

**MINUTES OF THE PUBLIC SESSION OF THE  
NOVEMBER 28, 2017  
COMMISSION MEETING  
OF THE JOINT COMMISSION ON PUBLIC ETHICS  
HELD AT  
540 BROADWAY  
ALBANY, NEW YORK**

**Acting Chair:** Michael K. Rozen (NYC)

**Members:** James E. Dering (ALB)  
Marvin Jacob (Webex)  
Seymour Knox, IV (ALB)  
Gary J. Lavine (ALB)  
J. Gerard McAuliffe, Jr. (ALB)  
Barry C. Sample (ALB)  
Dawn L. Smalls (NYC)  
George H. Weissman (ALB)  
James A. Yates (NYC)

**Members**

**Absent:** Robert Cohen

**Staff:**

Seth H. Agata, Executive Director  
Monica J. Stamm, General Counsel  
Martin L. Levine, Deputy General Counsel  
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  
Carol Quinn, Deputy Director of Lobbying Guidance  
Stephanie Blattmachr, Deputy Director, FDS Compliance  
Meghann Hennigan-Cohen, Deputy Director of Education  
Michael Sande, Deputy Director of Guidance  
Erin Lynch, Associate Counsel  
Patrick E. Coultry, Chief Investigator  
Peter J. Smith, Investigator  
Richard Coraggio, Investigator  
Lori Donadio, Principal Investigative Analyst  
Katherine Santandrea, Secretary to the Commission

**I. CALL TO ORDER**

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

**October 31, 2017**

A motion was made by Commissioner Weissman, seconded by Commissioner McAuliffe, to approve the minutes from the Public Session of the October 31, 2017 Commission Meeting. The motion was approved by unanimous vote.

**III. REPORT FROM STAFF**

**Update on Outreach Activities**

Executive Director Agata stated that the Commission continues to offer regular ethics trainings to satisfy the mandatory requirements for FDS filers. The Commission's Directors of Lobbying and Ethics are attending the annual COGEL conference in December. Additional outreach will be done in January to the City Bar Association by Executive Director Agata, regarding various ethics related issues. Also, both Executive Director Agata and General Counsel Stamm are going to NYU Law School to speak to faculty and scholars to discuss the Commission and Ethics issues. A fall/winter newsletter and Ethics Reminders will both be coming out shortly.

**Update on New York City and Albany Leases**

General Counsel Stamm explained that the Commission's leases are expiring in both the Albany and New York City offices. Staff is working with OGS, which is negotiating with the current Albany and New York City landlords, as well as considering other options. It was stressed to OGS that the Albany location needs to stay downtown, with a storefront entrance and a Hearing Room.

#### IV. **REGULATIONS**

##### **Statement by Acting Chair Rozen**

Acting Chair Rozen read the following statement into the record:

Apparently, there is some confusion about the status of the Commission's lobbying regulations which currently are under consideration. The Commission is in the middle of a rulemaking to develop and adopt regulations which will have the force and effect of law. The Commission has the authority to issue these regulations and is the sole entity charged by law in New York with administering and enforcing the Lobbying Act. The Commission has implemented this rulemaking process to inform lobbyists, their clients and the public how the Commission will interpret and enforce the Lobbying Act. Failure to follow the regulations, which detail how the Commission interprets and applies the law, will constitute a violation of the Lobbying Act and the Regulations. Violations of the Lobbying Act and the applicable Regulations thereunder will result in the imposition of penalties as provided by law. The Commission will pursue such violations to the full extent permissible under the law.

These regulations are the product of a transparent and collaborative process. The Commission has solicited input from the public at every step of the way and will continue to do so. The Commission's goal is to provide a comprehensive and straight forward set of rules for the regulated community to follow in order to understand and comply with the requirements of the Lobbying Act.

##### **Update on Proposed Comprehensive Lobbying Regulations**

Executive Director Agata explained that there are a number of substantive issues that were raised in comments and testimony received regarding the Comprehensive Lobbying Regulations. Staff is in the process of digesting and making proposals for the Commission's consideration. Four of the larger issues that staff will be presenting today are: Reportable Business Relationships, Commission Salespersons, Social Media and the Reporting Requirements of Coalitions. Staff will present on the remaining issues at the December meeting.

Director of Lobbying Andrew Bechard explained that based on comments received and further analysis, staff is suggesting revisions to the Reportable Business Relationships (RBR) sections to clarify when a client organization should disclose reportable business relationships related to its high-level members. The regulations define who may be a high-level member of a client organization and situations in which the client filer should be disclosing reportable business relationships. High-Level Member is defined to mean all proprietors, partners, directors, trustees or persons within the executive management of a client organization. The regulations prescribe that an organization should disclose any RBR between a state person and a high-level member, personally, or an entity that entered into an RBR at the direction or request of the high-level member.

