

**MINUTES OF THE PUBLIC SESSION OF THE
JANUARY 26, 2016
COMMISSION MEETING
OF THE JOINT COMMISSION ON PUBLIC ETHICS
HELD AT THE COMMISSION'S OFFICE LOCATED AT
540 BROADWAY
ALBANY, NEW YORK**

Chair: Daniel J. Horwitz (ALB)

Members: David Arroyo (NYC)
Hon. Joseph Covello (ALB)
Marvin Jacob (Webex)
Seymour Knox, IV (ALB)
Hon. Eileen Koretz (NYC)
Gary J. Lavine (ALB)
David A. Renzi (Webex)
Michael A. Romeo, Sr. (Webex)
Hon. Renee R. Roth (NYC)
Michael K. Rozen (Webex)
Dawn L. Smalls (NYC)
George H. Weissman (Webex)

Members

Absent: Hon. Mary Lou Rath

Staff:

Monica J. Stamm, General Counsel
Kevin T. Gagan, Chief of Staff
Martin L. Levine, Director of Lobbying and Financial Disclosure Compliance and
Senior Counsel
John P. Harford, Special Counsel and Director of Ethics and Lobbying
Compliance
Stephen Boland, Director for Administrations
Walter J. McClure, Director for External Affairs
Emily A. Logue, Investigative Counsel
Leah Ramos, Associate Counsel
Stacey Hamilton, Manager of Education Program and Special Counsel
Patrick E. Coultry, Chief Investigator
Terence Mulderrig, Senior Investigator
Lori Donadio, Confidential Legal Assistant
Deborah Novak, Executive Assistant

I. CALL TO ORDER

Chair Horwitz called the January 26, 2016 Commission Meeting to order.

II. APPROVAL OF MINUTES – PUBLIC SESSION

November 17, 2015

A motion was made by Commissioner Covello, which was seconded by Commissioner Knox, to approve the Minutes from the Public Session of the November 17, 2015 Commission Meeting. The vote on the motion was 11/0/1. Commissioner Smalls was not present at the November 17, 2015 Commission Meeting and abstained from voting. Commissioner Roth was not present for this vote.

December 15, 2015

A motion was made by Commissioner Knox, which was seconded by Commissioner Covello to approve the Minutes from the Public Session of the December 15, 2015 Commission Meeting. The motion was approved by unanimous vote of those Commissioners present. Commissioner Roth was not present for this vote.

III. REPORT FROM STAFF

Third Quarter Financial Report

Director for Administration, Stephen Boland stated that in the Third Quarter ending December 31, 2015, personal services expenditures were just over \$1 million for a year-to-date total of a little over \$2.6 million, which is approximately 60% of the Commission's budget for personal services. Over \$179,000 was spent on non-personal services, for a year-to-date total of \$575,000, which is about 52% of the Commission's budget for non-personal services. Overall in the third quarter the Commission spent approximately \$1,179,000 with a year-to-date total of \$3.2 million dollars, or 58% of the Commission's budget.

Update on Outreach Activities

Manager of Education Program and Special Counsel, Stacey Hamilton stated that at the last meeting she updated the Commission on the Education Unit's outreach activities, including a survey on holding Open Ethics Forums, which generated great interest. Survey results indicated that people were most interested in the topic "Outside Activities", so an Open Ethics Forum was held on January 14th that focused on Outside Activities. Over 117 ethics officers/special counsel registered from over 71 agencies. The forum went really well and great feedback was received. The Commission will be holding more Open Ethics Forums in the future.

Web Update

General Counsel, Monica Stamm gave an update on the redesign of the Commission's website for which a consultant was retained. The consultant is going to provide staff with its proposed new site in the near future and both ITS and Commission staff will then run tests. Assuming there are no issues, the Commission can expect that the site will go live before the February Commission meeting and staff will demonstrate the website to the Commissioners at the February meeting.

Commissioner Covello stated that the New York State Bar Association invited him to participate on a panel they are having this Thursday at their annual conference in Manhattan. Commissioner Covello is going to attend and Director of Lobbying and Financial Disclosure Compliance, Martin Levine will be on the panel.

