

NEW YORK STATE
JOINT COMMISSION ON PUBLIC ETHICS

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Commission Meeting of August 11, 2020
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Appearances: Michael K. Rozen, Chair

Commissioners:

Robert Cohen
James E. Dering
Colleen C. DiPirro
William P. Fisher
Marvin E. Jacob
Gary J. Lavine
James W. McCarthy
David J. McNamara
George H. Weissman
James A. Yates

Staff:

Monica J. Stamm, General Counsel
Martin L. Levine, Deputy General Counsel
Walter J. McClure, Director of Communications and Public
Information Officer
Stephen J. Boland, Director of Administration
Michael Sande, Deputy Director of Ethics
Megan Mutolo, Associate Counsel
Lori A. Donadio, Principal Investigative Analyst
Gage Hodgen, Intern

IT Staff - Tanya Smith
OGS Media Services - Amaury Corniel

1 Walter McClure: Okay, we are live.

2 Chair Rozen: Good morning everyone, welcome to the
3 August meeting of the New York State Joint Commission on Public
4 Ethics. Before we get started, I'd like to read a statement.
5 Thank you all for joining us today. I hope all of you and
6 your families continue to be healthy and safe as the health
7 crisis continues. As in prior months this meeting is being
8 held using video conferencing technology. The public session
9 is accessible on JCOPE's website to watch via livestream. We
10 anticipate that the Albany office will open to the public by
11 the end of August to accept filings and other documents. As
12 mentioned previously, some of the JCOPE operations that were
13 paused for the past few months will resume shortly after the
14 Albany office reopens. Announcements will be made and
15 distributed at the appropriate time. We will continue to
16 evaluate the circumstances of the health crisis to determine
17 whether further accommodations are still needed. Please
18 contact the Commission staff if you need assistance. Finally,
19 to conduct this meeting smoothly, I will do my best to
20 recognize anyone who wishes to speak. It is important that
21 only one person speak at a time and when not speaking, that
22 you mute your microphone. In addition, I ask that when you
23 speak, you identify yourselves, so we have a clear record. We
24 will need to take votes by roll call to ensure that everyone
25 is counted. Let's move on, attachment A, approval of the

1 minutes from the June Public Session. Any questions or
2 comments. I am not seeing or hearing any. Walt, Martin, Monica,
3 are we good?

4 Martin Levine: Seems we need a motion though.

5 Chair Rozen: Yeah. Can I have a motion please?

6 Martin Levine: I see Commissioner McNamara.

7 Chair Rozen: Commissioner McNamara. Thank you.

8 Second? Can I have a second please?

9 Commissioner Cohen: This is Rob Cohen, I'll second.

10 Chair Rozen: Thanks Rob, all in favor, Martin, we
11 need a roll call, I guess.

12 Martin Levine: Yes, On the Public minutes,
13 Commissioner Cohen.

14 Commissioner Cohen: Yes.

15 Martin Levine: Commissioner Dering.

16 Commissioner Dering: Yes.

17 Martin Levine: Commissioner DiPirro? Commissioner
18 DiPirro, what about Commissioner Fisher? Commissioner Fisher?

19 Commissioner Fisher: Yes.

20 Martin Levine: Thank you. Commissioner Jacob?
21 Commissioner Lavine? Judge McCarthy?

22 Commissioner McCarthy: Yes.

23 Martin Levine: Commissioner McNamara?

24 Commissioner McNamara: Yes.

25 Martin Levine: Commissioner Weissman?

1 Commissioner Weissman: Yes.

2 Martin Levine: Judge Yates?

3 Commissioner Yates: Yes.

4 Commissioner Lavine: Did you call my name Martin,
5 this is Gary.

6 Martin Levine: I did Commissioner, how do you vote on
7 the minutes?

8 Commissioner Lavine: Yes.

9 Martin Levine: Chair Rozen?

10 Chair Rozen: Yes.

11 Martin Levine: And Commissioner DiPirro? Alright the
12 motion carries.

13 Chair Rozen: Okay. Thank you. Report from staff.
14 Monica, Martin, who is taking this.

15 Lori Donadio: Is Monica muted?

16 Martin Levine: Monica you have to unmute.

17 Monica Stamm: Can you hear me?

18 Chair Rozen: Yes, go ahead Monica.

19 Monica Stamm: Sorry so I was reminding everyone that
20 financial disclosure statements filings are due on Monday,
21 August 17th. We will be posting the elected official financial
22 disclosure statements as we receive them. We expect to receive
23 the legislative filings from the LEC by the end of August or
24 early September. We are still pursuing compliance from
25 candidates in the primary. There were approximately 25

