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In the Matter of

UNITED UNIVERSITY PROFESSIONS,

Respondent

FOR ALLEGED VIOLATIONS OF LEGISLATIVE  
LAW §1-M.

**DECISION and**

**NOTICE OF CIVIL  
ASSESSMENT**

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The New York State Commission on Public Integrity (“Commission”), at its December 9, 2010 meeting, considered the Hearing Officer’s Findings of Fact and Recommendation (“Decision”) in the Matter of United University Professions (“UUP”), respondent, for alleged violations of Legislative Law §1-m. The Decision is incorporated herein by reference and made a part of this Decision and Notice of Civil Assessment.<sup>1</sup>

Based on the facts stipulated by the parties and for the reasons set forth in the Decision, the Commission affirms and adopts, in part, the Hearing Officer’s legal conclusions and the recommended civil penalty assessment.<sup>2</sup> Thus, the Commission finds that UUP knowingly and willfully violated Legislative Law §1-m by providing complimentary attendance, food and refreshments to public officials at an event UUP held on February 12, 2008.

The Commission modifies the Decision as set forth below, determining, based on the record evidence, that, as applied in this case, Legislative Law §1-m is not unconstitutionally vague and does not violate UUP’s constitutionally protected rights to due process, free speech and equal protection.<sup>3</sup>

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<sup>1</sup> The Hearing Officer’s Decision is attached hereto as Exhibit 1. UUP has requested oral argument, citing State Administrative Procedure Act (“SAPA”) §301(4). The Commission’s adjudicative proceedings, the regulations for which are set forth at 19 NYCRR Part 941, comport with SAPA. The Commission does not afford a respondent an opportunity for oral argument before the Commission members and is not required by SAPA to do so. Moreover, oral argument before the Commission members is not necessary to assist the Commission in making a determination in this case.

<sup>2</sup> The parties’ stipulation is attached as Exhibit 2, as well as those exhibits referenced in the Hearing Officer’s Decision.

<sup>3</sup> See, Roberts v. Coughlin 165 A.D.2d 964 (3d Dept. 1990) (Constitutional claim that hinges upon factual issues reviewable at administrative level must first be addressed to administrative agency to establish necessary factual record).

In the Decision, the Hearing Officer stated, “it must be noted that this is not the appropriate venue to determine the constitutionality of a state statute.” The Commission agrees with the Hearing Officer that an administrative adjudicatory proceeding is not the appropriate venue in which to determine the facial validity of Legislative Law §1-m. Thus, consistent with the Decision, the Commission does not address UUP’s contention’s regarding the facial validity of §1-m.

UUP argues that because the term “nominal” does not have a clear meaning, Legislative Law §1-m violates the vagueness doctrine. Under the two-part test the Court of Appeals applied in The People of the State of New York v. Stuart 100 N.Y.2d 412, 420 (2003), a statute is impermissibly vague if a term (1) is not sufficiently definite to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute, and (2) does not provide agency officials with clear standards for enforcement in that the statute will engender arbitrary and discriminatory application. To prevail in an administrative adjudicatory proceeding, UUP must show, therefore, that the term “nominal” was impermissibly vague as applied to them.

UUP cannot show that it lacked a reasonable opportunity to understand what conduct Legislative Law §1-m prohibits. The Commission rationally applied the term “nominal” contained in Legislative Law §1-m to UUP. Webster’s Dictionary defines the term “nominal” as “insignificantly small; trifling.” Thus, the Legislature intended that any amount more than “insignificantly small or trifling” is *not* nominal. This meaning of “nominal” is supported by the Legislature’s intent when it modified §1-m to change the gift threshold from \$75 to nominal when it enacted the Public Employee Ethics Reform Act (“PEERA”), Laws 2007, Chapter 14, §19. PEERA was an attempt to expand the regulation of lobbying to specifically reform “pay to play” politics. UUP admittedly was on notice that PEERA amended the language of the gift ban contained in Legislative Law §1-m. The parties stipulated that the total average cost per person for UUP’s event was \$50.53. Here, it is at least rational that the Commission determined that \$50.53 is not “nominal.” Since PEERA was enacted, the Commission has applied the term “nominal” in the same manner to every individual or entity subject to its jurisdiction. Moreover, the subsequent advisory opinion and draft regulations articulated this rational interpretation of the term “nominal.” UUP could have resolved any doubt by consulting the Commission prior to holding the event. Furthermore, UUP has not tried to show that Legislative Law §1-m authorizes or even encourages arbitrary and discriminatory enforcement. Nor has UUP presented any evidence that the enforcement action against it was arbitrary or discriminatory.

In regard to UUP’s “vague-as-applied” challenge involving its actions that are protected by the First Amendment, the Commission notes that Legislative Law §1-m prohibits the offering and giving of gifts in relation to UUP’s lobbying activities. The Commission’s enforcement of Legislative Law §1-m does not prohibit UUP’s primary purpose, which is to lobby or influence political action. Therefore, UUP has failed to show that Legislative Law §1-m is unconstitutionally vague.

## **Conclusion and Civil Penalty Determination**

The Commission affirms the Hearing Officer's finding that UUP knowingly and willfully violated Legislative Law §1-m. The Commission determines that, as applied in this case, §1-m is not unconstitutionally vague and does not contravene UUP's constitutionally protected rights to due process or equal protection or UUP's rights under the First Amendment. The Commission affirms the Hearing Officer's recommendation and directs that the UUP be assessed a civil penalty in the amount of \$5,000.

Concur:

Michael G. Cherkasky,  
Chairman  
Virginia M. Apuzzo  
John M. Brickman  
Andrew G. Celli, Jr.  
Richard D. Emery  
Hon. Howard A. Levine  
John T. Mitchell  
Mark G. Peters  
Joseph A. Spinelli  
Members

Dissent:

George F. Carpinello  
Member

December 9, 2010

## **Dissenting Opinion Commission George F. Carpinello**

### **United University Professions**

I respectfully dissent from the Commission's Decision and Notice of Civil Penalty Assessment for four reasons. First, I do not believe that it is consistent with the language of Legislative Law §1-c(j)(ii). Second, I do not believe it is fair to impose a penalty on the Respondent when the definition of the term "nominal value" had not yet been defined by an

appropriate clarifying opinion from the Commission before the subject event occurred. Third, I believe that it is bad public policy to label as illegal and unethical the conduct that occurred in this matter. And fourth, it is clear to me that the "gift" provided here was not provided under circumstances in which it could "reasonably be inferred that the gift was intended to influence [any] public official." Legislative Law §1-m.

Section 1-c(j) of the Legislative Law has numerous exclusions from the definition of gift. Particularly relevant here is sub-section (ii) which expressly excludes from the definition of gift "complimentary attendance, food and beverage offered by the sponsor or an event that is widely attended or was in good faith intended to be widely attended, when attendance at the event is related to the attendee's duties or responsibilities as a public official or allows the public official to perform a ceremonial function appropriate to his or her position." I believe this exclusion applies for three reasons. First, it reflects a legislative intent that, when a public official attends a function that is reasonably related to his or her duties, receiving food or beverage may be considered a normal compliment of such attendance and is typically of such small value that one could hardly infer that the ham sandwich or even the shrimp cocktail was designed to induce the public official to perform an act favorable to the registrant. Second, "widely attended" in its commonly understood meaning, refers to a large number of individuals not, as the hearing officer held here, representatives of a wide array of diverse groups. Again, to me, the legislative intent is clear that when large numbers of people are expected to attend the event that is open and the focus of "the gift", *i.e.*, the complimentary food or beverage, is not directed to a particular individual or small group of individuals, such that they would perceive that they were receiving any special *quid pro quo* or even largesse, that gift is not designed to influence their actions. Perhaps most importantly, if it were the intent of the Legislature to define "widely attended" as

including attendance of a diverse group of individuals, including a large number of individuals who are not public officers, employees or legislators, then the statute would have specifically said that, especially where the consequences are not an insubstantial monetary fine.