Update on Proposed Appropriations Bill

General Counsel Stamm explained that under the Governor's proposed budget, JCOPE would be funded at FY2015-16 levels, i.e., \$5.5 million, including the same personal and non-personal services allocation. There were other amendments and proposals in the Governor's appropriations bill related to JCOPE, some of which would require additional funding for the agency. Specifically, one of the proposals is to subject JCOPE to FOIL

and the Open Meetings Law. If the proposals pass they will become effective on January 1, 2017. That should allow sufficient time to create a FOIL unit but additional funding and staff would be needed. General Counsel Stamm stated that she has been in contact with DOB about what JCOPE would need in order to comply with these proposals.

Also, there are several new ethics proposals contained in the bill, some of which were suggested by the Commission in the report it issued last February and/or were suggested by the Ethics Review Commission in the fall. One of the proposals is to add penalty provisions to the sections of the Public Officers Law §74 that do not currently have them. There also is a proposal to add accessorial liability for violations of the Public Officers Law. There are proposed changes to Public Officers Law §73-a, which deals with the annual financial disclosure statements. One such amendment would eliminate the categories of values, and instead require a specific number in questions about a filer's income, holdings, etc. Another proposal would authorize JCOPE to seek supporting documentation when doing reviews of financial disclosure statements and to impose penalties for those who fail to cooperate.

There are also proposed changes to the Lobbying Act. One of the most significant is to add a whole new element of disclosure for political consultants. Political consultants, as defined in the proposal, would have to file all of the registration and disclosure reports that are required of lobbyists and would be subject to the provisions in the Lobbying Act that prohibit gifts and contingency fees under certain circumstances. In addition, there is a proposal to mandate electronic filing for lobbyists and clients of lobbyists. The proposals include adding penalties for those who fail to comply with random audits of lobbying filings.

Finally, there are proposed amendments to Executive Law §94 that would change the current requirement that the Commission act within 45 days after receipt of a complaint, or after a 15-day letter is sent. The proposal would extend that time period to 60 days and expressly authorize the Commission to adjourn matters or to defer to ongoing criminal prosecutions.

Commissioner Weissman asked that staff send around whatever portions of the bill apply to JCOPE.

IV. SEARCH FOR EXECUTIVE DIRECTOR

Chair Horwitz provided an update on the search for the Executive Director. Chair Horwitz thanked the members of the committee: Marvin Jacob, Eileen Koretz, Mary Lou Rath and Michael Rozen. The committee received 204 resumes, conducted interviews with 13 candidates, and recommends that four candidates be presented to the full Commission for further vetting. At some point in the next several weeks the four candidates will make themselves available to as many of the Commissioners who want to participate, either in Albany or in New York, via telephone or Webex.

V. ADVISORY OPINIONS PURSUANT TO EXECUTIVE LAW §94 AND THE LOBBYING ACT
Lobbying Act Implications in Social Media Activities

Associate Counsel Leah Ramos explained that staff has solicited public comments in order to develop guidance on when social media activities constitute lobbying and become reportable pursuant to the Lobbying Act. The Commission solicited comments and received three sets: from Citizens Union of the City of New York, the New York Advocacy Association, and from Wilson Elser on behalf of a client. The comments generally supported the idea that there should be guidance in this area, and acknowledged that social media could constitute lobbying. However, there were concerns raised about holding lobbyists or clients of lobbyists responsible for posts made by staff on their personal social media pages, and holding lobbyists or clients of lobbyists responsible for the action of others who repost or retweet their statements. There were also concerns that purely educational social media content could be considered lobbying. The comments caution that a social media post should not be considered lobbying unless there is a call to action, and the poster had actual knowledge and intent that a lobbying target would receive the communication. The Commission also received a request for the comment period to be extended, so the period will be extended until February 19, 2016. Also, a roundtable discussion will be held in New York City on February 12, 2016.

Commissioner Weissman asked why the period was extended beyond the next meeting. Director Levine stated that the 12th was the best date to host the roundtable and it was important to give the community an opportunity to submit comments after the roundtable. Commissioner Weissman stated that the Commission should act sooner rather than later.