1 candidates that we are actively pursuing before the election
2 that did not file yet. If there aren't any questions on that I
3 will just move on to the Buffalo and New York City office update.
4 This is about renovations and re-locations that have been
5 planned, having nothing to do with COVID-19 response. The
6 Buffalo office is due to be relocated to the new building in
7 the spring of 2021. I believe it will be temporary, but we will
8 keep you posted as we have more information about that. It has
9 been delayed due to COVID-19 but that has been in the plan for
10 a while now. In addition, as those of you in New York City
11 knows the New York City office building is under renovation.

12 Monica Stamm: The lobby in the New York City office
13 building is expected to be open in September. Due to
14 construction delays related to COVID-19, our internal offices
15 in New York City has been delayed from, it was supposed to
16 happen the spring of 2021, but now expecting it will happen in
17 August or the Fall of 2021. With that, I will turn it over to
18 Steve Boland, Director of Administration, for the first quarter
19 financial report. Steve needs to be unmuted.

20 Walter McClure: Steve is unmuted. Steve, can you hear
21 us? Steve was having an issue with his audio, so he couldn't
22 hear you before.

23 Monica Stamm: Okay so the first quarter financial
24 report, if anyone has questions, they can follow up with Steve.
25 My understanding is that in the first quarter, we spent

1 approximately \$1.1 million in personal service and about
2 \$122,000 in non-personal service so that is about 22% of our
3 cash for the year. Does anyone have any questions?

4 Commissioner Yates: Yes.

5 Chair Rozen: Go ahead Commissioner Yates.

6 Commissioner Yates: Were you able to find out if the
7 hiring freeze imposed by the governor prevents us from hiring a
8 replacement Executive Director for Seth Agata?

9 Monica Stamm: We did not make those inquiries. I
10 assume that when the time comes that the hiring freeze will not
11 apply and that will be processed but if you want me to make
12 those inquiries, we can make those inquiries. We did not make
13 them.

14 Commissioner Yates: No, you can wait if you think it
15 is appropriate. I just didn't want to engage in the search and
16 then find out we don't have the money.

17 Monica Stamm: We haven't been told that we have any
18 kind of reduction to our personal service fund, so I wouldn't
19 expect that to be the issue, it is probably more about processing
20 it. There have been many appointments that have been going on
21 even despite the hiring freeze. So, like I said for something
22 as significant as the Executive Director, I wouldn't expect it
23 to be an issue, but I am happy to make inquiries between now and
24 the next meeting.

25 Commissioner Yates: Okay, thank you.

1 Martin Levine: Any other questions on this?

2 Colleen DiPirro: This is Colleen DiPirro. I'm back
3 in. I got knocked off and they wouldn't let me back in, but I
4 am back in now.

5 Chair Rozen: Thank you Commissioner. Monica keep
6 going.

7 Monica Stamm: So, now I will turn it over to Martin.
8 He is going to give an update on lobbying regulations.

9 Martin Levine: Okay is my audio okay?

10 Chair Rozen: Yes.

11 Martin Levine: Great. So after the Commission voted
12 last meeting, we published the proposed regulations in the state
13 register on July 14th for a sixty day comment period that brings
14 us to September 13th. Since the publication, we have continued
15 to engage with stakeholders to evaluate both the efficiency and
16 the efficacy of the existing regs. We have been looking closely
17 at the provisions that allow coalitions to register as a single
18 entity in order to determine whether that provision of the
19 regulations has been effective and/or taken advantage of. Our
20 initial look, I'm sorry, I mean utilize, not taken advantage
21 of, our initial look at the data shows that the coalition
22 registration option was seldom used and certainly not in
23 proportion to the amount of staff time and resources and
24 questions that came up through the regulated community. As a
25 result, after discussions internally, we are going to post for

