

**MINUTES OF THE PUBLIC SESSION OF THE
JANUARY 28, 2014
COMMISSION MEETING
OF THE JOINT COMMISSION ON PUBLIC ETHICS
HELD AT THE COMMISSION'S OFFICE LOCATED AT
540 BROADWAY
ALBANY, NEW YORK**

Present:

Chair: Daniel J. Horwitz

Members:

Paul Casteleiro
Hon. Joseph Covello
Mitra Hormozi (*via* Teleconferencing in NYC)
Marvin E. Jacob (*via* Skype)
Seymour Knox, IV (*via* Teleconferencing in BUF)
Gary J. Lavine
Hon. Mary Lou Rath (*via* Telephone)
David A. Renzi (*via* Skype)
Hon. Renee R. Roth (*via* Teleconferencing in NYC)
George H. Weissman

Members

Absent:

David Arroyo
LaShann DeArcy

Staff:

Letizia Tagliafierro, Executive Director
Monica J. Stamm, Chief of Staff and Deputy Counsel
Robert Cohen, Special Counsel and Director of Ethics and Lobbying
Compliance
Martin L. Levine, Director of Audit and Review and Senior Counsel
John T. Milgrim, Director for External Affairs
Jeannine Clemente, Director of Administration
Shari Calnero, Senior Counsel and Manager of Training
Louis Manuta, Associate Counsel
Deborah Novak, Executive Assistant
Patrick E. Coultry, Chief Investigator
Jack Patterson, Confidential Investigator

I. CALL TO ORDER

Chair Horwitz opened the Public Session, thanked Commissioners Ellen Yaroshefsky and Commissioner Vincent DeIorio for their service, and welcomed new Commissioner Paul Casteleiro.

II. MINUTES - PUBLIC SESSION – DECEMBER 30, 2013

Upon motion made by Commissioner Weissman, which was seconded by Commissioner Covello, the Minutes from the Public Session of December 30, 2013 Commission Meeting, were approved by unanimous vote.

III. REPORT FROM EXECUTIVE DIRECTOR

Training Update

Executive Director Letizia Tagliafierro discussed that training and education continues to be one of JCOPE’s highest priorities, and the agency is committed to expanding its training and outreach program. Executive Director Tagliafierro highlighted a few new initiatives, including a roll out of guidance materials and training in connection with the gift regulations, once finalized, and the first lobbying training on ethics. Manager of Training and Senior Counsel Shari Calnero reported on the development of the on-line ethics orientation which new FDS filers are required to complete within 3 months of becoming an FDS filer. Utilizing new e-learning software, JCOPE’s training unit is finalizing this course, which will be available to State officers and employees through the Governor’s Office of Employee Relations Statewide Learning Management System (“SLMS”). The SLMS program includes the ability to track compliance with training requirements. JCOPE anticipates that the new training will be available through SLMS in March.

Third Quarter Financial Report

Director of Administration Jeannine Clemente reported that, as of the end of the third quarter of the 2013/14 fiscal year, JCOPE has spent \$2,665,000, which is 61% of its cash allocation for personal services and 51% of its cash for non-personal services.

Meeting Schedule

Commissioner Jacob discussed the meeting schedule for 2014 and suggested that it be posted on JCOPE's website so that the public has notice of the planned meetings and any schedule changes, as took place in the fall. Chair Horwitz agreed that the schedule could be posted on the website to provide more notice to the public, and clarified that despite the scheduling changes in the fall, the Commission held 11 meetings in 2013, which is more than is statutorily required.

A motion was made by Commissioner Jacob, which was seconded by Commissioner Renzi, to post the proposed meeting schedule through June 2014 on JCOPE's website. The motion was approved by a unanimous vote.

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

Chair Horwitz called for a motion to enter into Executive Session. A reporter from Newsday asked about the grounds for entering Executive Session under the Open Meetings Law. Chair Horwitz advised that JCOPE is not subject to the Open Meetings Law, and in accordance with the Commission's meeting guidelines, the Commission will enter into Executive Session to discuss matters deemed confidential under the Commission's rules, regulations, and statutes.