Second, I am concerned about the temporal circumstances under which the fine is being levied. At the time this event occurred, the Legislation defining "gift" had been changed to eliminate the \$75 safe-harbor in favor of the more subjective term, "nominal value." In the absence of direction from this Commission, it would not seem unreasonable for a registrant to conclude that the cost of sandwiches at an average cost of \$32.27 per person was anything more than nominal.<sup>4</sup> While I do not take issue with the Commission's March 25, 2008 Advisory Opinion No. 08-01, that nominal value means essentially a cup of coffee, fining the Respondent because it guessed wrong as to where this Commission would draw the line, is in my mind, unfair and inappropriate.<sup>5</sup>

Third, as a matter of public policy, I believe the events of the type sponsored by Respondent here, are appropriate and indeed essential to a robust democracy. While I concede that unorganized citizens do not have the wherewithal to conduct events of this type, we would

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<sup>4</sup> I note parenthetically that any decision that needs to calculate the cost for decorations, balloons, tableware and the like, in order to arrive at an average cost of the event of \$50.53 in my mind trivializes the very important function that the ethics laws are designed to serve.

<sup>5</sup> The Hearing Officer was not troubled by the fact that guidance for the term "nominal" came after the event at issue because the Respondent did not seek advice from the Commission before it held the event. But if the Respondent had sought the Commission's advice, what would the Commission have told him, before it promulgated the guidelines that it issued in March, 2008? To my mind, the only appropriate answer would have been "we can't tell you yet because we haven't formulated an official position."

The Hearing Officer also notes that the Respondent was "well aware of the existence of the Lobbying Act" and the restrictions that applied thereto because it had conducted almost the identical event for the past 17 years. Even though previous events were held under the prior law, which had a clear \$75 limit, it was certainly not unreasonable for the Respondent to conclude that the change from \$75 to "nominal value" was intended (in the absence of clear legislative history or Commission guidance to the contrary) to allow long-standing events of this type.

be closing our eyes to reality to suggest that there aren't literally hundreds of special interest groups that routinely conduct meetings throughout the entire legislative session. The fact that this meeting also included sandwiches does not, to my mind, make it unethical. Indeed, the influence of such a sandwich in the context of the Albany climate is truly trivial, especially when one considers that virtually every night of the Legislative session literally hundreds of lobbyists and their clients are paying orders of magnitude greater than the amounts at issue here, to attend political fund-raising events on behalf of these same legislators. So long as such events are legal and pervasive, it simply makes no sense to prohibit the kinds of conclaves held here, simply because incidental food and beverages are served. I recognize that some public officials and legislators would not attend, but for the "free lunch." But I do not find that to be a grounds for prohibiting such conduct. The purpose of the gift ban is to prevent the giving of gifts which in and of themselves are designed to influence a public official or legislator to take particular action. Here, the "gift" is designed to get the public official or legislator to attend the event at which the Respondent's point of view is conveyed. I do not find that to be offensive.

Fourth, the Legislative Law contains what I believe to be a very salutary safe-harbor to the effect that gifts, even if they are outside of the enumerated exclusions of §1c(j), are not prohibited by §1-m if they are given under circumstances in which "it is not reasonable to infer that the gift was intended to influence such public official." Again, the ham sandwich is not in and of itself designed to influence the public official. I simply cannot believe that our public officials and legislators are so easily bought. The food is incidental to the event, which is an opportunity for the Respondent to convey its views to public officials and its representatives in the Legislature. It is perfectly appropriate for the *event* and the speeches made at that event, to influence those public officials. That is, after all, the nature of democracy.

Finally, I recognize, especially as a new member of the Commission, that the issue of gifts has been a troublesome one, which has taken up an inordinate amount of time for the staff and for the Commission and that both the staff and the Commission have worked very hard to be fair and reasonable in their application of these provisions, and most especially to provide clear guidance to public employees and lobbyists and their clients. If there is any message that should come through loud and clear to the employees and lobbyists and their clients, it is that the best practice is to accept no gifts of whatever value. However, in the context of public events where food and beverage are served, I believe that we should take a much more tolerant position in recognition of both the desirability of such events and the human need to eat.

# EXHIBIT 1

STATE OF NEW YORK  
COMMISSION ON PUBLIC INTEGRITY

COUNTY OF ALBANY

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In the Matter of  
UNITED UNIVERSITY PROFESSIONS

Respondent

For alleged violations of §1-m of the Legislative Law

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A Notice of Reasonable Cause was issued in this matter on December 10, 2009 and a hearing was held on June 2, 2010, for the sole purpose of the submission of a Stipulation of Facts by the parties and the creation of a schedule for the submission of briefs.

The United University Professions ("UUP") is charged with violating Legislative Law (Lobbying Act) §1-m, when on February 12, 2008 it hosted a complimentary reception in the Legislative Office Building in Albany, New York and offered complimentary food and refreshments, in excess of nominal value, to public officials.

The Commission on Public Integrity ("Commission") was created pursuant to §94 of the Executive Law as part of the Public Employees Ethics Reform Act of 2007, which combined the New York State Ethics Commission and the New York Temporary State Commission on Lobbying into a single, new entity.

The Lobbying Act was created by Chapter 2 of the Laws of 1999, as amended by Chapter 62 of the Laws of 2003, Chapter 1 of the Laws of 2005 and as amended most recently by Chapter 14 of the Laws of 2007. It was this last amendment that created the Commission on Public Integrity. Lobbying Act §1-m, in pertinent part, reads:

Prohibition of Gifts. No individual or entity required to be listed on a statement of registration pursuant to this article shall offer or give a gift to any public official as defined within this article, unless under the circumstances it is not reasonable to infer that the gift was intended to influence such public official.

The UUP is a labor organization representing more than 34,000 bargaining unit members who primarily are academic and professional faculty employed by the State University of New York ("SUNY") and, for purposes of Legislative Law §1-m, is a "client" whose name, address and telephone number are required to be reported on the statement of registration filed by any lobbyist it may retain, employ or designate to represent it. In addition UUP, as such a client, must file semi-annual reports with the Commission pursuant to §1-j of the Lobbying Act. Indeed, UUP has filed these client reports with the Commission and its predecessor agencies for more than ten years and has never been found in violation of any gift ban. A "public official" under §1-m is defined in §1-c(1) as, among others, the Governor, Lieutenant Governor, Comptroller, Attorney General, members of the State Legislature, certain State officers and

employees and officers and employees of the Legislature. Finally, "gift" is defined in §1-c(j) as "anything of more than nominal value given to a public official in any form including, but not limited to money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance, or promise, having a monetary value." Excluded from the definition of gift in §1-c (j), among other exclusions not germane to this matter, are these two numbered paragraphs:

- (ii) complimentary attendance, food and beverage offered by a sponsor of an event that is widely attended or was in good faith intended to be widely attended, when attendance at the event is related to the attendee's duties or responsibilities as a public official or allows the public official to perform a ceremonial function appropriate to his or her position;
- (xi) meals or refreshments when participating in a professional or educational program and the meals or refreshments are provided to all participants.

#### FINDINGS OF FACT

1. On Tuesday, February 12, 2008 UUP held a legislative luncheon in "The Well" of the Legislative Office Building in Albany, New York. The Well is a large, open space frequently used by organizations for a variety of events, despite the fact that it is open to the public via both the concourse and the plaza level of the Empire State Plaza (Stipulation of Facts, paragraphs 17 and 19).
2. To this event UUP invited: certain of its own officers, members and employees; officers and employees of the New York State United Teachers, UUP's Statewide affiliate; Statewide elected officials; officers and employees of SUNY and the Governor's Office of Employee Relations; and, New York State Legislators and members of their staff. A number of legislators were invited to speak and others were permitted to do so upon request (paragraphs 20 and 21).
3. UUP's staff attempted to keep track of attendees both by documenting the names of those who had responded to the invitation indicating that they would attend, and by placing a sign-in sheet at one of the access points to the event. Nonetheless, not everyone who responded to the invitation actually attended and many people who did attend had not in fact indicated that they were going to do so. In addition, many people who did attend failed to place their name on the sign-in sheet and various people-those who were attending the event as well as those just passing through The Well-were continually moving in and out of the event area and through its adjoining hallways, elevators and stairs (paragraphs 22-24).
4. Several legislators made speeches, generally referencing the importance of SUNY to the people and businesses of the State and the need to adequately fund SUNY in the NYS budget. In addition, UUP officers, members and employees had the chance to speak with legislators, State employees and other public officials and the UUP representatives from the individual SUNY campuses were able to provide information about their particular campus to these same individuals (paragraphs 25 and 26).