1 an informal comment a segment of the regulations that propose
2 to simplify the coalition model. Essentially what they would
3 do is take away the coalition filing option and require any
4 members of a coalition to simply disclose all their activities,
5 whether they be individual or coalition related, including their
6 contributions. We think this will simplify the process without
7 creating any sort of meaningful burden at the option of removing
8 was infrequently used we suspect due to its unfortunate
9 complexity. This goes to the comment Commissioner Fisher had
10 last month about sort of a cost benefit of sort of these complex
11 regulations. We are also considering certain changes to the use
12 of stock as lobbying compensation specifically we are evaluating
13 whether there are additional criteria that can be used to
14 determine a proposed compensation arrangement violates the
15 contingent fee prohibition. Depending on how these two sort of
16 interim proposals are received, it may bring changes back to
17 you with the regulations in October. Obviously if any
18 substantive changes were adopted by the Commission to this or
19 anything else, that would trigger an additional Notice and
20 Comment period under SAPA but there is nothing more to act on
21 today. We just wanted to let you know that we are going to float
22 a couple of proposals that we think will both simplify the
23 process and sort of facilitate this new development this
24 question of stock compensation.

25 Judge Yates: May I?

1 Chair Rozen: Commissioner Yates, go ahead.

2 Judge Yates: Does that proposed change on coalitions
3 mean that if someone, part of a coalition, say signs onto a
4 letter or something but they didn't spend \$5000 that they still
5 would have to register and file.

6 Martin Levine: Let me sort of unwind that. If someone
7 signs on to a coalition letter for instance but using that staff
8 time and any other expenditures that they have for lobbying,
9 they don't exceed \$5000, they would not register now nor would
10 they have before. So, there is no change to that and there is
11 no additional obligation.

12 Chair Rozen: Other questions? Yes.

13 Commissioner Weissman: This is George.

14 Chair Rozen: Hi George, go ahead.

15 Commissioner Weissman: Martin, what are you looking
16 at in terms of the stock compensation, what areas?

17 Martin Levine: I think George we are going to drill
18 a little more into specifics of the lobbying activity, for
19 instance, whether it is procurement, or whether it is
20 legislation, or whether it is regulation, and evaluate on a case
21 by case whether the type of lobbying creates more or less of a
22 risk of sort of perverse incentive to create a contingent fee.
23 The other thing we are going to look at will be specific sides
24 of the entity or the lobbying company that is seeking to pay
25 their lobbyist in stock, and to determine whether that has a

1 more or less likelihood of the lobbying impacting the value of
2 the stock. Finally we are going to make clear that internal
3 employee compensation that includes stock options when you have
4 an internal employee who is a in-house lobbyist, that they are
5 not prohibited from receiving the same compensation as any other
6 employee but you being the in-house lobbyist, so we are going
7 to clarify that would not be of itself a violation. It continues
8 to be a factor based evaluation but we would just like to provide
9 a little more flexibility because we found that the factors that
10 we previously enacted didn't really create any sort of avenue
11 to utilize this sort of arrangement so we are trying to make it
12 somewhat effective if possible.

13 Commissioner Weissman: Thank you very much.

14 Chair Rozen: Any other questions, okay, hearing none
15 that concludes the

16 Commissioner Lavine: May I ask Mr. Chairman?

17 Chair Rozen: Sure, Gary go ahead.

18 Commissioner Lavine: Do you intend to report on the
19 confidentiality committee deliberation and then I have a follow
20 traveling issue I wanted to address.

21 Chair Rozen: Sure, so regarding the confidentiality
22 committee, staff recently distributed revised materials for the
23 committee's consideration. The committee plans to reconvene in
24 August and hopes to be able to present to the full Commission
25 at the next meeting a detailed plan including specific proposals

1 to amend the Commission's records access regulations, meeting
2 guidelines, and internal practices. Go ahead Gary.

3 Commissioner Lavine: Yeah, thank you Mr. Chairman. I
4 want to raise the issue that was initially brought to the floor
5 by Ravi Batra with whom some of us served when he was a
6 commissioner. When Commissioner Batra parted company, he
7 asserted that there is in effect a two-tier hierarchy of
8 commissioners with respect to information sharing. He dubbed
9 the term "super commission", which is to say the super
10 commissioners are those who are fully informed, he asserted
11 salient information is withheld from the other commissioners,
12 the others being not gubernatorial appointees. I want to state
13 emphatically Mr. Chairman that as a matter of law is
14 malpractice. Information should not be withheld from any
15 commissioner. There is no need for the confidentiality
16 committee's analysis on this subject. A principal should be
17 self-evident. I want to stress that my observations are not
18 directed at staff. They are directed at the governance of the
19 Commission, which is our responsibility, not staff's. It is my
20 distinct impression that Commissioner Batra's characterization
21 still is the situation regarding certain matters. If I am
22 wrong, I would like to be disabused. However, it is my further
23 impression the rationale has been propounded that certain
24 commissioners cannot be trusted to maintain confidentiality
25 emanating from those who've opposed pursuing the leak cover-up