General Counsel Stamm explained that the Commission has generally tried to encourage discussion on these issues and to engage with the groups that are going to be affected by any future guidance in an effort to understand all of the issues. Staff would then require time to draft an advisory opinion. Given that the next meeting is only three weeks away, the consideration was to extend the comment period and plan to present proposed guidance at the March meeting. Director Levine explained that the guidance was first put out for comment after the December meeting, right before the holidays. Commissioner Weissman stated that this should be wrapped up before the next meeting so the Commission could consider it at the next meeting.

Chair Horwitz stated that the Commission has always made sure that there is an opportunity for public comment. Since the social media issue was first introduced just before the holidays, it would not be prudent for the Commission to rush to proceed without sufficient time for public comment.

Commissioner Smalls asked if the Commission ever reaches out to specific people/groups for comment. General Counsel Stamm explained that the Commission staff does a lot of outreach and engages with the entities that are regulated by the Commission, both formally and informally. An eblast was sent around to all the regulated entities and JCOPE is planning to hold a roundtable, where the staff meets with a group of people in person to engage in discussion and bounce ideas off of each other in an effort to develop the Commission's position. This is the same process that was utilized with the Advisory Opinion on consulting which is before the Commission today.

Commissioner Smalls stated that the Commission has only received three comments and none are from parties squarely in the technology field. If the Commission is putting forward an advisory opinion on the basis that communication is evolving, and this is something new and outside of the Commission's wheelhouse, it seems a missed opportunity to rely on our traditional constituency and to not reach out to those who are squarely operating in this arena about how they operate and how they might be captured by these rules. Commissioner Smalls stated that there are online advocacy organizations that almost exclusively function in social media platforms. Commissioner Smalls believes that their activity could be captured by any guidance the Commission issues, but they may not be on the Commission's radar because they are not brick and mortar lobbying organizations. Those organizations should be engaged or at least solicited to get feedback on how they function, and the practical implications of any guidance to them, to make sure that the Commission is comprehensive and responsive in how it drafts the guidance.

Chair Horwitz stated that that is a good suggestion, but as none of those organizations contacted the Commission, he suggested that Commissioner Smalls give Director Levine a call to make sure the staff understands who she has in mind.

Reporting Obligations under the Lobbying Act for Consultants

Chair Horwitz reported that a draft Advisory Opinion entitled "Reporting Obligations under the Lobbying Act for Consultants" was put out for comment and has garnered quite a bit of attention, particularly as it affects the media and First Amendment issues. The staff has taken the comments received into consideration and has revised the proposed Advisory Opinion. The Opinion does not suggest that a garden variety telephone conversation between a reporter, or an editorial board, and a lobbyist, or a consultant, is necessarily lobbying. The intent is to clarify that if there is an organized lobbying campaign and as part of that campaign the services of a lobbyist or a consultant are engaged, for the purpose, in part, to solicit an editorial or comment by media outlets, such conduct may be considered lobbying. If the lobbyist calls up the editorial board and tries to talk the editorial board into writing something on the specific matter for which the

lobbyist has been engaged, that is the kind of conduct that could be reportable. It is not intended to cover an editorial board calling people who are knowledgeable on a particular topic, to ask questions because the editorial board has decided this is an important issue that needs to be addressed, or a reporter that is working on a story calling someone with knowledge to ask questions. It is intended to cover somebody who is getting paid as part of a specific lobbying agenda to obtain favorable newspaper stories, or an editorial.

Director Levine pointed out that as with any regulation of lobbying, going back to the first Supreme Court case in 1957, there is always a tension between the protection of the First Amendment and the rights of the public to have access to information on the activities of government. Asking someone to report their paid activities to influence the media is not an infringement on the First Amendment because the Supreme Court has said for 60 years that it is an appropriate use of regulation. The Commission is cognizant of this tension and a footnote was added to the Advisory Opinion to reiterate that the Commission does not intend to infringe on the First Amendment but to generate the required transparency for those who are paid to attempt to get the media to take a position.

Chair Horwitz clarified that the reporting obligation is not on the media outlet; it is not on the editorial writers; and it is not on the newspaper reporters; but it is on the lobbyist. The lobbyist knows they have been hired by the Acme Company who is interested in a piece of legislation that is pending in the State Legislature. The lobbyist knows that they have a fixed strategy that includes trying to sway public opinion through editorial boards. The reporting obligation is on the lobbyist and it is a reasonable regulation of speech, which the Constitution and the Supreme Court permit. Director Levine stated that there is a specific exclusion for the media in the Lobbying Act that addresses those situations in which it publishes news or editorials.