5. UUP provided food and beverage to all of the attendees, as the event was held during the traditional lunchtimes (12:00-1:30), by contracting with a caterer. Birch Hill Catering ("Birch Hill") had previously catered such events for UUP and, while the initial contract anticipated that 300 people would attend, the final invoice billed UUP for the 350 people the on-site Birch Hill representative estimated actually attended the event, at \$32.27 per person (\$24.57 for the main buffet, \$3.80 for dessert, \$1.90 for coffee, tea and ice water and \$2.00 for canned sodas and bottled water). In addition, Birch Hill charged for decorations (\$360), balloons (\$145), delivery (\$90), an off-premises fee for disposable tableware (\$1,575), a service charge (\$2,852.90) and sales tax (\$1,369.39) so that the total average cost per person for the event amounted to \$50.53 (paragraphs 27-32).

6. At the time this event was held-February of 2008-the only guidelines which existed that addressed gifts to public officials was Advisory Opinion No. 94-16, which was promulgated by the New York State Ethics Commission on August 10, 1994 and which addressed the gift law as it existed at that time, and Lobbying Opinions No. 55 and No. 57. Subsequent to the issuance of Opinion No. 94-16 but prior to the February 2008 UUP event, the Lobbying Act was amended (effective April 25, 2007) to significantly change the gift provision. Nonetheless, the Commission's revised Advisory Opinion No. 08-01, captioned "Interpretation of Advisory Opinion No. 94-16 in light of amendments to Public Officers Law §§73(5) and 74, and Legislative Law §§1-c and 1-m with respect to gifts" was not issued until March 25, 2008 (paragraphs 34-36).

7. In December 2008, the Commission submitted draft regulations, which would be Part 934 of its regulations and would address gifts to public officials, to the Governor's Office of Regulatory Reform and refiled them, at GORR's request, in December 2009. However, GORR had not yet acted on these proposed draft regulations. Nonetheless, on December 30, 2009 the Commission issued guidance, by e-mail sent to lobbyists and clients, regarding the "Application of Gift Ban to Legislative Receptions" (paragraphs 37 and 38).

8. Prior to the February 12, 2008 legislative luncheon, UUP did not solicit advice or request an opinion from the Commission with regard to any question it may have had regarding compliance with, or any possible violation of, the amended Lobbying Act that might have been relevant to that event. Indeed, for at least 17 years prior to this event, UUP hosted an annual legislative reception with a similar format without being cited for a possible violation of any gift ban (paragraphs 1, 16 and 18).

9. Prior to that event the Commission issued no Advisory Opinion, regulations or general guidance with regard to the revised gift section of the Lobbying Act to lobbyists or clients (inferred from paragraphs 34-38).

## CONCLUSIONS OF LAW

In order to prove that UUP violated Legislative Law §1-m and offered or gave a gift to a public official by providing attendance to a reception as well as food and beverages, the Commission must show that UUP is an "individual or entity required to be listed on a statement of registration" that knowingly and willfully offered or gave a gift to public officials under circumstances where "it is not reasonable to infer that the gift was intended to influence such officials." The gift-as defined in amended Lobbying Act §1-c(j)-would have to be "anything of more than nominal value given to a public official in any form including, but not limited to money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance, or promise having a monetary value" which did not fall within statutory exclusions from the definition of gift, two of which are germane here: complimentary attendance, including food and beverage, offered by the sponsor of an event "that is widely attended or was in good faith intended to be widely attended when attendance at the event is related to the attendee's duties or responsibilities as a public official or allows the public official to perform a ceremonial function appropriate to his or her position;" or, "meals or refreshments when participating in a professional or educational program and the meals or refreshments are provided to all participants."

It is undisputed that public officials attended the February 12, 2008 reception sponsored by UUP, as it invited New York State Statewide elected officials and officers, and employees of SUNY and the Governor's Office of Employee Relations, as well as New York State Legislators and members of their staff, and at least some of those invitees attended [paragraph 20; exhibits L, M and N; Lobbying Act, §1-c (l)]. It also is undisputed that UUP is a labor organization that is a lobbying client required to be listed on a statement of registration and required to file semi-annual reports with the Commission and that it supplied complimentary attendance, food and beverage to these public officials (paragraphs 1 and 27). Therefore, the only remaining substantive issues that need to be addressed are: if the complimentary attendance, food and beverages constituted a gift of more than nominal value and the circumstances do not give rise to the "not reasonable to infer that the gift was intended to influence" element and, if so, if such gift falls within the widely-attended event or professional/educational program exclusions. Finally, it must be determined if any such gift was knowingly and willfully offered or given.

UUP argues that the giving of a gift, of any value, does not violate the gift ban when it is not reasonable under the circumstances to infer that such gift was intended to influence a public official. It suggests that the circumstances here, where attendance, food and beverages were equally supplied to all attendees, not just public officials, and where there is no evidence to indicate that such items were provided as a *quid pro quo* for any particular piece of legislation or other consideration or act by any of the public officials, the provision of such attendance, food and beverages was not a prohibited gift (Respondent's initial brief, p. 12). Respondent is mistaken in this belief.

To agree that a lobbying client may, at will, wine and dine public officials while plying them with information favorable to the client's interests and be totally free of liability under the gift ban, merely because other folks also were wined and dined, and a *quid pro quo* was not clearly articulated, is to make a mockery of the Lobbying Act and of all attempts to establish an ethical government environment. Indeed, the Public Employees Ethics Reform Act of 2007,

which amended the Lobbying Act, states in its Legislative declaration that, while “the people are free to petition their government for the redress of grievances and to express freely” their opinions on legislation and government operations, “to preserve and maintain the integrity of the governmental decision-making process in this State, it is necessary that the identity, expenditures and activities of persons and organizations retained, employed or designated to influence the passage or defeat of any legislation” and other related governmental function “be publically and regularly disclosed.”

The Legislature, in that same Act, went on to prohibit the giving of gifts of more than nominal value to public officials in an effort to achieve that balance between the right of redress and the requirement of disclosure by going beyond disclosure and choosing instead to restrict certain behavior. If the Legislature had intended to permit unlimited gifts to public officials as long as those gifts also were given to others who were not public officials, it would not have made impermissible gifts of more than nominal value. Clearly, it did not intend to permit, no less authorize, attempts by individuals or organizations to influence legislation by giving gifts to public officials merely by expanding the field of persons to whom those gifts were given. Thus, it is disingenuous of Respondent to claim that the mere act of spreading gifts around to an array of individuals, including some public officials and some private, somehow changes the nature of that Act and removes any possibility of that gift being intended to influence the public officials who received it. Indeed, it is as likely as not that the gift of complimentary attendance and food and beverages at the legislative reception was offered as a means of access to public officials who, while they may not have been asked for a *quid pro quo* favor, certainly did make themselves available to listen and hear the views of, and perhaps be influenced by, this organization whose members are employees of State funded institutions. Thus, it cannot be said that this gift was given under circumstances where it is not reasonable to infer that the gift was intended to influence public officials. Clearly, it is at least reasonable, if not likely, that this was the intent.

