

**MINUTES OF THE PUBLIC SESSION OF THE
AUGUST 11, 2020
COMMISSION MEETING
OF THE JOINT COMMISSION ON PUBLIC ETHICS
VIA WEBEX**

Chair: Michael K. Rozen (WebEx)

Members: Robert Cohen (WebEx audio only)
James E. Dering (Albany)
Colleen C. DiPirro (WebEx audio only)
William P. Fisher (Albany)
Marvin E. Jacob (WebEx)
Gary J. Lavine (WebEx audio only)
James W. McCarthy (WebEx)
David J. McNamara (WebEx)
George H. Weissman (Albany)
James A. Yates (WebEx)

Absent: Daniel J. Horwitz

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

I. CALL TO ORDER

Chair Rozen called the August 11, 2020 meeting to order, and gave the following statement:

Thank you all for joining us today. I hope all of you and your families continue to be healthy and safe as the health crisis continues. As in prior months this meeting is being held using video conferencing technology. The public session is accessible on JCOPE's website to watch via livestream. We anticipate that the Albany office will open to the public by the end of August to accept filings and other documents. As mentioned previously, some of the JCOPE operations that were paused for the past few months will

resume shortly after the Albany office reopens. Announcements will be made and distributed at the appropriate time. We will continue to evaluate the circumstances of the health crisis to determine whether further accommodations are still needed. Please contact the Commission staff if you need assistance. Finally, to conduct this meeting smoothly, I will do my best to recognize anyone who wishes to speak. It is important that only one person speak at a time and when you are not speaking, I would ask that you would mute your microphone. In addition, I ask that when you speak, you identify yourselves, so we have a clear record. We will need to take votes by roll call to ensure that everyone is counted.

II. APPROVAL OF MINUTES – PUBLIC SESSION

June 23, 2020

A motion was made by Commissioner McNamara, seconded by Commissioner Cohen, to approve the minutes from the Public Session of the June 23, 2020 Commission Meeting.

The motion was approved by unanimous vote of those present. Commissioner DiPirro was not present for the vote.

III. REPORT FROM STAFF

FDS Filings/Candidates Filings

General Counsel Monica Stamm stated that financial disclosure statements are due on Monday, August 17 and the financial disclosure statements for elected officials will be posted when each is received. JCOPE expects to receive the legislative filings from the LEC by the end of August or beginning of September. JCOPE is still pursuing compliance on candidates in the election. There are approximately 25 candidates who have not filed yet.

Buffalo and NYC Office Updates

General Counsel Stamm stated that renovations and re-locations for the Buffalo and NYC Offices have been postponed due to the COVID-19 pandemic. The Buffalo office relocation to a new building has been delayed to the spring of 2021. The lobby in the NYC

office building is expected to re-open in September. Due to construction delays, JCOPE's internal move in the NYC building has been delayed to the fall of 2021.

First Quarter Financial Report

General Counsel Stamm reported that in the first quarter, JCOPE spent approximately \$1.1 million in personal services and about \$122,000 in non-personal services. This amounts to 22% of JCOPE's cash allocation for the year. Commissioner Yates inquired if staff was able to find out if the hiring freeze precludes the Agency from hiring a replacement for the previous Executive Director, expressing concern as to whether the agency will have the funding for the position. General Counsel Stamm responded that no inquiries were made, but staff will do so before the next meeting. General Counsel Stamm further stated that JCOPE has not been advised of any reduction to the agency's personal service funds.

[Commissioner DiPirro re-joined the meeting after experiencing technical difficulties.]

Lobbying Regulations Update

Deputy General Counsel Martin Levine discussed the proposed revisions to the Commission's Comprehensive Lobbying Regulations and Source of Funding regulations, Title 19, Parts 943 and 938, respectively. After the Commission voted at the last meeting, the regulations were published in the State Register; the sixty-day public comment period ends on September 13. Staff has continued to engage stakeholders to evaluate both the efficiency and efficacy of the existing regulations. In particular, attention has been paid to the provisions that allow coalitions to register as a single entity in order to determine whether that provision of the regulations has been effective and/or utilized. The initial review of the data suggests that the coalition registration option was seldom used and certainly not in proportion to the amount of staff time, resources, and questions that arose from the regulated community. As a result, staff plans to post a new proposal to simplify the coalition model and solicit informal public comments. Essentially, the revised regulation would take away the coalition filing option and require any members of a coalition to simply disclose on their own filings all their activities whether they be individual or coalition-related (including contributions to the coalition). This could

simplify the process without creating any sort of meaningful burden. Staff also is considering certain changes to provisions addressing the use of stock as lobbying compensation. Specifically, staff is evaluating whether there are additional criteria that can be used to determine if a proposed compensation arrangement violates the contingent fee prohibition. Depending how these interim proposals are received, changes may be incorporated into the rulemaking when the regulations are presented again in October.

