

**MINUTES OF THE PUBLIC SESSION OF THE  
APRIL 25, 2017  
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 (Webex)

**Members:**

Robert Cohen (NYC)  
Marvin Jacob (Webex)  
Seymour Knox, IV (ALB)  
Hon. Eileen Koretz (NYC)  
Gary J. Lavine (Webex)  
J. Gerard McAuliffe, Jr. (ALB)  
David A. Renzi (Webex)  
Hon. Renee R. Roth (NYC)  
Dawn L. Smalls (NYC)  
George H. Weissman (ALB)  
Hon. Penny M. Wolfgang (NYC)

**Members**

**Absent:** None

**Staff:**

Seth H. Agata, Executive Director  
Monica J. Stamm, General Counsel  
Martin L. Levine, Deputy General Counsel  
Stephen J. Boland, Director of Administration  
Keith C. St. John, Director of Ethics  
Andrew Bechard, Director of Lobbying  
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  
Peter J. Smith, Investigator  
Michael Sande, Deputy Director of Ethics Guidance  
Leah Ramos, Deputy Director of FDS  
Carol C. Quinn, Deputy Director of Lobbying Guidance  
Meghann Hennigan, Deputy Director of Education  
Stephanie Blattmachr, Associate Counsel  
Erin R. Lynch, Associate Counsel  
Lori Donadio, Principal Investigative Analyst  
Deborah Novak, Secretary to the Commission

**I. CALL TO ORDER**

Acting Chair Michael Rozen called the April 25, 2017 Commission Meeting to order.

**II. APPROVAL OF MINUTES – PUBLIC SESSION**

**March 21, 2017**

A motion was made by Commissioner Weissman, seconded by Commissioner Knox, to approve the Minutes from the Public Session of the March 21, 2017 Commission Meeting. The motion was approved by unanimous vote.

**III. REPORT FROM STAFF**

**Hiring Update**

Executive Director Seth Agata introduced the new Director of Lobbying, Andrew Bechard.

**Update on Outreach Activities**

Deputy Director of Education, Meghan Hennigan explained that on April 11, 2017 she and Deputy Director of Investigations, Emily Logue, met with 200 Department of Corrections Investigators to review the Public Officers Law and JCOPE'S Investigative and Enforcement process. Many of the attendees were not financial disclosure filers, so it was a good opportunity to reach a broader audience. Excellent feedback was received and participants noted that they would be referring matters to JCOPE.

Upcoming events include a CLE program to be conducted on May 10 with Public Service Commission employees during their Ethics and Compliance Week. In addition, later this week, staff is holding an ethics officers forum; currently there are 85 ethics officers signed up to participate live and *via* WebEx. The Unit continues to work on preparing guidance documents, including ethics reminders, newsletters and other materials.

### **Update on Annual Report**

General Counsel, Monica Stamm explained that staff is working on finalizing the lobbying data for the annual report. As soon as it is ready, it will be circulated to the Commission and made available to the public.

### **End of Year Financial Report**

Director of Administration Stephen Boland reported that for the 4<sup>th</sup> quarter of the fiscal year, January 1, 2017 to March 31, 2017, a transfer of \$100,000 was made from personal service to non-personal service to fund some unforeseen needs. The 4<sup>th</sup> quarter expenditures for personal service were just over \$907,000 for a total of \$3,808,000, or 88% of the adjusted budget. The Commission spent just over \$293,000 on non-personal services, made up of \$19,000 for supplies; \$6,000 for equipment; \$1,000 for travel and \$266,000 for contractual services (primarily for litigation costs) for a total of \$1,068,000 or 88% of the budget. Total costs for the year were \$4,876,000 or 88.2% of the budget. For the fiscal year 2017-18, it was enacted into law that JCOPE will receive the same budget as last year.

## **IV. REGULATIONS**

### **Staff Draft of Comprehensive Lobbying Regulations**

Deputy General Counsel Martin Levine gave a presentation on the draft Comprehensive Lobbying Regulations. Specifically, Deputy General Counsel Levine covered procurement lobbying and reportable lobbying activity under the regulations. During the presentation on coalitions, Commissioner Jacob asked what the statutory basis is for the Commission to promulgate rules relating to coalitions in lobbying. Deputy General Counsel Levine explained that the statute defines a lobbyist and a client, but when parties come together to engage a lobbyist, the parties are the client, and these regulations give a name to that arrangement, so that the client is clearly defined, and it also ensures that such reporting activity is disclosed. This practice does not change or add to the statute; it is an explanation of the way a client might be formed, and how it should be disclosed. Executive Director Agata stated that one of the specific lobbying

related powers of the Commission is to administer and enforce the provisions of the Lobbying Act. That provision is part of the administrative process and it is up to the Commission to interpret what a client is, and to give the parties notice as to how the Commission will interpret that term.

Commissioner Jacob asked if all members of a coalition report separately on their spending or their sources. Deputy General Counsel Levine responded that once a coalition is formed, it has two filing options: 1) file either as “the” coalition; or 2) each group that spends money for the coalition’s effort can report it under its own filing. This practice is consistent with the Lobbying Commission’s precedent in an Advisory Opinion. General Counsel Stamm added that the Commission is developing the regulatory position on coalitions in response to questions that have come up from the regulated community over the last five years.

