

**MINUTES OF THE PUBLIC SESSION OF THE
NOVEMBER 29, 2016
COMMISSION MEETING
OF THE JOINT COMMISSION ON PUBLIC ETHICS
HELD AT THE COMMISSION'S OFFICE LOCATED AT
540 BROADWAY
ALBANY, NEW YORK**

Acting Chair: Michael K. Rozen (ALB)

Members:

Marvin Jacob (Webex)
Seymour Knox, IV (ALB)
Hon. Eileen Koretz (NYC)
Gary J. Lavine (ALB)
J. Gerard McAuliffe, Jr. (ALB)
David A. Renzi (Webex)
Hon. Renee R. Roth (NYC)
Dawn L. Smalls (NYC)

Members

Absent: George H. Weissman

Staff:

Seth H. Agata, Executive Director
Monica J. Stamm, General Counsel
Stephen J. Boland, Director of Administration
Martin L. Levine, Director of Lobbying and Senior Counsel
Walter J. McClure, Director of Communications and Public Information Officer
Pei Pei Cheng-deCastro, Director of Investigations and Enforcement
Emily A. Logue, Deputy Director of Investigations and Enforcement
Patrick E. Coultry, Chief Investigator
Terence Mulderrig, Senior Investigator
Peter J. Smith, Investigator
Erin R. Lynch, Associate Counsel
Stephanie Blattmachr, Associate Counsel
Carol C. Quinn, Deputy Director of Lobbying Guidance
Michael Sande, Deputy Director of Ethics Guidance
Leah Ramos, Deputy Director of Financial Disclosure Compliance
Lori Donadio, Investigative Analyst
Deborah Novak, Secretary to the Commission

I. CALL TO ORDER

Acting Chair Rozen called the November 29, 2016 Commission Meeting to order and thanked Daniel Horwitz for his tenure as Chair, and his fantastic representation of the State and the Commission.

II. APPROVAL OF MINUTES – PUBLIC SESSION

October 26, 2016

A motion was made by Commissioner Knox, seconded by Commissioner Koretz, to approve the Minutes from the Public Session of the October 26, 2016 Commission Meeting. The motion was approved by unanimous vote.

III. REPORT FROM STAFF

Update on Outreach Activities

Executive Director Seth Agata reported that staff has been working with New York Law School and Center for New York City Law, on two projects: a volume on New York's ethics and lobbying laws to be submitted for publication in the fall and a CLE program that will be conducted in conjunction with New York Law School on Lobbying and Ethics in New York. Staff conducted an Ethics Officer Forum with over 50 people in attendance from various state agencies. The latest edition of the newsletter will be published by the end of the year.

2017 Legislative Initiatives

Executive Director Agata stated that staff is preparing legislative initiatives for the Commission's consideration at the January 2017 meeting. Some proposals address gaps or issues that have arisen since the passage of the Lobbying Act, and subsequent amendments, as well as §94 of the Executive Law which created the Commission. Staff is preparing to have the laws drafted for the January meeting with explanations so that the Commission can consider the proposals and can have a more public legislative agenda. Staff suggests that the legislative proposals be posted on the website.

In the matter of Tracy R. Kinn – NYS Division of Veterans’ Affairs

General Counsel Stamm reported that the matter of Tracy Kinn proceeded under the old adjudicatory regulations, in effect before the amendment of Executive Law §94 this summer. Because it fell under the old regulations, the hearing was conducted publicly in Buffalo on November 9th and 10th before an independent Hearing Officer, Judge Pratt, who was randomly selected. At the conclusion of the Hearing, Judge Pratt requested briefs from the parties. The briefing schedule has not been set, but it is anticipated that the briefs will be submitted to Judge Pratt sometime in January 2017. After Judge Pratt issues a “Report and Recommendation” to the Commission, the Commission will consider its findings and determine whether or not penalties are appropriate.

IV. REGULATIONS

Update on Staff Draft of Comprehensive Lobbying Regulations

Executive Director Agata stated that a public hearing is scheduled on December 7th at 90 Church Street, with several Commissioners attending. Briefing materials are being prepared for the Commissioners. The Commission has received comments on the draft regulations, and testimony will be taken. Written testimony is due on Monday, December 5th. A conference call is being scheduled for all Commissioners participating at the hearing.