Commissioner Yates asked if the proposed change on coalitions mean that if someone signs onto a letter as part of a coalition, but did not spend \$5,000, would they still would have to file. Deputy General Counsel Levine explained that if the individuals' expenditures do not exceed \$5,000, they would not need to register under the new proposal, nor would they have to under the current regulations. Commissioner Weissman inquired about what potential changes to the stock compensation issue are being considered. Deputy General Counsel Levine responded that staff is looking into the specifics of the lobbying activity, for instance, whether it is procurement, legislation, or regulation, and evaluate on a case-by-case basis whether the type of lobbying creates more or less of a risk of creating incentives for bad behavior.. Staff also is examining the size of the entity or the lobbying company that is seeking to pay their lobbyist in stock, and to determine whether that creates more or less of a likelihood of the lobbying activity impacting the value of the stock. Finally, staff proposes to clarify that an internal employee who is an in-house lobbyist is not prohibited from receiving the same compensation as any other employee, even if it includes stock.

IV. NEW AND OTHER BUSINESS

Commissioner Lavine asked for an update on the Confidentiality Committee deliberations. Chair Rozen stated that staff recently distributed revised materials for the committee's consideration. The committee plans to reconvene in August and hopes to be able to present to the full Commission at the next meeting a detailed plan, including specific proposals to amend the Commission's records access regulations, meeting guidelines, and internal practices.

Commissioner Lavine noted the comments of former Commissioner Ravi Batra regarding an apparent two-tier hierarchy of commissioners with respect to information sharing, i.e., there are “super commissioners” who are fully informed, and that salient information is withheld from the other commissioners who are not gubernatorial appointees. Commissioner Lavine stated this, as a matter of law, is malpractice, and that information should not be withheld from any commissioner. Commissioner Lavine stated former Commissioner Batra’s characterization is still an issue, and that it has been suggested that certain commissioners cannot be trusted to maintain confidentiality. Commissioner Weissman added that he would like to second Commissioner Lavine’s statement and the notion that some commissioners have more information than others and that staff has similar information but have been precluded from sharing it does cause a significant public policy issue.

Chair Rozen responded that to the extent he is aware of that which they are both referring to, this is not a case of “super commissioners” who have more information than others. Chair Rozen stated that he is aware of certain information that every other commissioner is not (pursuant to the delegation of authority), and that relates to a matter that should not be discussed in public session. The Chair requested that if there is another circumstance, it be brought to his attention privately.

Commissioner Lavine addressed a question to General Counsel Stamm with respect to the Campaign for One New York and Mayor de Blasio. General Counsel Stamm confirmed that the Commission has jurisdiction over lobbying activities before the City of New York (including the Office of the Mayor) under the Lobbying Act but does not have jurisdiction over local officials under the Public Officers Law. Commissioner Lavine confirmed with General Counsel Stamm that the City’s Conflict of Interest Board (COIB) has jurisdiction over the Mayor with respect to ethics provisions. Commissioner Lavine asked General Counsel Stamm whether the COIB has taken any action with respect to the Mayor relating to the Commission’s inquiry into gifts by lobbyists to the Campaign for One New York. General Counsel Stamm stated that the COIB’s activities are confidential, but believes it issued a public statement relating to its inability to enforce certain advisory opinions. It

has now engaged in a rulemaking process which will enable them to impose penalties for certain violations of law. Commissioner Lavine referred to two prior opinions issued by the COIB which should make clear that there was an unethical situation involving the Campaign for One New York. General Counsel Stamm stated his questions relate to a confidential matter and she cannot answer his question during the public session. Commissioner Lavine reiterated that the Mayor's contempt for ethical propriety is reprehensible and since the Commission cannot do anything about it, he strongly urges staff to contact the COIB to ascertain exactly what it intends to do and report back.

V. MOTION TO ENTER INTO EXECUTIVE SESSION PURSUANT TO EXECUTIVE LAW

§ 94(19)(B)

A motion was made by Commissioner Dering, seconded by Commissioner DiPirro, to enter into Executive Session. The motion was approved by unanimous vote.

VI. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

[Chair Rozen was not present for the remainder of Public Session. Commissioner Dering served as Chair for the remainder of the meeting.]

General Counsel Stamm stated that in Executive Session, the Commission discussed litigation matters, considered an appeal from the denial of requests for exemption from filing a FDS pursuant to Executive Law § 94(9)(k), issued an advisory opinion pursuant to Executive Law § 94(16), approved one settlement agreement, commenced three substantial basis investigations, authorized steps in several investigative matters, closed one matter, and discussed several other investigative matters.

VII. MOTION TO ADJOURN THE PUBLIC MEETING

Upon motion made by Commissioner Weissman, seconded by Commissioner Fisher, the Public Session was adjourned by unanimous vote.