or filer as well as title and salary information for JCOPE staff. The proposed regulation was first presented at the December meeting and since then, the only substantive change made is that when a filing is released to the public, it would indicate whether information has been deleted or redacted (but not whether information was exempt from reporting). These amendments come out of the deliberations from the records access committee. If the Commission elects to adopt these amendments, the next step would be a vote to commence a rulemaking.

Commissioner Jacob asked if it would be appropriate to include the exemptions provided in the Governor's Executive Order 202.6 and .7. General Counsel Stamm stated that the Records Access Regulations address the records of JCOPE, which would not include information regarding records that are not in its possession --Executive Orders 202.6 and .7, or client exemption determinations by the Office of Court Administration. The purpose of the Record Access Regulations is to govern disclosure of records maintained by JCOPE and to identify what records are going to be publicly available, how they are going to be made publicly available, and the procedure for challenging determinations of the records access officer. Commissioner Lavine asked if the records access regulations cover informal or formal opinions. General Counsel Stamm stated that those records are not covered under the proposed regulations because those records are not included in the law as being publicly available. The Commission votes on whether to publish its formal opinions, and informal opinions are being discussed by the confidentiality committee. Commissioner Lavine asked if a filer would be notified if an inquiry was made about the filer's FDS filing. Deputy General Counsel Levine confirmed that the proposed regulation would not provide affirmative notification to the filer, but the filer would be entitled to inquire whether their FDS had been requested.

A motion was made by Commissioner Lavine that all formal and informal opinions be covered under the records access policy, whereby informal opinions would be made publicly available in redacted form, and when staff issues an informal opinion, it should

include language that the opinion is not binding on the Commission. Chair Rozen noted that this matter was already before the confidentiality committee and requested that this motion be held in abeyance until after the next committee meeting in February. Commissioner Lavine agreed to wait on that motion.

Commissioner Lavine made a motion to amend the records access regulations to be consistent with other agencies subject to FOIL with respect to records of requests, and to include that FDS filers can find out if their FDS was requested and by whom. Commissioner Yates proposed an amendment to Commissioner Lavine's motion to provide that for documents that are not mandated in Section 94 the exemptions under FOIL be applied. Commissioner Lavine accepted the amendment. Commissioner Weissman seconded the motion. After further discussion, Commissioner Weissman made a motion to table all of the amendments until all Commissioners have a better understanding of FOIL. Chair Rozen seconded that motion. General Counsel Stamm stated that no motion would be needed if Commissioner Lavine withdrew his motion. Commissioner Lavine agreed to withdraw his motion.

V. NEW AND OTHER BUSINESS

**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 left the meeting during Executive Session. Commissioner Weissman served as Chair for the remainder of the meeting.]

General Counsel Stamm stated that in Executive Session, the Commission discussed several litigation and personnel matters, approved one settlement agreement, amended

another settlement agreement, 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 Yates, the Public Session was adjourned by unanimous vote.