Commissioner Jacob asked if there is any precedent in any other jurisdiction, federal, state or local. Director Levine explained that the opinion has a few parts. With regard to the section of the Opinion that deals with those who create access or “door opening” for a

client, JCOPE would be on the cutting edge as far as explicitly stating that this activity would be covered under our lobbying statute. However, a number of states have statutes that regulate “good will lobbying” which arguably includes these activities. With regards to grassroots lobbying, the Commission is not the first to define it. As far as articulating the activities of consultants in those grassroots efforts, JCOPE would be out front.

Commissioner Smalls asked about the strong push-back from media organizations related to this Advisory Opinion. Director Levine explained that some responses received implied people were interpreting the Opinion far broader than the intent or plain reading. To the extent that the concerns were valid, they were welcomed and modifications were made to address those concerns. Otherwise, it was expected that the media might view the opinion favorably because it will generate transparency about who is paying the people soliciting the media to take a position on a specific issue.

Commissioner Covello suggested that the content of the footnote was too important and asked if it could be moved from a footnote into the body of the opinion. Chair Horwitz agreed that it should be absolutely clear that this opinion does not infringe on the media’s right to do its business, but rather focuses on activities of a lobbyist who gets paid to sway public opinion to advance a particular legislative or executive agenda.

Commissioner Smalls stated the other substantive point that she wanted to raise is about the standard of “control” related to input into the message. The opinion encompasses a different kind of activity which is: if you are an academic and you wrote on a legislative strategy but never discussed it with anybody, you would be a lobbyist because you had substantive input into an ultimate strategy. On the other end of the spectrum, if a consultant provides information to a professor or an academic, who is not actually engaged in the broader work of lobbying or advancing issues, who then writes a paper stating what they think about an issue, that conduct could be considered lobbying. Chair Horwitz explained that if the academic who wrote this paper is not getting paid by somebody to write the paper then it does not meet the fundamental definition of lobbying. Commissioner Smalls asked if a paid consultant who comes up with a graphic, a mailer

and a message or a strategy, that never has contact with a client or an elected official, and has no direct involvement with the call to action, is a lobbyist and needs to register with JCOPE. Director Levine explained that the opinion holds that in order to be required to register as a lobbyist, you would have to meet the expenditure threshold and you would have to engage in the actual delivery of the message. The consultant who is purely behind the scenes, who never has contact with the public official or the public or any other outside body, but only with their client, would not be captured. The Opinion as originally drafted could arguably have captured such parties. Based on those concerns, the Opinion was revised to clarify that people behind the scenes are not captured. Disclosure of those activities will be captured through the expense reporting in lobbying and client filings. But the registration requirements and the prohibition on gifts and contingent fees will only apply to those that have contact with the public or the public official by delivering the message.

Commissioner Arroyo offered a different hypothetical scenario involving the press, but General Counsel Stamm pointed out that this is an Advisory Opinion providing guidance to those governed by the Commission on how it interprets the Lobbying Act with respect to defining lobbying. Staff will receive many nuanced questions after the opinion is issued and will have to answer them and provide guidance. These questions are going to depend on the very specific facts of who is paying who, for what activities, and what the contracts and arrangements are. It is difficult to answer hypothetical questions without real facts. Ultimately, staff plans to develop comprehensive lobbying regulations, or revise the existing lobbying guidelines, to address these issues and others that have arisen over the past four years.

Commissioner Arroyo stated that he believes part of the discomfort heard from the regulated communities is that one might infer that anything said to the press is going to influence an elected official who has a piece of legislation before him/her. If that is not the message or the directive, the Commission should be clearer about that. Chair Horwitz stated that is not the case because the footnote makes it abundantly clear that the hypothetical wherein a reporter, or an editorial board or a member of the press, contacts a

lobbyist to ask a question, and it happens to be in the subject area that the lobbyist has been retained, that contact is not intended to be covered by the opinion. The Opinion is limited solely to the circumstance wherein the media is the recipient of a phone call from a paid lobbyist with a definitive strategy to influence public opinion by seeking news stories or editorials. The Commission is not trying to limit the media's ability to pursue a story. Director Levine read footnote 21: "This is in no way intended to restrict a reporter's ability to gather information, or to seek comment from representatives of advocacy groups, as part of reporting the news. Rather this is intended to generate transparency in the activities of paid media consultants who are hired to proactively advance their clients' interest through the media."