Likewise, it is difficult to accept that the Legislature, which changed the gift giving limit from \$75 to nominal, intended that nominal should mean about half of the original \$75 limit. Surely, if it was considering a limit of roughly \$50, or \$35 or even \$37.27, the Legislature would have stated that specific amount in the bill. Instead, the amended Lobbying Act states that the only permissible gifts are those that are of nominal value. Thus, it is unlikely that nominal means the \$37.27 or more that UUP paid for the reception. Respondent argues that, as this amount (the lowest possible estimate of the per person cost of the reception) is just under half of the previous gift limit, it is in the “nominal” range. However, the commonly accepted meaning of nominal almost certainly does not include gifts costing roughly half of \$75 as the term generally is held to contain “the implication that the thing named is so small, slight or the like, in comparison to what might properly be expected” (Black’s Law Dictionary). If an individual was making an inquiry about the cost of an item and was told it was “nominal” it is doubtful that the individual, or even the members of the Legislature that represent the views of the collective individuals of the State, would expect that item to cost \$37.27. Nonetheless, if the UUP believed that the cost of the legislative reception would fall within any definition of nominal conceived by the Legislature as eventually interpreted by the Commission in its regulations, certainly it had the opportunity to ask if that was the case.

Respondent makes much of the fact that although the Lobbying Act of 2007 was effective April 25, 2007, the Commission failed to give any guidance about how it would define nominal until March of 2008 (paragraphs 34-38). While it may have been convenient, and perhaps appropriate, for the Commission to provide official guidance earlier than it did, the UUP is not blameless in its failure to obtain that information. By its own admission UUP is a lobbying client, as that term is used in the Lobbying Act, and was required to file semi-annual reports with the Commission, which it has done for more than 10 years (paragraph 1). It has long experience with legislative receptions and has hosted an annual event similar to the one given on February 12, 2008 for 17 or more years (paragraph 16). The UUP was well aware of the existence of the Lobbying Act and its restrictions and requirements and was aware that it was amended in 2007 (paragraphs 1, 3, and 34-36). Nonetheless, UUP failed to either solicit advice or request an opinion of the Commission with regard to any question it may have had regarding compliance with the Lobbying Act that would have been relevant to the planned 2008 reception (paragraph 18).

UUP claims that to be required to seek such permission prior to holding an event chills its constitutionally protected speech, and that a rule requiring a party to seek an advisory opinion before engaging in speech, association or petitioning would be unconstitutional as a prior restraint on speech or associated conduct. That may very well be true, but that is not the case here. Neither the Commission nor the Legislature has enacted such a law or rule. The Legislature enacted an amendment to a law that changed the conditions under which UUP operates. UUP was aware that there was such a change in conditions. Hence, it was in UUP's own best interest to seek out information to clarify those new conditions and to seek out the likely definition of the word "nominal" prior to deciding, on its own, without legislative or regulatory guidance, that its event would comply with the amended statute, or to be willing to accept potential consequences if its self-determination was in error. Accordingly, it is the failure of Respondent to take a voluntary step to seek guidance that resulted in this proceeding, not any governmental action or rule. That being the case, there is no unconstitutional prior restraint and Respondent cannot now claim that it is somehow disadvantaged because it failed to take a step that could have prevented the commencement of this proceeding.

It is unfortunate that the Commission did not issue an advisory opinion in time for the Respondent to rely upon it prior to its February 12, 2008 legislative reception. However, the Commission did issue Advisory Opinion No.08-01 on March 25, 2008 which was titled "Interpretation of Advisory Opinion No. 94-16 in light of amendments to Public Officers Law §§75(5) and 74, and Legislative Law §§1-c and 1-m with respect to gifts" (Exhibit S). Advisory Opinion No. 94-16 had previously been issued by the NYS Ethics Commission and gave guidance regarding the gifts provision of the Public Officers Law as they existed in 1994 (Exhibit R). The revised Advisory Opinion No. 08-01 was issued by the Commission on Public Integrity which, in addition to continuing the work of the former Ethics Commission, also absorbed the duties and responsibilities of the New York Temporary State Commission on Lobbying. Hence, 08-01 reviewed 94-16 in light of the Commission's authority to issue Advisory Opinions relating to the Lobbying Act and in light of the amendments made by the Public Employees Ethics Reform Act of 2007 ["PEERA"] (paragraphs 2 and 34-36).

The Commission is authorized by the Lobbying Act and the Executive Law to issue advisory opinions [Lobbying Act §1-d(f); Executive Law §94(15)]. In addition, PEERA further authorized the Commission to issue opinions and promulgate rules and to administer and enforce all provisions of the Lobbying Act [Executive Law 94(16); Lobbying Act §1-d(a)]. Thus, Respondent's claim that the Commission exceeded its authority and that its application of the Lobbying Act was *ultra vires* is without merit.

The Commission has the authority to issue opinions and to promulgate rules but it issued neither opinions nor rules applicable to this matter prior to the February 12, 2008 legislative reception, except to the extent that the 94-16 gifts opinion of the former Ethics Commission may have some bearing on the Commission's view of a widely attended event. Indeed, Respondent has consistently argued that it was the Commission's failure to give timely guidance with respect to the amended gift sections of the Lobbying Act that resulted in its inability to accurately determine if the complimentary attendance, food and beverage given to public officials at the February 12, 2008 legislative reception violated the more than nominal value gift ban. The Commission issued a Notice of Reasonable Cause to Respondent stating that UUP may have violated the gift ban in Lobbying Act §1-m by providing complimentary attendance, food and beverage to public officials that appeared to be in excess of the nominal amount permitted by the statute (paragraphs 9, 10 and 12). At no time did the Commission claim that this alleged violation of statute was based upon any regulation or advisory opinion relating to an explanation or definition of nominal value. Indeed, the investigation that led to this proceeding was commenced with a letter seeking clarification of the \$18,487 amount UUP listed as an expense for a legislative luncheon it hosted which was reported on the 2008 January/June Client Semi-Annual Report to the Commission. Given that the gift amount had fairly recently been reduced from \$75 to nominal, it is reasonable to assume that a routine review of the 2008 January/June Client Semi-Annual Reports would cause this amount to be flagged and reviewed irrespective of a precise understanding of nominal value. Thus, any argument Respondent may have with respect to the overly broad, unconstitutional, illegal breadth of the Commission's regulations or advisory opinions is immaterial to this proceeding, as the Commission's authority stems solely from the statute. To the extent the Respondent argues that the terms of the statute in question were unconstitutionally vague and thus violated UUP's constitutionally protected rights to due process, free speech and association and equal protection, it must be noted that this is not the appropriate venue to determine the constitutionality of a State statute.

Finally, Respondent argues that no impermissible gift could have been offered to a public official because the legislative reception falls within statutory exceptions to gifts. The Lobbying Act has several exclusions to the definition of a gift. Two are germane here: the widely attended event and the educational or professional program. In each case, items such as complimentary attendance, food, beverages and refreshments, that might otherwise violate the gift ban, do not.

The widely attended event exception excludes from the definition of gift "complimentary attendance, food and beverage offered by the sponsor of an event that is widely attended or was in good faith intended to be widely attended, when attendance at the event is related to the attendee's duties or responsibilities as a public official or allows the public official to perform a ceremonial function appropriate to his or her position" [Lobbying Act § 1-c(j)(ii)]. By its term this exclusion requires that the event in question be widely attended and that the public officials who attend do so because attendance is related to their duties or because it allows them to

perform a ceremonial function. Respondent argues that the legislative reception was just such a widely attended event.

Respondent bases this contention on the following: at least 350 people attended the event including UUP officers, members and staff, NYSUT officers and staff and State officers and employees representing both the Legislature and State agencies; the event took place in an open area and "although they did not necessarily partake of the food and beverages, members of the general public could move through the area at the time of the event;" and, it was within the public officials' duties and responsibilities to meet with their constituents regarding the status of SUNY and the status of the State budget with respect to SUNY, and those public officials were performing a ceremonial function by speaking before their constituents about matters of public concern such as the status and funding of SUNY (Respondent's Initial Brief, pp.14,15). To arrive at the conclusion that this gathering, of members and staff of a labor association and its affiliates (UUP officers, members and staff and NYSUT officers and staff) and State officers and employees, is somehow "widely attended" stretches credulity (paragraph 20) .