1 perpetrated by the Inspector General's office, this rationale
2 couldn't be more ironic. I want to say emphatically Mr.
3 Chairman, withholding information is fundamentally antithetical
4 to informed discussions and deliberations should not be abided.
5 Thank you for letting me express myself.

6 Chair Rozen: No problem. Commissioner Weissman?

7 Commissioner Weissman: I will make it short. I am
8 just going to second Commissioner Lavine's statement, and like
9 Commissioner Lavine, I was here from day one, and the notion
10 that some commissioners have more information than others, and
11 then those Commissioners, as Commissioner Lavine said, staff
12 has similar information but have been precluded from sharing
13 it, does cause a significant public policy issue.

14 Chair Rozen: So, since I am aware of, I think, of what
15 you both are referring to, I am going to just say that I do not
16 think it is the case that there are, what did you call them,
17 Gary, super commissioners?

18 Commissioner Lavine: Yes.

19 Chair Rozen: Who have information while others don't.
20 I am aware of certain information that every other commissioner
21 is not, and that is pursuant to discussions that we have all
22 had, in delegation and all sorts of other things that we don't
23 need to discuss here in public session. But I am not aware of
24 any other circumstance, so if there is that, please bring it to
25 my attention privately and I will immediately look into that.

1 But I am not aware of anything else, other than that one item
2 that I referred to, so if there is something else, please let
3 me know, but not in public session obviously.

4 Commissioner Lavine: Thank you very much, Mr.
5 Chairman.

6 Chair Rozen: Not at all.

7 Commissioner Lavine: Mr. Chairman, I have another item
8 that I would like to raise, if I may.

9 Chair Rozen: Go ahead, Commissioner Lavine.

10 Commissioner Lavine: Let me address our General
11 Counsel. This is in respect to the Committee for One New York
12 and Mayor DeBlasio. Now as I understand it there is an
13 idiosyncrasy in the law by which we have jurisdiction over
14 lobbyists functioning before the City of New York and the office
15 of the Mayor, but we do not have jurisdiction over the Mayor,
16 is that correct?

17 Monica Stamm: Yes, that's correct. The Public
18 Officers law, the State's Public Officers Law, does not apply
19 to local officials.

20 Commissioner Lavine: And it is my further
21 understanding that jurisdiction over the mayor is with the
22 Conflicts of Interest Board, correct?

23 Monica Stamm: With respect to ethics provisions, yes.

24 Commissioner Lavine: Now to the extent that you are
25 aware and can divulge in the public session, has any action been

1 taken by the New York City Conflicts of Interest Board with
2 respect to our inquiry, which has demonstrated beyond any doubt
3 whatsoever that there was impropriety in the gift giving to the
4 Committee for One New York by lobbyists. Any action whatsoever
5 emanating from the Conflicts of Interest Board?

6 Monica Stamm: The Conflicts of Interest Board's
7 activities are confidential, so other than what they have made
8 public, I don't have any information about what action they may
9 or may not have taken. They did issue a statement, I believe,
10 relating to their inability to enforce certain advisory opinions
11 and then they engaged in a rule making process to adopt rules
12 to allow them to impose penalties for certain types of
13 violations of law, but if you want to get into more detail on
14 that, I would have to look into it more because I am not, you
15 know, the City's rules and laws are not something that I focus
16 on regularly.

17 Commissioner Lavine: It is the case, however, is it
18 not, that prior to the commencement of our inquiry into this
19 tawdry situation, that the Conflicts of Interest Board had
20 issued two opinions, which should have been perfectly obvious
21 to all the participants, the lobbyists, the mayor, and the
22 mayor's staff, that what they were doing was improper and
23 unethical, is that not the case, that these opinions were
24 issued?