Emergency Source of Funding Regulations

Executive Director Agata explained that after the most recent changes to the Lobbying Act and the Source of Funding provisions, the Commission promulgated emergency regulations. Those regulations are before the Commission today as a revised draft after taking the public comments into consideration. If the Commission approves this draft, it would be a second emergency promulgation of the regulations, and would also commence the permanent adoption process. It will ensure that regulations are in place by the January 15, 2017 filing deadline.

General Counsel Stamm reminded the Commission that if the proposed changes are adopted it would constitute a substantial change and another public comment period will

be necessary to complete the rulemaking for the permanent regulations. The permanent regulations would then be brought back to the Commission before finalizing. The Commission would be proceeding on two tracks, emergency regulations and continuing the rulemaking process on the permanent regulations.

Director of Lobbying and Senior Counsel Martin Levine stated the comments generally focused on three issues: (1) the extent of the “look back” period for reporting contributions; (2) how membership dues should be disclosed; and (3) the effect of the statute’s “in kind” provision for 501(c)(4) organizations.

Finally, a number of comments raised issues that either challenged the permissibility of source of funding, or portions of the Commission’s existing regulations that the Commission first addressed in 2012. This rulemaking is solely implementing the new statute. Other changes can be made during the comprehensive regulation rulemaking period.

Commissioner Lavine asked about the Attorney General’s regulations for disclosure by 501(c)(3) corporations. Director Levine stated that the Commission has been in contact with the Attorney General, and understands that office is currently promulgating their regulations. Commissioner Lavine asked what, if any, impact will it have on the Commission if the AG grants an exemption. Director Levine explained that JCOPE has no authority over the exemptions for 501(c)(3)s, but if the AG does not foreclose disclosure, the information will be submitted to JCOPE for placement on its website.

Commissioner Lavine asked about the exemption process under the Commission’s source of funding regulations and confirmed that while the Commission makes the final determination for 501(c)(4) organizations seeking a blanket exemption, the statute provides an appeal to an independent hearing officer for individual sources who seek an exemption. These appeals are covered in the new adjudicatory regulations, and the hearing officer is randomly selected. The Commission retains a consultant who makes

the random selection. Commissioner Lavine suggested that one of the legislative initiatives should be to give the Commission final say in individual exemptions.

Commissioner Roth raised concerns about membership dues and asked if the statute excludes membership dues from disclosure, how can the identity of the payer of the dues be disclosed. General Counsel Stamm explained that the statute reads in 1-(h)(4), “*amounts received* from each identified source of funding shall not be required to be disclosed if such amounts constitute membership dues, fees or assessments charged by the reporting entity to enable an individual entity be a member of the reporting entity. [emphasis added]” The plain language of the law states that dollar amounts do not have to be disclosed, but it is a question of statutory interpretation for the Commission whether or not the identity of the source should be disclosed. Executive Director Agata explained that a possible rationale is to protect the dues structures of these organizations while still providing the information to the public about who are the sources of funding. Commissioner Smalls asked several questions about this provision to illustrate by example how it would work. Commissioner Jacob acknowledged that the Legislature may have found that identifying the source to be more important than the amount of the contribution. Executive Director Agata stated that staff has and will continue to publish FAQs to further outline the filing requirements.

Commissioner Smalls raised concerns regarding the look-back and applying the new reporting requirements in July of 2016, before the new legislation was effective, and whether it was possible to only apply the new reporting requirements after September 23, 2016. Director Levine explained that the regulation was drafted to give affect to the legislative intent for the law to be effective within 30 days of signing. The law became effective on September 23 and the next filing date is January 15, 2017, which covers July 1 to Dec 31, 2016. Executive Director Agata explained that in the past the Legislature expressly provided for a delay in the effective date, but elected not to do that here. Discussions were held among several Commissioners wherein it was agreed that the

threshold period should be bifurcated, having the old rules apply from the period of July 1, 2016 through September 22, 2016 and the new rules apply to contributions starting on September 23, 2016.