Commissioner Arroyo stated that the footnote does not say that if a communications firm is contacted by a reporter that would not qualify that communications person as a lobbyist because he or she was not initiating the contact. Commissioner Arroyo suggested that it be more explicit and asked if the determinative factor is who initiates the contact. Commissioner Covello stated that is not the determinative factor as it does not matter who makes the contact. If a consultant is paid specifically to influence the media and a reporter calls that consultant, the result will be the consultant lobbying that reporter. If the reporter calls the consultant before the consultant calls the reporter that is not a determinative factor. General Counsel Stamm explained that the important issue is who the client is and who the lobbyist is, what the consultant is hired to do, and what actually happened. It is not necessarily just about who called who. It is when, as part of a proactive paid lobbying campaign, the consultant lobbyist attempts to get the newspaper to write a position piece. What the footnote makes clear is that the Opinion is not meant to capture fact gathering, or when a reporter calls the media consultant to get a statement. The Commission is not trying to interfere with reporters who are reporting the news, developing a story, or developing an editorial on their own. The action the Opinion captures is when the media consultant is paid specifically to influence the paper to get a position piece published in connection with a lobbying campaign to influence a specific government decision.

Commissioner Arroyo stated he is satisfied that this is not going to have a chilling effect on the media. Commissioner Smalls stated the opinion does not say what General Counsel Stamm just said it says. Chair Horwitz explained that the original draft said, “Further, a public relations consultant who contacts a reporter or editorial board...” which covered contact with reporters and editorial boards in an attempt to get a media outlet to advance a client’s message. The current draft proposed to delete that sentence and instead replace it with what General Counsel Stamm just said, which limits it to a lobbyist who is in contact with a media outlet in connection with an editorial. By definition it has limited and excluded conversations between a reporter seeking to gather information on a story they are working on about a bill, or another subject on which the lobbyist has been engaged.

Commissioner Jacob stated that the method for JCOPE to provide guidance is laid out in §94(16) wherein a specific request for said guidance is contemplated. The Commission cannot give guidance without a specific request so this should not be called an Advisory Opinion. JCOPE should not go into this area in a general way; rather it should only be dealt with in response to specific requests from the public. General Counsel Stamm clarified that the Commission is not operating under Executive Law §94(16). It is operating under §1-d(f) of the Lobbying Act, which says that the Commission can issue advisory opinions to those under its jurisdiction. Commissioner Jacob stated that the language is similar to that in §94(16). General Counsel Stamm explained that it does not mention responding to requests. In any event, over the last several years, the Commission has had many requests to address issues relating to when consulting activity constitutes lobbying.

Commissioner Smalls stated her belief that staff should revise that part of the definition of grassroots lobbying that holds that “...control of the delivery of a grassroots communication involves participation in the actual delivery of the message.” Director Levine explained that the choice of words came from the agency’s predecessor, the Temporary Commission on Lobbying, in opinion 39.

A motion was made by Commissioner Weissman, which was seconded by Commissioner Lavine, to approve the Advisory Opinion entitled “Reporting Obligations under the Lobbying Act for Consultants” with the modification to move the footnote into the text. Chair Horwitz and Commissioners Arroyo, Covello, Knox, Koretz, Lavine, Renzi, Romeo, Rozen, and Weissman voted for the motion. Commissioners Roth, Smalls and Jacob opposed the motion. The motion carried 10/3.

Commissioner Jacob stated that the opinion would be of limited effect as it was not in response to a request, asking upon whom the opinion would be binding. General Counsel Stamm explained that it would be binding on anyone required to register with the Commission and the Commission would be bound to follow its own guidance. Chair Horwitz stated that Commissioner Jacob has clearly stated his concerns in the past about the effect of issuing advisory opinions, but as has been previously discussed, advisory opinions are important in an enforcement action to satisfy due process in showing that the subject had notice of the Commission’s interpretation of the governing statute.