A motion to enter into Executive Session pursuant to Executive Law §94(19)(b) to discuss confidential matters was made by Commissioner Covello and seconded by Commissioner Hormozi. The motion was approved unanimous vote.

V. PUBLIC ANNOUNCEMENT OF ACTIONS FROM FIRST EXECUTIVE SESSION

Chair Horwitz announced that, during the Executive Session, the Commission granted two applications and denied one application for waivers from the Revolving Door provisions pursuant to Public Officers Law §73(8-b). Also, pursuant to JCOPE's source of funding regulations, the Commission determined to redact personally

identifiable information from three applications for exemptions from the source of funding requirements.

Commissioner Knox was not present for the remainder of the meeting.

VI. APPLICATIONS FOR EXEMPTION FROM SOURCE OF FUNDING DISCLOSURE REQUIREMENTS

Special Counsel and Director of Ethics and Lobbying Compliance Robert Cohen provided a PowerPoint presentation on the legal requirements for an exemption from the source of funding disclosure requirements pursuant to the Lobbying Act and the regulations adopted by the Commission after an extensive public comment process. The statute provides that the exemption is available upon a showing of a substantial likelihood that the application of the disclosure requirement would lead to harm, threats, harassment or reprisals to a source of funding or to individuals or property affiliated with the source, including, but not limited to, the area of civil rights and civil liberties. The regulations provide a non-exclusive list of factors for the Commission to consider in determining whether the evidentiary standard is met.

Commissioner Renzi stated that the statute limits the availability of the exemption to those organizations which establish a substantial likelihood that its sources will suffer harm, threats, harassment or reprisals. Commissioner Renzi added that an exemption should only be granted under exigent circumstances, when the harm to a disclosed source is imminent, not speculative, because an exemption creates the ability of a special interest to hide assets, resources, and fundraising abilities. Director Cohen explained that the source of funding requirements in the Lobbying Act are the first to require disclosure of sources' identities, so the regulations were drafted in anticipation of indirect evidence of harm through evidence relating to individuals or entities other than the sources themselves. Commissioner Renzi stated that with respect to at least one application, the primary evidence relates only to employees of the organization, which is not sufficient to satisfy the applicable legal standard. Commissioner Casteleiro stated that, in his view, such information is fairly strong

circumstantial evidence that others with the same views will be subject to similar threats and harm. Chair Horwitz discussed that the statute tilts heavily in favor of disclosure and that the regulations represent the Commission's efforts to balance the competing concerns articulated by Commissioners Renzi and Casteleiro. Chair Horwitz added that the Commission may consider additional amendments to the source of funding regulations at the next meeting.

Application from Family Planning Advocates of NYS

Chair Horwitz presented the first application for exemption, which is from Family Planning Advocates of New York State and opened the matter up for discussion. The Chair, then, called for a motion.

A motion was made by Commissioner Roth to grant an exemption for Family Planning Advocates from the source of funding disclosure requirements. There was a discussion about the proposed time period for the exemption. Chief of Staff and Deputy Counsel Monica Stamm stated that the source of funding disclosures are part of the client semi annual report which is filed on January 15th and July 15th of each year. Therefore, based on prior discussions of the Commission, these pending applications cover, at a minimum, the July through December 2012 period, the January through June 2013 period, and the July through December 2013 period.

Commissioner Roth amended her motion to propose an exemption for three years. Commissioner Casteleiro seconded the motion. Commissioners Casteleiro, Jacob, and Roth voted in favor of the motion. Commissioners Covello, Hormozi, Horwitz, Lavine, Renzi, and Weissman did not vote in favor of the motion. The motion did not carry, and the exemption was not granted.

Chair Horwitz discussed that the regulations require that, when an application is denied, the Commission provide a written explanation for the grounds of the denial.

The regulations also provide a time period of 15 days for an applicant to notice an appeal. It is the Commission's view, that the 15-day time period will not start to run until such time that the Commission issues its written decision.

A motion was made by Commission Jacob, which was seconded by Commissioner Casteleiro, to grant an exemption to Family Planning Advocates for three filing periods, until the filing due on July 15, 2014. Commissioner Casteleiro, Jacob, and Roth voted in favor of the motion. Commissioners Covello, Hormozi, Horwitz, Lavine, Renzi, and Weissman did not vote in favor of the motion. The motion did not carry, and the exemption was not granted.