A motion was made by Commissioner Roth, seconded by Commissioner Jacob, to have new Source of Funding standards effective on September 23, 2016. The vote on the motion was 8-1. Commissioners Jacob, Knox, Koretz, Lavine, McAuliffe, Renzi, Roth and Smalls voted in favor of the motion. Acting Chair Rozen opposed the motion. The motion carried.

A motion was made by Commissioner Jacob, seconded by Commissioner Smalls, to adopt the regulations on an emergency basis and proceed with rulemaking with these changes which will be subject to another comment period. The vote on the motion was 8-0-1. Acting Chair Rozen and Commissioners Jacob, Knox, Koretz, Lavine, McAuliffe, Renzi and Smalls voted in favor of the motion. Commissioner Roth abstained from voting. The motion carried.

Emergency Adjudicatory Proceedings and Appeals Procedures Regulations

General Counsel Stamm reported that the Commission received minimal comments and staff is suggesting non-material changes, so no additional comment period is necessary.

A motion was made by Commissioner Roth, seconded by Commissioner Koretz, to adopt Adjudicatory Proceedings and Appeals Procedures Regulations, as amended, on an emergency and permanent basis. The motion was approved by unanimous vote.

Exemption from Publicly Disclosing Client Name in Financial Disclosure Statements Regulations

Executive Director Agata stated that the topic “Exemption from Publicly Disclosing Client Name in Financial Disclosure Statements Regulations” will be on the agenda on December 20, 2016. The client disclosure statutory provisions apply to clients of filers in the year 2016.

One question for the Commission is, if a party applies to JCOPE for an exemption, what proceeding and standards will govern that application. To date, JCOPE has not received any applications for exemptions. OCA has promulgated regulations governing their process and has advised that it has received about 50 applications statewide.

A second question for the Commission's consideration is, if an exemption is granted, what, if anything, is disclosed on the Financial Disclosure Statement. Three options were identified.

- Discussions have been held with the Legislative Ethics Commission. It has not issued any formal guidance, but on an *ad-hoc* basis, LEC is advising its filers that they do not need to disclose any information on the Financial Disclosure Form if an exemption is granted. The LEC believes that practice is consistent with current practice for other exemptions and the other carve-outs for not disclosing clients. Thus, following the LEC's practice is one option for the Commission to consider.
- Second, the statute provides that a filer can seek an "exemption to publicly disclosing the name of that client". Another option which is included in the current version of the draft regulations is that the client's name does not need to be disclosed, but the nature of the action and the monies received should be reported.
- Finally, the last option is listing on the form that an individual has applied to OCA or JCOPE for an exemption, and the exemption was granted. This option will provide the public with more information.

These questions can be addressed in regulations or as guidance. There is a concern that there could be a divergence between how the LEC filers file and how other filers respond. This matter will be placed on the December agenda for further discussion.

Some Commissioners raised concerns that if OCA does not require the information to be disclosed, it presents problems for JCOPE in conducting random audits. In addition, OCA does not have authority to interpret and enforce the Public Officers Law. Commissioner Roth suggested that one reason OCA has received so many applications is because it will not disclose any information on the FDS forms if it grants an exemption application. Executive Director Agata explained that OCA did not address JCOPE's role in their regulations, but deferred to JCOPE as to what needs to be reported in a FDS. JCOPE regulations track, for the most part, the OCA application process.

V. NEW AND OTHER BUSINESS

PROPOSED MEETING SCHEDULE – JANUARY THROUGH JUNE 2017

Acting Chair Rozen explained that the January through June 2017 meeting schedule, as attached, is final.

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

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

VII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

Acting Chair Rozen announced that, during the Executive Session, pursuant to Executive Law §94(19)(b), the Commission approved a settlement agreement, closed two investigations and authorized a guidance letter in another matter. The Commission commenced investigations into several related matters, authorized communications in some investigative matters, received updates from staff and discussed other investigative matters.

VIII. MOTION TO ADJOURN THE PUBLIC MEETING

A motion was made by Commissioner Knox, seconded by Commissioner Lavine, to adjourn the Public Meeting. The motion was approved by unanimous vote of Acting Chair Rozen, and Commissioners Jacob, Knox, Koretz, Lavine, McAuliffe, Roth and Smalls.