If this event was re-worded in its simplest form it would state that a lobbying client was meeting at a social event with representatives of the State Legislature and certain Executive Branch agencies to discuss the client's interest in the State budget and its impact on the client. Read in that form, it is unlikely that such a meeting would ever be considered a "widely attended event"-irrespective of the number of client representatives or State officials involved. Indeed, it would be assumed that it was a meeting between a lobbying client and State officials for the purpose of advancing the views of the lobbying client to the State decision makers and for allowing the State officials to make their views known to the client-not to any general group of constituents-by making speeches. Such meetings, of course, are not illegal and may indeed serve a useful purpose. Nonetheless, they are not widely attended events. The number of participants is not the operative factor in the widely attended event term of art; rather, it is the nature of the participants. If UUP's legislative reception had included invitees from "throughout a given industry or profession" or if it represented "a range of persons interested in a given matter" (Exhibit R) instead of just its own and its affiliate's members and staff, the legislative reception may have been viewed differently. However, that is not the case. To allow Respondent's attempt to repackage its event into one that falls within the "widely attended event" exception to the gifts prohibition under the facts herein would make a mockery of the State's Ethics and Lobbying law by permitting a lobbying client to meet socially, essentially on its own, with members of the Legislature and other State officers and staff to promote its private purpose.

Likewise, a similar analysis can be applied to the contention that the legislative reception was an educational or professional event. Respondent claims that the UUP attendees, the SUNY attendees and the GOER attendees all "had an interest as professionals in the subject matter of the event" (Respondent's Initial Brief, p. 14). The fact that a group of employees who are deemed to be "professionals" all have an interest in a particular subject matter does not make a particular event a "professional" or an "educational" program as that term is used in the statute. Indeed, it is unlikely that an event such as this "legislative reception" would qualify for continuing education points or graduate education credits. Of course, one cannot assume this from the title alone and it is quite possible that some attendees benefited from "up-to-date-information on the treatment of SUNY by the Legislature and its funding in the State budget,"(*id*) but the mere fact that particular employees may have learned something of benefit

to their jobs is not sufficient to create an educational or professional program out of a reception any more than attendance at a movie that contributes to an employee's understanding of a work-related topic changes a social outing to a job function. The attendees were not treated to lectures by experts in a particular field but to speeches by public officials to a "gathering of their constituents about matters of public concern such as the status and funding of SUNY" (Respondent's initial brief, p. 15), hardly the stuff out of which educational and professional programs are made. Hence, Respondent's argument that it was not prohibited from giving attendance, food and beverage to public officials at the legislative reception because it was, in fact, a professional or educational program must fail.

As it is now clear that Respondent's view that no impermissible gift was made because the legislative reception was either a widely attended event or a professional or educational program, thereby taking the offering of complimentary attendance, food and beverages out of the realm of a gift under Legislative Law §1-c(j)(ii), (ix) and (xi) is incorrect, it only remains to determine if any such gift was "knowingly and willfully" offered.

Respondent asserts that, due to the undefined term "nominal" in the amended Lobbying Act and to the Commission's failure to timely issue an advisory opinion or to promulgate rules clarifying its interpretation of the term, it is impossible for the Commission now to meet its burden of proving that UUP "knowingly and willfully" gave a prohibited gift (Respondent's Initial Brief, p. 10). This assertion is based on Respondent's view that since there was no agency interpretation of nominal "[W]ithout the direction of the Commission UUP did what was reasonable within its understanding at the time" (Respondent's Reply Brief, p. 7). However, UUP does not give itself enough credit. It is a sophisticated lobbying client with a long history of interaction with the Legislature and State agencies, as well as with legislative receptions (paragraphs 1 and 16). In addition, by its own admission, it has been filing reports with the Commission and its predecessors for over ten years (Paragraph 1). Clearly, UUP is an entity that understands it is a regulated body and that it is familiar with the Commission that does the regulating (Paragraph 2). Also, UUP was well aware that the Lobbying Act had been amended and that the gift provision was changed to reduce permissible gifts from those valued at \$75 or more to those being "anything more than of nominal value." Respondent indeed states in its initial brief that on February 12, 2008-the date of the legislative reception- it "could only guess at the meaning of the term 'nominal value'" (Respondent's Initial Brief, p. 11). As a sophisticated participant in the legislative process, UUP clearly knew that the rules had changed and that it did not yet know exactly what the new rules were going to be. Thus, it had to make a choice. It could simply proceed as usual and host a legislative reception under the same terms as it had for the past 17 years-even though it seems unlikely that the same terms could apply when the fundamental rules had changed-or it could inquire about how that new "nominal" rule might be interpreted and applied to that legislative reception. In hindsight it might seem foolish to proceed as it had in the past, even though a fundamental rule had been altered, but at the time that is the decision Respondent made. It hosted a reception, as it had for 17 years, and offered complimentary attendance, food and drink to public officials at a cost of, at the very least, \$32.27 per person, despite the fact that it was well aware that the gift ban now applied when the gift was anything more than nominal rather than \$75 or more and of the unalterably fact that it was certainly possible, if not likely or certain, that \$32.27 was not a nominal amount. UUP claims that by hosting the reception as it had in the past, it did what was "reasonable at the time."

Certainly, it would seem less than reasonable to continue to act in the present as you had in the past when you were well aware of a change in the statute which governed your actions.

Hence, UUP acted in a knowing and willful manner when it hosted the legislative reception on February 12, 2008 and offered or gave a gift of more than nominal value to public officials. Acting willfully does not mean that the actor is motivated by dislike or malice. "It merely means intentionally doing an act and knowing that the act is being done" (*Old Republic Life Insurance Company v. Thomas Thacher, as Superintendent of Insurance of the State of New York*, 12 N.Y. 2d 48). Respondent knew it was hosting a legislative reception under the same terms and conditions as it had done for 17 years, even though a fundamental part of the law which regulated its conduct-the Lobbying Act's gift provision-had been amended in such a way as to almost certainly change the rules under which UUP had previously operated. That amendment took effect on April 25, 2007, some 10 months before the February 12, 2008 legislative reception, thus affording considerable time to investigate the implications of the amendment. While it is regrettable that the Commission failed to re-visit its earlier gift opinion or to provide other timely guidance with respect to this fundamental alteration of the gift law, it does not excuse Respondent's failure to seek its own guidance about its intended action. It is a well accepted axiom in American jurisprudence that ignorance of the law is no excuse and cannot be used as a defense. That is especially true in circumstances such as these, where the Respondent is a knowledgeable and sophisticated participant in the legislative process and had faithfully complied with its regulatory obligations for many years and certainly knew enough to seek guidance when faced with circumstance that it surely knew or should have known raised questions under the amended statute.

#### RECOMMENDED PENALTY

The Respondent argues that if a violation is found the recommended penalty should be a written admonition. It bases this suggestion on the fact that UUP has been, over a long term, in good standing with the Commission and its predecessor agencies, that it has consistently been transparent and cooperative in the investigation of this matter and that the terms of the Act in question simply were not clear at the time of the Legislative Reception. The Commission, on the other hand, states that while the statute permits a penalty of \$25,000 for a violation, the nature of this particular violation creates the possibility of the imposition of the \$25,000 civil penalty for each illegal offer of a gift.

Respondent is correct in its assertions relating to its overall clean record and cooperation. Nonetheless, UUP's record of consistent timely filings with the Commission and its long-standing tradition of hosting a Legislative Reception work against it as well as for it. It is not an entity new to the Lobbying Act. Hence, once it realized that the Act had been amended in such a way that it might impact the annual Legislative Reception, it had an obligation to attempt to ascertain what its obligations might be under the newly amended gift ban. The fact that it utterly failed to do so can hardly serve as a mitigating factor with respect to the penalty. However, the fact that the Commission did not issue guidance at an earlier date in an area as critical to the Lobbying Act as the gift provisions undercuts its attempt to seek a penalty for each possible offer

of a gift. Hence, the recommended penalty, taking into account UUP's spotless record prior to this matter, balanced by its failure to seek any type of guidance about the new gift ban when it knew or should have known that there was likely to be a significant change in the amount of a permissible gift and the fact that the Commission could have issued guidance a bit earlier than it eventually did, is \$20,000.

Respectfully submitted on September 13, 2010 by Christine C. Kopec, Hearing Officer.

A handwritten signature in cursive script, reading "Christine C. Kopec", is written over a horizontal line.