Commissioner Jacob stated that the information should be in one place instead of having to go to different filings to determine the information. Deputy General Counsel Levine agreed, and stated that it would be addressed in the revised draft of the regulations. Deputy General Counsel Levine also clarified that the regulations state that labor organizations, trade associations, or organizations formed under §§ 501(c)(5) or (6), are not a coalition for purposes of lobbying.

**APPLICATION FOR EXEMPTION FROM SOURCE OF FUNDING DISCLOSURE REQUIREMENTS**

**New York Civil Liberties Union (NYCLU)**

General Counsel Stamm explained that NYCLU’s application for an exemption from disclosing its Sources of Funding is before the Commission to vote to approve or deny. In accordance with the Commission’s regulations, if the application is denied, the Commission must inform the applicant in writing which shall include a statement of the Commission’s findings and conclusions and the reasons for the denial. Accordingly, it is important during the discussion, that Commissioners state the basis for their positions to create a record to support the

Commissioner's decision. Commissioner McAuliffe stated that it is his understanding that pursuant to the Lobbying Act and the Regulations, that when reviewing an application for exemption, the Commission must consider specific evidence of past or present harm, the severity and the number of incidents, and the duration of the harm, the pattern of threats of manifestation of public hostility to the source, the evidence of harm, threats, harassment or reprisals directed against an organization or persons holding views similar to the filer, and must consider the impact of disclosure on the ability of the source or client filer to maintain ordinary business operations and the extent of resulting economic harm.

Commissioner Smalls added that the factors that Commissioner McAuliffe listed are nonexclusive and believes it is important to note that the regulations refer to organizations that operate in the area of civil rights and civil liberties. Specifically, the legislative history explains that exemptions for organizations whose primary activity concern "civil rights and civil liberties" were in place to include organizations whose primary activities focus on the question of abortion rights, family planning and a number of others.

Commissioner Renzi questioned if the Commission defined "substantial likelihood". His position, particularly when considering a substantial likelihood in the context of an application for a blanket exemption, is that an applicant must satisfy a very high standard where the applicant must allege specific, demonstrative facts as to actual harm to a donor. Commissioner Cohen disagreed and stated that the statute unequivocally does not require a substantial likelihood of harm to a specific donor or the client filer itself. He also noted that Judge Pratt's prior determination in 2014 stated that because disclosure of donors had not previously been required, an applicant would most likely be unable to present evidence of actual harm etc., to its donors because donors' identities had not been previously disclosed, such harm would simply not have occurred. Judge Pratt, in an earlier decision, went on to say that in the matter before him, it was clear that

the appellants (NYCLU) provided specific evidence of many and severe incidents that satisfied the requirement of Parts 1, 2, 3 and 4 of §938.4.

Commissioner Renzi disagreed, asking what specific evidence has been presented, stating that the Commission needs, as was previously outlined by Commissioner McAuliffe, specific examples of harm. Judge Wolfgang added that substantial likelihood is a term that is found in the law in many places. Substantial likelihood does not require that some event has already happened; it is a likelihood that it is going to happen. Asking for proof that it already happened – that somebody has already been injured or harmed beforehand – is not consistent with the legislative intent of the term substantial likelihood.

Commissioner Weissman stated that he believes it is critical that the Commission look at what the NYCLU actually provided in its current application. He noted that in looking at that record, the bottom line analysis is that the application doesn't meet any evidentiary standard. Without meeting any possible evidentiary standard, he does not see how the Commission could grant the blanket exemption.

A motion was made by Commissioner Roth, seconded by Commissioner Cohen, to approve the application for exemption from source of funding disclosure requirements to New York Civil Liberties Union. The vote was 5/7: Commissioners Cohen, Koretz, Roth, Smalls and Wolfgang voted in favor of the motion; and Chair Rozen and Commissioners Jacob, Knox, Lavine, McAuliffe, Renzi and Weissman were opposed. The motion did not carry.

V. **NEW AND OTHER BUSINESS**

**May Commission Meeting**

Executive Director Agata explained that the May Commission meeting will be hosted in New York City. If Commissioners prefer to attend in Albany they can do so. The May meeting will be held at the Public Service Commission hearing room and will be open to the public and press.

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

A motion was made by Commissioner McAuliffe, seconded by Commissioner Smalls, 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**

Commissioner Weissman announced that, during the Executive Session, pursuant to Executive Law §94(19)(b), the Commission approved a settlement agreement, commenced a Substantial Basis Investigation, authorized several investigative steps, discussed several pending investigative matters and discussed some litigation matters. The next meeting is May 23, 2017 at the PSC hearing room, located at 90 Church Street.

**VIII. MOTION TO ADJOURN THE PUBLIC MEETING**

A motion was made by Commissioner McAuliffe, seconded by Commissioner Roth, to adjourn the Public Meeting. The motion was approved by unanimous vote of Commissioners Cohen, Jacob, Knox, Koretz, Lavine, McAuliffe, Roth, Smalls, Weissman and Wolfgang. Chair Rozen and Commissioner Renzi were not present for the motion.