Campaign Solicitations by Elected Officials

General Counsel Stamm explained that there is a proposed Advisory Opinion regarding campaign solicitations by elected officials pending before the Commission with some revised language for consideration. While staff does not believe that the changes are necessary or alter the substance of the guidance provided, the revisions are an attempt to clarify issues that have been raised and/or are in response to comments received. The Commission received written comments from the Attorney General’s office, which have been circulated to the Commissioners, as well as posted on JCOPE’s website. The Attorney General takes the position that this opinion is an attempt at campaign finance reform which is outside the Commission’s authority, and argues that the opinion unfairly targets his office and the office of the State Comptroller. The Attorney General also states that the opinion unfairly discriminates against incumbents in relation to candidates.

The Advisory Opinion was revised to clarify that an elected official must act “knowingly and intentionally” to violate the Public Officers Law. In addition, language was

incorporated at the suggestion of the City Bar to clarify that the Opinion refers to enforcement actions in which the elected official and/or their immediate staff have “personal and substantial” involvement. The footnote related to the definition of enforcement powers was moved into the text of the Opinion. In response to concerns raised by some Commissioners and the Legislative Ethics Commission, the definition of elected official was deleted in footnote four, and instead just refers to JCOPE’s authority under §94(16) to provide guidance.

Commissioner Lavine requested that he be allowed to comment on the Opinion in the executive session as his comments relate directly to an investigative matter.

Commissioner Weissman asked what elected officials are impacted by this proposed Advisory Opinion. General Counsel Stamm responded that clearly the four statewide elected officials are impacted; there has been a debate among the Commissioners, as raised by the LEC, about whether or not JCOPE can provide guidance to other elected officials. General Counsel Stamm suggested that all elected officials could read this guidance and be aware of how the Commission interprets Public Officers Law §74, but at this point JCOPE is not providing guidance to Members of the Legislature. Chair Horwitz stated that if Members of the Legislature want to follow this opinion they can, but this opinion is not directed at them. Commissioner Weissman suggested that the opinion include the full text of §94(16) in the footnote and language be added to clarify that the Commission is referring to an active subject and ongoing enforcement powers. Commissioner Weissman stated that he agrees with the Attorney General’s position that the Commission does not have authority to change the campaign finance rules, but the Commission is addressing the use of enforcement powers. Finally, it should be clarified whether it is “investigate and prosecute” or “investigate or prosecute.”

Commissioner Weissman asked about the last sentence in the definition of enforcement powers. General Counsel Stamm explained that the mere ability to regulate does not necessarily mean that there is an ongoing enforcement action. For example the Attorney General’s office regulates co-ops, that does not mean that every co-op is the subject of an

enforcement action. The opinion is not referring to potential subjects; it is referring to actual subjects of ongoing enforcement actions. Commissioner Weissman stated that he understands it to mean that just because the elected official has the authority to regulate it does not mean they are exercising enforcement power. Commissioner Weissman stated that the opinion does not clearly say the subject of an ongoing enforcement action; it just says the official has the mere authority to exercise enforcement powers. General Counsel Stamm explained that Commissioner Weissman is referring to the definition of the term enforcement powers, but the paragraph that precedes the definition says “which is the active subject of enforcement powers of the official or the official’s office”.

Chair Horwitz stated that the heart of the advisory opinion is in the first paragraph on page five which reads, “Public Officers Law §74 prohibits a statewide elected official from directly soliciting or accepting a money or in-kind campaign contribution from a person or entity which is the active subject of enforcement powers of the official or the official’s office, in which the elected official or the official’s immediate staff are personally and substantially involved.” The Opinion is directed at people who are actively conducting an investigation of someone who is an active subject of their enforcement powers. It does not apply to the ability to regulate, or other government functions; it applies to enforcement powers which have a specific meaning.

Commissioner Jacob asked about “investigating and prosecuting”. General Counsel Stamm stated that based on Commissioner Weissman’s earlier suggestion, the language will amended throughout the opinion to read “or”.