Hearing Officer

# EXHIBIT 2

STATE OF NEW YORK  
COMMISSION ON PUBLIC INTEGRITY

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In the matter of  
UNITED UNIVERSITY PROFESSIONS

for alleged violations of §1-m of the Legislative Law,  
this hearing is held pursuant to part 941 of the  
Commission's regulations

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STIPULATION OF FACTS

Case No. L08-75

PRESENT: Christine C. Kopec, Esq., Hearing Officer

This stipulation of facts is entered into by the Commission on Public Integrity ("Commission") and United University Professions ("UUP") through their respective counsel. As a hearing was scheduled for June 2, 2010 at 10:00 a.m. at the Commission's Conference Room, 540 Broadway, Albany, New York, 12207, before Hearing Officer Christine C. Kopec, Esq., as the parties agree on the following stipulation of facts and as the parties agree to submit the stipulation of facts to the hearing officer to use as a basis for her findings of fact and recommendations, the Commission and UUP hereby stipulate to the following facts:

Parties

1. The United University Professions ("UUP") is a labor organization representing more than 34,000 bargaining unit members who primarily are academic and professional faculty employed by the State University of New York ("SUNY"). UUP has its principal place of business located at 800 Troy-Schenectady Road, Latham, New York, 12110. UUP is a "client" as that term is used in the Article 1-A of the Legislative Law ("Lobbying Act"). As a client, UUP is required to file semi-annual reports with the Commission pursuant to §1-j of the Lobbying Act. UUP has been

filing client reports with the Commission and its predecessors for more than ten years. UUP has not been found to be in violation of gift ban of the Lobbying Act or of any predecessor act at any time prior to making this submission.

2. The Commission was created and is maintained pursuant to Section 94 of the Executive Law. The Commission has its principal place of business located at 540 Broadway, Albany, New York, 12207. Among other responsibilities, the Commission is responsible for administering and enforcing the Lobbying Act. In particular, the Commission has the authority to investigate possible violations of §1-m, the gift ban, of the Lobbying Act. As part of its investigations regarding §1-m, it may review the semi-annual reports filed with the Commission by clients pursuant to §1-j of the Lobbying Act.

Procedure

3. On July 14, 2008, UUP filed its 2008 January /June Semi-Annual Report. A copy of that report is attached hereto as Exhibit "A".

4. On November 19, 2008, Scott Clark, a Confidential Investigator for the Commission, sent a letter to UUP regarding an event it held on February 12, 2008 and reported on its 2008 January/June Client Semi-Annual Report. In that letter, Mr. Clark requested documentation from UUP related to expenses for the February 12, 2008 event. A copy of the November 19, 2008 letter is attached hereto as Exhibit "B".

5. On December 1, 2008, UUP sent a letter to Mr. Clark enclosing the documentation that he requested. A copy of the December 1, 2008 letter, without the related documentation, is attached hereto as Exhibit "C". (The documentation that was enclosed with the letter will be discussed separately in more detail below in the part of this stipulation addressing the February 12,

2008 event.)

6. On December 30, 2008, the Executive Director of the Commission addressed a 15 day letter<sup>1</sup> to UUP stating, in part, that "UUP may have violated Legislative Law § 1-m by providing attendance" to a February 12, 2008 reception to Public Officials. That letter, among other things, afforded UUP an opportunity to submit a written response and to request a meeting with a Commission representative. A copy of the December 30, 2008 15 day letter is attached hereto as Exhibit "D".

7. On January 8, 2009, UUP responded to the December 30, 2008 15 day letter by letter from its counsel. That letter, in part, requested a meeting with a Commission representative to discuss the matter. A copy of the January 8, 2009 letter from UUP's counsel is attached hereto as Exhibit "E".

8. Pursuant to UUP's request for a meeting, representatives of the Commission met with representatives of UUP on October 8, 2009.

9. Subsequently, Commission staff recommended that the Commission issue a notice of reasonable cause to UUP. A copy of their written recommendation is attached hereto as Exhibit "F".

10. On December 10, 2009, the Executive Director of the Commission signed a notice of reasonable cause regarding UUP captioned as Case No. L08-75. A copy of the December 10, 2009 notice of reasonable cause is attached hereto as Exhibit "G".

11. The December 10, 2009 notice of reasonable cause was served upon counsel for UUP

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<sup>1</sup> These letters are called "15 day" letters because the recipient of each such letter is given 15 days to respond to the letter.

under cover letter dated December 14, 2009, which UUP's counsel received on December 15, 2009. That cover letter outlined a possible resolution of the matter, and advised that if the matter was not resolved, it would be scheduled for hearing. A copy of the December 14, 2009 cover letter is attached hereto as Exhibit "H". The matter was not resolved.

12. On March 25, 2010, the Executive Director of the Commission signed a notice of hearing regarding UUP. A copy of the March 25, 2010 notice of hearing is attached hereto as Exhibit "I".

13. The Commission served the March 25, 2010 notice of hearing along with a "Plain Language Summary of the Procedures for Adjudicatory Proceedings and Appeals" upon counsel for UUP by first class and certified mail. Counsel for UUP received both such mailings on March 29, 2010. A copy of the "Plain Language Summary of the Procedures for Adjudicatory Proceedings and Appeals" is attached hereto as Exhibit "J".

14. The notice of hearing stated, in part, that the hearing regarding UUP's February 12, 2008 event was scheduled for June 2, 2010. In lieu of a hearing on that date, the Parties have entered into this Stipulation of Facts.

15. The Parties reserve their rights to object to the relevancy of any "fact" stipulated or otherwise presented. Further, the parties do not waive any objection or right they may otherwise have regarding any other evidence, documents or materials presented to this Administrative Law Judge in the further course of this proceeding.

February 12, 2008

16. For 17 or more years prior to February 12, 2008, UUP hosted an annual legislative reception. Each such reception had a similar format to the event that UUP held on February 12,

2008.

17. On Tuesday, February 12, 2008 from Noon to 1:30 p.m., UUP held a legislative luncheon in "The Well" of the Legislative Office Building in Albany, New York.

18. Prior to its occurrence, no representative of UUP solicited advice or requested an opinion of the Commission with regard to any question it may have had regarding compliance with or any possible violation of the Lobbying Act that would be relevant to the planned February 12, 2008 event.

19. The Well is a large open space that can be accessed by a hallway from the concourse level of Empire State Plaza, by a staircase from the plaza level of Empire State Plaza and by elevators and staircases from the upper floors of the legislative office building. The Well is frequently used by numerous and various organizations for many different kinds of events.

20. In preparation for its February 12, 2008 event, UUP invited certain of its own officers, members and employees; officers and employees of New York State United Teachers, UUP's statewide affiliate; New York State statewide elected officials; officers and employees of SUNY and the Governor's Office of Employee Relations ("GOER") and, New York State legislators and their staff members. A copy of the invitation that was sent to legislators and their staff members is attached hereto as Exhibit "K"

21. A number of legislators were invited to make speeches to the persons assembled at the event, and other legislators were allowed to speak upon request while they were at the event. Prior to the event, UUP's Research and Legislation staff prepared a list of tentative speakers for Phil Smith the President of UUP identifying each speaker and their relationship to SUNY. Mr. Smith was elected president of UUP shortly prior to the event, and February 12, 2008 was one of Mr.

Smith's very first days as President. The tentative list of speakers is attached hereto as Exhibit "L".

22. UUP's legislative staff kept track, to an extent, of whether the persons invited to attend the event responded to their invitation with an RSVP. However, not everyone who responded with an RSVP attended the event, and not everyone who attended the event responded with an RSVP. Nonetheless, the documents used by UUP to track the RSVPs are attached hereto as Exhibit "M".

23. At the event, UUP staff set up sign-in sheets at one of the access points to the event. However, many people attended the event without signing the sign-in sheets. A list of attendees created by UUP Research and Legislation staff after the event, based on the sign-in sheets, is attached hereto as Exhibit "N".