Application from the New York Women's Equality Coalition

Chair Horwitz presented the application for exemption from the New York Women's Equality Coalition and opened the matter up for discussion. The Chair, then, called for a motion.

A motion was made by Commissioner Casteleiro, which was seconded by Commissioner Jacob, to grant an exemption for New York Women's Equality Coalition from the Source of Funding requirements for three filing periods, until the filing due on July 15, 2014. Commissioners Casteleiro, Jacob and Roth voted in favor of the motion. Commissioners Covello, Hormozi, Horwitz, Lavine, Renzi, and Weissman did not vote in favor of the motion. The motion did not carry, and the exemption was not granted.

Application from New Yorkers for Constitutional Freedoms

Chair Horwitz presented the application for exemption from New Yorkers for Constitutional Freedoms and opened the matter up for discussion. The Chair, then, called, for a motion. No motion was made, and the exemption was not granted.

Application from New York Civil Liberties Union

Chair Horwitz presented the application for exemption from the New York Civil Liberties Union (“NYCLU”) and opened the matter up for discussion. The Chair, then, called for a motion.

Commissioner Casteleiro discussed that the NYCLU presented a compelling case, showing threats not only to individuals who have worked for the ACLU, but threats in New York and throughout the country, for a consistent period of time. Commissioner Casteleiro stated that the NYCLU, which clearly is an organization concerned with civil liberties and civil rights, has shown in its submissions, that there is a substantial likelihood that harm would come to some of its sources of funding, based upon the threats that have been leveled against it over the years, and urged the Commission to grant this exemption.

A motion was made by Commissioner Casteleiro, which was seconded by Commissioner Roth, to grant an exemption for New York Civil Liberties Union from the Source of Funding requirements for three filing periods, until the filing due on July 15, 2014. Commissioners Casteleiro, Jacob and Roth voted in favor of the motion. Commissioners Covello, Hormozi, Horwitz, Lavine, Renzi, and Weissman did not vote in favor of the motion. The motion did not carry, and the exemption was not granted.

There was further discussion about the written denial. Commissioners Roth and Casteleiro discussed that no Commissioners had stated a specific basis for the denial of the exemption applications. Commissioner Renzi stated that at the beginning of the discussion he expressed his view that none of the applicants had met their statutory burden. Chair Horwitz stated that, as the Commission had discussed previously, staff will prepare drafts for the Commission’s consideration.

Commissioners Roth and Jacob discussed that Commissioners who have a different view should have an opportunity to write why they believe there was sufficient evidence to satisfy the legal standard. Chair Horwitz invited Commissioners to submit suggestions to the staff.

Chair Horwitz made the following statement:

On June 25, 2013, the Joint Commission granted NARAL-New York's application for exemption from the Source of Funding disclosure requirements. That exemption was granted for a period running through 2016.

Since that time, significant amendments have been made to the regulations, including provisions increasing the transparency of the process as well as a revision to the threshold standard adhering to the statutory language.

Recently, at the direction of the Commission, the Commission staff and NARAL representatives engaged in discussions regarding the exemption. Both the Commission and NARAL New York now agree to revise the exemption granted in order to be consistent with the standards, practices and procedures that will apply to all applicants.

That being the case, NARAL New York's exemption granted in June will now remain in effect until the filing date on July 15, 2014. For that filing, NARAL will have the opportunity to submit a new application for exemption pursuant to the revised regulations.

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

A motion to enter into Executive Session pursuant to Executive Law §94(19)(b) to discuss certain investigative matters and other confidential matters was made by Commissioner Lavine and seconded by Commissioner Hormozi. The motion was approved unanimous vote.

VIII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

Commissioners Weissman and Roth were not present for the remainder of the meeting.

Chair Horwitz reported that during the Executive Session, the Commission discussed several investigative matters, including authorization of further action in some matters and approving one settlement agreement.

IX. MOTION TO ADJOURN THE PUBLIC MEETING

Upon motion made by Commissioner Covello, seconded by Commissioner Lavine, which was approved by unanimous vote of those Commissioners present, the meeting was adjourned.