The Lobbying Act provides the activities of Commission Salespersons related to government procurements are excluded from the definition of lobbying. Based on comments received, staff proposes revising the regulations addressing Commission Salespersons for Procurement Lobbying to clarify that there is no mandatory annual compensation threshold percentage to qualify for the lobbying exception, and a person will qualify for the lobbying exception if they receive a sales commission on at least 50 percent of the number of sales the person has made.

The revisions address the concerns raised at the October hearing and further provide additional clarity and definition concerning the statutory language “all or a substantial part of the sales which such person has caused...”.

Commissioner McAuliffe agreed with the revisions, citing concerns about uncertainty associated with a threshold that is based on commissions as a percentage of total compensation.

Deputy Director of Lobbying Carol Quinn gave an update on Social Media provisions in Parts 943.6 and 943.7. As was discussed several months ago, the use of Social Media is now a part of many lobbying campaigns. Lobbyists/organizations can directly tweet a lobbying message to a Public Official (Direct Lobbying via Social Media) or they might

disseminate a lobbying message by using Facebook to post a message that calls upon the public to urge a Public Official not to pass a certain bill (Grassroots Lobbying via Social Media). All of this is lobbying activity that must be disclosed.

Based on comments received and further analysis, staff is suggesting revising the Social Media provisions in the Direct and Grassroots Lobbying sections of the regulations to clarify: when an employee must be identified as an Individual Lobbyist by an organization by virtue of the employee's personal Social Media activities; when an employee's personal Social Media activities are attributable to an organization; and how an organization should report expenses attributable to its Social Media activity.

The regulations will now more clearly state that the personal Social Media activities of employees are attributable to an organization and such person must be listed as an Individual Lobbyist of the organization, only if such activities are part of the person's job duties. Staff plans to add in examples to further illustrate this point. This clarification is carried through to reportable expenses as well: the regulations currently provide that reportable expenses related to Social Media may include consulting services, staff time allocated to planning and posting Social Media messages, and promotion and advertising costs. Staffs suggested revisions would similarly clarify that staff time allocated to planning and posting/sending Lobbying messages via Social Media would be attributable to the organization as a lobbying expense only if done as part of their job duties.

Turning to coalitions, the regulations currently provide that if a coalition expends or incurs more than \$5,000 in annual compensation and expenses related to lobbying, the coalition can either file as a coalition (naming a responsible party) and maintain an up-to-date list of coalition members who exceed \$5,000 in cumulative lobbying compensation and expenses; or each member who exceeds the \$5,000 threshold must file its own lobbying reports.

In the first case, a member's contribution to a coalition is not considered a lobbying expenditure for purposes of whether the member itself must register and file lobbying reports. In the second case, each member's contribution to the coalition counts toward

whether or not that member must file individually. Also, when filing individually, each member will have to identify the coalition in question.

Staff proposes to revise option 1 above to provide that a coalition that files as a coalition must disclose all paying members (not just those that exceed the \$5,000 threshold). This would address concerns that coalitions have no way of knowing how much its members each expend on other lobbying activities. This is consistent with the notion that the coalition acts as a contractual client for its member beneficial clients, thereby easing the reporting burden on members, but not eliminating the general requirement that all beneficial clients in lobbying arrangements be disclosed.

Commissioner Yates raised concerns that groups contributing small amounts to coalitions could be identified as beneficial clients, and thus be subject to the gift ban. Staff agreed to reconsider this issue before the next meeting.

General Counsel Monica Stamm noted that the Commission had previously discussed whether or not to include in the proposed amendments to the Source of Funding regulations a definition of “substantial likelihood” for purposes of exemptions from disclosing sources. If the Commission chooses to include such a definition, staff recommends that the term “substantial likelihood” should be defined to mean “reasonable probability”, so as to comport with federal First Amendment caselaw. The issue will be put before the Commission again at a future meeting.

**V. NEW AND OTHER BUSINESS**

None

**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**

Acting Chair Rozen announced that during Executive Session, pursuant to Executive Law 94(19)(b), the Commission discussed various litigation matters, approved an application for exemption pursuant to Public Officers Law section 73(8-b), approved a Substantial Basis Investigation & Settlement, discussed several investigative matters and authorized actions on investigative matters.

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

A motion was made by Commissioner Yates, seconded by Commissioner Smalls, to adjourn the Public Meeting. The motion was approved by unanimous vote.