24. The nature of the event, being in the Well during the lunch hour between Noon and 1:30 p.m., was that various people were continually moving in and out of the area where the event was taking place. In addition, persons not attending the event also were moving through the Well area in the hallways, in the elevators and on the staircases.

25. At the event, ten or more legislators made speeches. Although each speech was different, most of the speeches addressed the importance of SUNY to the people and businesses of New York State, the need to adequately fund SUNY in the New York State budget to ensure an educated workforce and citizenry and the status of the pending New York State budget as it related to SUNY. UUP officers, members and employees had opportunity during the event to speak with legislators, state employees and other public officials.

26. In addition, the event was intended by UUP to allow UUP representatives from the individual SUNY campuses to provide information about their particular campus to the legislators,

their staffs and other state officers and employees. Those representatives, in fact, provided such information.

Food and Beverage

27. As the event was held during the typical lunch hour, UUP provided food and beverages for the attendees.

28. UUP contracted with a caterer to set up and provide food and beverages for the event. On January 8, 2008, UUP entered into a tentative catering contract with Birch Hill Catering for an anticipated attendance of 300 people. That contract was secured with a \$750 deposit. Birch Hill had experience catering such events previously for UUP, including UUP's 2007 legislative event, and it could anticipate the approximate number of people who would attend such event. Similarly, the UUP Meetings and Travel staff who signed the contract had years of experience with such events and could reasonably anticipate the approximate number of people who might attend such event. One copy each of the tentative catering contract signed by Mary Bergquist, UUP staff, on January 8, 2008, the UUP purchase order for the deposit and a UUP accounting entry showing payment of the deposit are attached hereto as Exhibit "O".

29. The final invoice from Birch Hill was billed for attendance of 350 people. One copy each of the final invoice from Birch Hill for the balance due of \$17,736.79 and a UUP accounting entry showing payment of \$17,736.79 are attached hereto as Exhibit "P".

30. Birch Hill decorated the Well area with pipe and drape for a charge of \$360. It provided clusters of balloons for a charge of \$145, and it charged an additional balloon delivery fee of \$90.00. It charged an off premises fee, which included a charge for disposable ware, of \$1,575. It charged a service charge of \$2,852.90. And, it calculated the tax as being \$1,369.39.

31. Birch Hill provided food and beverage for an attendance of 350 people. For lunch, it provided a buffet table for \$24.57 per person, which included chicken, potatoes, salad, vegetables, rolls and pasta. For dessert, it provided chocolate chip cookies and brownies for \$3.80 per person. It provided a beverage service of coffee, tea and ice water for \$1.90 per person. And, it provided canned sodas and bottled water with cups of ice at \$2.00 per person.

32. According to Steven Feldman, the operator of Birch Hill Catering, who was present on site during the event, approximately 350 persons, in fact, attended the event.

33. All persons attending the event, including UUP officers, members and employees and NYSUT officers and employees, as well as state employees, legislators and their staff members, had the opportunity to eat the food and drink the beverages served at the event. The food and beverage was provided to all participants in the event.

#### Commission Guidance

34. On August 10, 1994, the New York State Ethics Commission, which was a predecessor of the Commission, issued Advisory Opinion No. 94-16 which addressed gifts to public officials under the law as it stood at that time. A copy of Advisory Opinion No. 94-16 is attached hereto as Exhibit "Q".

35. Subsequently, the Lobbying Act was amended by L. 2007, c. 14, §19 to add, among other things, the current language of the gift ban in §1-m and the definition of the term gift in §1-c. That amendment took effect on April 25, 2007. A copy of L. 2007, Ch. 17, §§9 and 19 is attached hereto as Exhibit "R".

36. On March 25, 2008, the Commission issued Advisory Opinion No. 08-01, which it captioned as "Interpretation of Advisory Opinion No. 94-16 in light of amendments to Public

Officers Law §§73(5) and 74, and Legislative Law §§1-c and 1-m with respect to gifts.” A copy of Advisory Opinion No. 08-01 is attached hereto as Exhibit “S”.

37. In December 2008, the Commission submitted draft regulations to the Governor’s Office of Regulatory Reform “GORR”. Those draft regulations would form part 934 of the Commissions regulations, and they would address gifts to public officials. At GORR’s request, the draft proposed gift regulations were refiled with GORR on December 23, 2009. A copy of the draft proposed gift regulations are attached hereto as Exhibit “T”. Nonetheless, GORR has not acted yet on the draft proposed gift regulations.

38. On December 30, 2009, the Commission issued guidance by an e-mail sent to lobbyists and clients regarding the “Application of Gift Ban to Legislative Receptions.” A copy of that e-mail is attached hereto as Exhibit “U”.

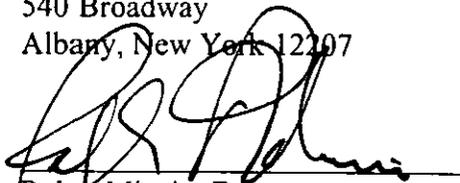
2009 Event

39. At its 2009 event in the Well, UUP did not serve food or beverages.

Dated: June 2, 2010

RALPH MICCIO, ESQ.  
Special Counsel to  
Commission on Public Integrity  
540 Broadway  
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By:

  
Ralph Miccio, Esq.  
Special Counsel

Dated: June 2, 2010

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By:

  
Robert T. Reilly, Esq.  
Of Counsel

# EXHIBIT L

**UUP Legislative Luncheon  
Speaker List  
February 12, 2008**

*Phil – This list is fluid of course as many legislators may show up wishing to speak  
We will help, along with Chris Black, to prioritize the order in which they should go on.*

- 11:55 a.m.            Phil Smith,  
                              President, UUP**
- 12:00 p.m.            Senator Joe Bruno**
- Senate Majority Leader and President Pro Tempore
  - UUP Friend of SUNY Award winner, 2001
  - Huge SUNY supporter
- 12:05 p.m.            Assemblyman Ron Canestrari**
- Assembly Majority Leader
  - UUP Friend of SUNY award winner, 2006,
  - Former Assembly Higher Ed. Chair
- 12:10 p.m.            Assemblyman Joel Miller**
- Assembly Higher Ed Committee
  - SUNY supporter
- 12:15 p.m.            Assemblyman James Tedisco**
- Assembly Minority Leader
- 12:20 p.m.            Senator Malcolm Smith**
- Senate Minority Leader
- 12:25 p.m.            Senator Toby Ann Stavisky**
- Senate Higher Ed Committee, long time SUNY and public higher ed supporter
  - Assistant Minority Whip
- 12:30 p.m.            Senator Ken LaValle**
- Chair, Senate Higher Ed Committee member
  - UUP Friend of SUNY award winner, 1983

12:35 p.m.

**Assemblymember Deborah Glick**

- Chair, Assembly Higher Ed Committee
- Great supporter of SUNY and all Public Higher Ed
- Member of Governor's Commission on Higher Ed

12:45 p.m.

**Assemblyman Herman D. Farrell**

- Chair, Committee on Ways & Means
- Longtime SUNY and public higher ed supporter

12:55 p.m.

**Senator William T. Stachowski**

- Senate Higher Ed Committee Member

1:00 p.m.

**Assemblyman Peter Rivera**

- Chair, NYS Assembly Puerto Rican/Hispanic Task Force
- SUNY Friend of SUNY Award winner, 2008
- Instrumental in organizing the Office for Diversity and Educational Equity

# EXHIBIT R

of the public officers, the commission shall render advisory opinions on the requirements of said provisions. The opinion rendered by the commission, until amended or revoked, shall be binding on the commission in any subsequent proceeding concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such opinion may also be relied upon by such person, and may be introduced and shall be a defense, in any criminal or civil action. Such requests shall be confidential but the commission may publish such opinions provided that the name of the requesting person and other identifying details shall not be included in the publication.