Commissioner Weissman questioned about the carve-out for other government functions. Commissioner Jacob agreed that with the amendment to the definition of enforcement action, there is no need for the carve-out. The opinion does not need the carve-out because it covers investigations or prosecutions of lawsuits. General Counsel Stamm explained that the sentence was originally added based on discussions with the Comptroller’s Office and the Attorney General’s Office to address their concerns that the

opinion was not clear that potential subjects were not included and that the entities over which they exercise regulatory jurisdiction would not necessarily be included.

Commissioner Jacob noted the Attorney General's comment that the Advisory Opinion applies only to him and the Comptroller. Commissioner Jacob asked how it applies to the other two statewide elected officials. General Counsel Stamm explained that the language speaks for itself - to the extent that there is personal and substantial involvement by a statewide elected official or his/her immediate staff in an ongoing enforcement matter, the Advisory Opinion would apply. Commissioner Jacob asked what investigations or prosecutions of lawsuits take place in the Governor's office. Commissioner Lavine stated that the Attorney General's assertion is wrong. This opinion would certainly apply to the Inspector General who reports by statute directly to the Secretary to the Governor.

Commissioner Jacob asked if the Inspector General is conducting an investigation, then it would be inappropriate and improper for the subject of that investigation to give campaign contributions to the Governor or the Lieutenant Governor. Chair Horwitz stated that if there was personal and substantial involvement in the investigation by the elected official or his/her immediate staff, then the opinion would apply. This is the language that was proposed by Benton Campbell, the Chair of the Government Ethics Committee of the City Bar Association, who had also served as the United States Attorney for the Eastern District of New York, as a way of circumscribing some of the concerns that were raised by the Attorney General and the Comptroller. Commissioner Jacob asked whether it would apply only to Inspector General investigations. What if there was personal and substantial involvement in an investigation by DFS into the banking industry. Chair Horwitz explained that this is an Advisory Opinion and its applicability depends on the specific facts and circumstances.

Commissioner Smalls stated that the Attorney General's letter addressed difficulties with implementation in relation to staff within the office. Commissioner Smalls stated that she is fully supportive of the goal and the language of the Advisory Opinion, but shares other Commissioners' concerns about wanting to make sure it has broad applicability to the

statewide elected officials, while acknowledging that the Attorney General raises a very valid concern about how it would actually be implemented. General Counsel Stamm stated that she does not think it is within JCOPE's purview to direct officials on how to implement the guidance, but believes it is a perfectly appropriate use of state resources to fulfill the purposes of the Public Officers Law to avoid conflicts of interest. General Counsel Stamm stated that it is her understanding that the Attorney General's office already has vetting procedures in place and does not believe that the Advisory Opinion significantly or inappropriately increases any burdens on the existing vetting procedures or staff implementing them.

Chair Horwitz proposed that in the interest of time, and to accommodate Commissioner Lavine, who has comments about the Opinion that he feels need to be taken up in Executive Session because of a connection to an investigation, that the Commission go into executive session then take this matter up again when it returns to public session.

Commissioner Weissman asked that if the opinion is adopted, it be sent to the LEC so that the Legislature could also consider this guidance, as it could be instructive for them.

VI. NEW AND OTHER BUSINESS

There was no new business.

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

A motion was made by Commissioner Arroyo, and seconded by Commissioner Roth, to enter into Executive Session pursuant to Executive Law §94(19)(b). The motion was approved by unanimous vote.

VIII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

Chair Horwitz announced that, during the Executive Session, pursuant to Executive Law §94(19)(b), the Commission considered a number of personnel issues, had a litigation update from counsel, considered and granted an exemption from the revolving door

provision of Public Officers Law §73(8-b), and approved a settlement of a Substantial Basis Investigation. The Commission also approved a Substantial Basis Investigation Report and discussed several other investigative matters.

A motion was made by Commissioner Lavine, and seconded by Commissioner Weissman, to approve the Advisory Opinion on Campaign Solicitations by Elected Officials with the changes that were discussed during the public session. The motion was approved by unanimous vote.

IX. MOTION TO ADJOURN THE PUBLIC MEETING

A motion was made by Commissioner Covello, which was seconded by Commissioner Lavine, to adjourn the Public Meeting. The motion was approved by unanimous vote.