1 Monica Stamm: Commissioner Lavine, I can't really
2 discuss this matter, and answer your questions in the public
3 session this relates to you know.

4 Commissioner Lavine: Thank you very much, and I
5 respect confidentiality. Mr. Chairman, let me say that at this
6 juncture, I want to reiterate what I said late last year, the
7 Mayor's contempt for ethical propriety is reprehensible and
8 something ought to be done about it, and as been stated here
9 today, we don't have jurisdiction to do anything about it. The
10 jurisdiction is with the Conflicts of Interest Board. I
11 strongly urge that our staff contact the Conflicts of Interest
12 Board and ascertain exactly what they intend to do with the
13 results of our findings and report back to us. Thank you very
14 much, Mr. Chairman.

15 Chair Rozen: Thank you Commissioner. Alright at this
16 time we need to enter into Executive Session, can I have a
17 motion please.

18 Commissioner Dering: I will move.

19 Chair Rozen: Who was that?

20 Commissioner Dering: Dering.

21 Chair Rozen: Thank you Commissioner, is there a
22 second?

23 Commissioner DiPirro: Commissioner DiPirro will
24 second.

1 Chair Rozen: Thank you Commissioner. Martin, we need
2 a roll call.

3 Martin Levine: Sorry. Commissioner Cohen.

4 Commissioner Cohen: Yes.

5 Martin Levine: Commissioner Dering?

6 Commissioner Dering: Yes.

7 Martin Levine: Commissioner DiPirro?

8 Commissioner DiPirro: Yes.

9 Martin Levine: Commissioner Fisher?

10 Commissioner Fisher: Yes.

11 Martin Levine: Commissioner Jacob?

12 Commissioner Lavine: Martin, did you call my name
13 this is Gary.

14 Martin Levine: Commissioner Lavine, yes, I did.

15 Commissioner Lavine: Yes.

16 Walter McClure: Commissioner Jacob was muted. Try
17 him again.

18 Martin Levine: Commissioner Jacob?

19 Commissioner Jacob: Yes.

20 Martin Levine: Judge McCarthy?

21 Judge McCarthy: Yes.

22 Martin Levine: Commissioner McNamara?

23 Commissioner McNamara: Yes.

24 Martin Levine: Commissioner Weissman?

25 Commissioner Weissman: Yes.

1 Martin Levine: Judge Yates?

2 Judge Yates: Yes.

3 Martin Levine: Chair Rozen?

4 Chair Rozen: Yes.

5 Martin Levine: Motion Executive Session.

6 Chair Rozen: Okay, so the public session is adjourned.

7 Walter McClure: We're back on.

8 Commissioner Dering: Okay, we are back from Executive
9 Session. Monica, could you please provide a summary of the
10 action we took?

11 Monica Stamm: Sure. Yes, sorry. During executive
12 session, we discussed litigation matters, we considered an
13 appeal from the denial of request for exemption from filing an
14 FDS pursuant to Executive Law 94(9)(k), we issued an advisory
15 opinion pursuant to Executive Law 94(16) we approved one
16 settlement agreement, we commenced three substantial basis
17 investigations, and we authorized steps in several
18 investigative matters, closed one matter, and discussed several
19 other investigative matters.

20 Commissioner Dering: Great. Thank you. Given the
21 time, is there a motion to close the meeting?

22 Commissioner Weissman: Motion to adjourn.

23 Commissioner Fisher: Commissioner Fisher seconds.

24 Commissioner Dering: Martin if could you please do a
25 roll?

1 Martin Levine: To adjourn, Cohen?
2 Commissioner Cohen: Yes. Yes.
3 Martin Levine: Dering?
4 Commissioner Dering: Yes.
5 Martin Levine: DiPirro?
6 Commissioner DiPirro: Yes.
7 Martin Levine: Fisher?
8 Commissioner Fisher: Yes.
9 Martin Levine: Jacob?
10 Commissioner Jacob: Yes.
11 Martin Levine: Lavine?
12 Commissioner Lavine: Yes.
13 Martin Levine: McCarthy?
14 Commissioner McCarthy: Yes.
15 Martin Levine: McNamara?
16 Commissioner McNamara: Yes.
17 Martin Levine: Weissman?
18 Commissioner Weissman: Yes.
19 Martin Levine: It carries. We're adjourned.
20 Commissioner Dering: Thank you everyone.
21
22