§ 6. Paragraphs (a) and (b) of subdivision 17 of section 94 of the executive law, as amended by section two-a of this act, is amended to read as follows:

(a) Notwithstanding the provisions of article six of the public officers law, the only records of the commission which shall be available for public inspection and copying are:

(1) the information set forth in an annual statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law except the categories of value or amount, which shall remain confidential, and any other item of information deleted pursuant to paragraph (h) of subdivision nine of this section;

(2) notices of delinquency sent under subdivision eleven of this section;

(3) notices of reasonable cause sent under paragraph (b) of subdivision twelve of this section; and

(4) notices of civil assessments imposed under this section which shall include a description of the nature of the alleged wrongdoing, the procedural history of the complaint, the findings and determinations made by the commission, and any sanction imposed; and

(5) the terms of any settlement or compromise of a complaint or referral which includes a fine, penalty or other remedy; and

(6) those required to be held or maintained publicly available pursuant to article one-A of the legislative law.

(b) Notwithstanding the provisions of article seven of the public officers law, no meeting or proceeding, including any such proceeding contemplated under paragraph (h) or (i) of subdivision nine of this section, of the commission shall be open to the public, except if expressly provided otherwise by the commission or as is required by article one-A of the legislative law.

§ 7. Subdivision 5 of section 107 of the civil service law, as added by section thirty-two of this act, is amended to read as follows:

5. Violation of this section. Complaints alleging a violation of this section by a statewide elected official or a state officer or employee, as defined in section seventy-three of the public officers law, may be directed to the state ethics commission on public integrity.

§ 8. Subdivision (f) of section 1-c of the legislative law, as added by chapter 2 of the laws of 1999, is amended to read as follows:

(f) The term "commission" shall mean the ~~New York temporary state commission on lobbying created by section one-d of this article~~ commission on public integrity created by section ninety-four of the executive law.

§ 9. Subdivision (j) of section 1-c of the legislative law is REPEALED and a new subdivision (j) is added to read as follows:

(j) The term "gift" shall mean anything of more than nominal value given to a public official in any form including, but not limited to money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance, or promise, having a monetary value. The following are excluded from the definition of a gift:

(i) complimentary attendance, including food and beverage, at bona fide charitable or political events, and food and beverage of a nominal value offered other than as part of a meal;

(ii) complimentary attendance, food and beverage offered by the sponsor of an event that is widely attended or was in good faith intended to be widely attended, when attendance at the

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event is related to the attendee's duties or responsibilities as a public official or allows the public official to perform a ceremonial function appropriate to his or her position;

(iii) awards, plaques, and other ceremonial items which are publicly presented, or intended to be publicly presented, in recognition of public service, provided that the item or items are of the type customarily bestowed at such or similar ceremonies and are otherwise reasonable under the circumstances, and further provided that the functionality of such items shall not determine whether such items are permitted under this paragraph;

(iv) an honorary degree bestowed upon a public official by a public or private college or university;

(v) promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause;

(vi) goods and services, or discounts for goods and services, offered to the general public or a segment of the general public defined on a basis other than status as a public official and offered on the same terms and conditions as the goods or services are offered to the general public or segment thereof;

(vii) gifts from a family member, member of the same household, or person with a personal relationship with the public official, including invitations to attend personal or family social events, when the circumstances establish that it is the family, household, or personal relationship that is the primary motivating factor; in determining motivation, the following factors shall be among those considered: (A) the history and nature of the relationship between the donor and the recipient, including whether or not items have previously been exchanged; (B) whether the item was purchased by the donor; and (C) whether or not the donor at the same time gave similar items to other public officials; the transfer shall not be considered to be motivated by a family, household, or personal relationship if the donor seeks to charge or deduct the value of such item as a business expense or seeks reimbursement from a client;

(viii) contributions reportable under article fourteen of the election law;

(ix) travel reimbursement or payment for transportation, meals and accommodations for an attendee, panelist or speaker at an informational event when such reimbursement or payment is made by a governmental entity or by an in-state accredited public or private institution of higher education that hosts the event on its campus, provided, however, that the public official may only accept lodging from an institution of higher education: (A) at a location on or within close proximity to the host campus; and (B) for the night preceding and the nights of the days on which the attendee, panelist or speaker actually attends the event;

(x) provision of local transportation to inspect or tour facilities, operations or property owned or operated by the entity providing such transportation, provided, however, that payment or reimbursement of lodging, meals or travel expenses to and from the locality where such facilities, operations or property are located shall be considered to be gifts unless otherwise permitted under this subdivision; and

(xi) meals or refreshments when participating in a professional or educational program and the meals or refreshments are provided to all participants.

§ 10. Subparagraphs (C) and (D) of paragraph (iii) and paragraph (v) of subdivision (1) of section 1-c of the legislative law, as added by chapter 2 of the laws of 1999, are amended to read as follows:

(C) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies ~~other than officers of such boards, commissions or councils who receive no compensation or are compensated on a per diem basis,~~

(D) members or directors of public authorities, other than multi-state authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, ~~who receive compensation other than on a per diem basis,~~ and employees of such authorities, corporations and commissions;

(v) municipal officers and employees including an officer or employee of a ~~municipal entity~~ municipality, whether paid or unpaid, including members of any administrative board, commission or other agency thereof and in the case of a county, shall be deemed to also

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#### Public monies

n pursuant to section one-e of hat during the year they will nd expenses in an amount in on, on forms supplied by the ion by a public official, or by a

person or entity working in cooperation with a public official, with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies in excess of fifteen thousand dollars other than a governmental procurement as defined in section one-c of this article.

(b) Such public monies lobbying reports shall contain:

(i) the name, address and telephone number of the lobbyist and the individuals employed by the lobbyist engaged in such public monies lobbying activities;

(ii) the name, address and telephone number of the client by whom or on whose behalf the lobbyist is retained, employed or designated on whose behalf the lobbyist has engaged in lobbying reportable under this paragraph;

(iii) a description of the grant, loan, or agreement involving the disbursement of public monies on which the lobbyist has lobbied;

(iv) the name of the person, organization, or legislative body before which the lobbyist has engaged in lobbying reportable under this paragraph; and

(v) the compensation paid or owed to the lobbyist, and any expenses expended, received or incurred by the lobbyist for the purpose of lobbying reportable under this paragraph.

(c) Public monies lobbying reports required pursuant to this section shall be filed in accordance with the schedule applicable to the filing of bimonthly reports pursuant to section one-h of this article and shall be filed not later than the fifteenth day next succeeding the end of such reporting period.

(d) In addition to any other fees authorized by this section, the commission may impose a fee for late filing of a report required by this subdivision not to exceed twenty-five dollars for each day that the report required to be filed is late, except that if the lobbyist making a late filing has not previously been required by statute to file such a report, the fee for late filing shall not exceed ten dollars for each day that the report required to be filed is late.

(e) All reports filed pursuant to this subdivision shall be subject to review by the commission. Such reports shall be kept in electronic form by the commission and shall be available for public inspection.

§ 19. Section 1-m of the legislative law is REPEALED and a new section 1-m is added to read as follows:

#### § 1-m. Prohibition of gifts

No individual or entity required to be listed on a statement of registration pursuant to this article shall offer or give a gift to any public official as defined within this article, unless under the circumstances it is not reasonable to infer that the gift was intended to influence such public official. No individual or entity required to be listed on a statement of registration pursuant to this article shall offer or give a gift to the spouse or unemancipated child of any public official as defined within this article under circumstances where it is reasonable to infer that the gift was intended to influence such public official. No spouse or unemancipated child of an individual required to be listed on a statement of registration pursuant to this article shall offer or give a gift to a public official under circumstances where it is reasonable to infer that the gift was intended to influence such public official. This section shall not apply to gifts to officers, members or directors of boards, commissions, councils, public authorities or public benefit corporations who receive no compensation or are compensated on a per diem basis, unless the person listed on the statement of registration appears or has matters pending before the board, commission or council on which the recipient sits.

§ 20. Section 1-o of the legislative law is REPEALED and a new section 1-o is added to read as follows:

#### § 1-o. Penalties

(a)(i) Any lobbyist, public corporation, or client who knowingly and wilfully fails to file timely a report or statement required by this section or knowingly and wilfully files false information or knowingly and wilfully violates section one-m of this article shall be guilty of a class A misdemeanor; and

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Additions are indicated by underline; deletions by strikethrough; vetoes by shading