Commission Meeting of October 27, 2020

Appearances: Michael K. Rozen, Chair

Commissioners:

Robert Cohen
James E. Dering
Colleen C. DiPirro
William P. Fisher
Daniel J. Horwitz
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
Keith St. John, Deputy Counsel and Director of Ethics
Carol Quinn, Deputy Director of Lobbying
Stephen J. Boland, Director of Administration
Michael Sande, Deputy Director of Ethics
Megan Mutolo, Associate Counsel
Lori A. Donadio, Principal Investigative Analyst

IT Staff - Tanya Smith
OGS Media Services - Amaury Corniel
Walter McClure: Okay Mr. Chair we are in public session.

Chair Rozen: Thank you. Good morning everybody. Welcome to the October meeting of the New York State Joint Commission on Public Ethics. As we have done for the past number of months during the coronavirus pandemic, this meeting is being held using video conferencing technology. The public session is accessible on JCOPE’s website to watch via livestream. As a reminder, it is important that only one person speak at a time. In addition, I ask that when you do speak to identify yourself, so that we have a clear record. We will take votes by a modified role call today to ensure that everyone is counted. Martin will call for votes in favor of the motion and record everyone he can see on the screen or in-person. The remaining Commissioners will be recorded by roll call. Please remember to mute your phone when you’re not planning to speak. Let’s move to item two on the agenda, approval of the minutes from the Public Session in September behind attachment A. Any questions or comments. If none, can I have a motion to approve?

Commissioner Weissman: So moved.

Chair Rozen: Thank you, Commissioner Weissman. Second?

Commissioner Dering: I’ll second, Dering.

Chair Rozen: Thank you Jim, Martin.
Martin Levine: On the motion on the minutes, all on the screen or in-person in favor please raise your hand, just hold it up. Okay and then for the remaining.

Commissioner Cohen?
Commissioner Cohen: Yes.

Martin Levine: Commissioner DiPirro?
Commissioner DiPirro: Yes.

Martin Levine: Commissioner Jacob?
Commissioner Jacob: Yes.

Martin Levine: Commissioner Lavine?
Commissioner Lavine: Yes.

Martin Levine: And Judge McCarthy?
Commissioner McCarthy: Yes.

Martin Levine: Thank you. Just to be clear, everyone else I affirmed a positive vote visually, so we have 12-0. Motion carried.

Chair Rozen: Thank you. Item three, report from staff.

Monica Stamm: Yes, one second, sorry. First up is the outreach update. JCOPE held its annual CLE event with CityLaw and New York Law School on Tuesday, October 13. More than 250 people participated, and have we received a lot of positive feedback. The topic was “Ethics and Innovation in New York State: Navigating Conflicts When Government is A Partner”. We had panelists from SUNY and the SUNY Research Foundation
talk about Public Officers Law implications in conducting research and developing intellectual property. The panelists from Empire State Development and Olympic Regional Development Authority talked about business development, grants, and sponsorships. Deputy General Counsel Martin Levine moderated. I just want to thank Martin, and Director of Public Information Walter McClure, for their work in putting together this really successful event.

In addition, on December 10, we are planning to hold an ethics officer forum to discuss the Public Officers Law implications for state agencies who use contractors, in some cases, located at the state offices performing work similar to what state employees do, so we want to talk that through with other Ethics Officers and understand what the practices are, determine/develop best practices, and work through some of the ethics issues. If there aren’t any questions, I will turn it over to the Director of Administration.

Chair Rozen: Hang on, I heard somebody, I heard somebody, Monica.

Dan Horwitz: It’s me, Dan Horwitz. I just want to say, Mr. Chairman, that I attended the CLE that we put on with New York Law School and I want to commend the staff because I thought it was an excellent presentation, and I also want to thank New York Law School for their partnering with us on this,
and I am impressed that so many people participated. It’s a great outreach, it’s a great program, and I would encourage the other Commissioners if they didn’t participate this time, to participate when it is offered again. Thank you, Mr. Chairman.

Chair Rozen: Thank you. Okay, let’s move on, Monica.

Monica Stamm: Again, Director of Administration Steve Boland will give the second quarter financial Report.

Steve Boland: Good morning everybody. This is the second quarter financial report for fiscal year 2020-21, as of September 30. During the quarter, we, the Commission, spent almost $1,132,000 on personal service, and non-personal service, almost $150,000, for a total spending of the quarter $1,281,000. Year to date for personal service, we spent $2,254,000, or 48.8 percent of our budget, and on non-personal service, we spent $271,000, or almost 30 percent of our budget, for overall spending of $2,526,000, or 45.7 percent of our budget. Does anyone have any questions? Thank you.

Chair Rozen: Thank you.

Monica Stamm: Okay, and so then last report from the report from staff, attachment B is the meeting schedule. We didn’t hear about any conflicts from anyone, so this schedule will be posted on our website, after the meeting. This is for the first half of 2021.
Chair Rozen: Okay, thank you. Let’s move on to the Lobbying Regulations behind attachment C.

Martin Levine: Thank you, Mr. Chairman. Commissioners, the proposal in your books, at Tabs C and D, covers recent changes to the lobbying and source of funding regulations. Staff requests today is for a motion to commence a revised rulemaking, and as these proposed changes are substantive, they will trigger a new 45-day notice and comment period under the administrative procedure act. We do intend to bring these back to you for an emergency adoption, so that they are in effect for the lobbying registration period beginning on the first of the year 2021. As mentioned at the last meeting, and before that, we’ve been continuing to look at some of the filing issues surrounding coalitions, or as we define them, groups that form for the primary purpose of engaging in lobbying. Carol Quinn, who heads up our lobbying division, is going to review those changes in more detail, but the essence of the changes is that we’re going to move from a system where the coalition elects whether or not, excuse me, elects whether it or the members disclose lobbying activity, to one where there are objective criteria that will dictate how the filing has to occur. Our hope is that this change leads to more clarity for filers, better data for the public, and a generally smoother filing process for everyone.
As I said, Carol is going to discuss that with some additional detail but before I turn it over to her, I want to quickly review a new proposal on the rules governing the use of equity or stock as lobbying compensation. This is on Page 18 of the draft behind tab C. As you know, the Commission and its predecessors have long held that paying a lobbyist in stock instead of in cash would violate the Lobbying Act’s prohibition on contingent fees. The advisory opinion that governs held that the lobbying in that case would affect the value of the stock of the company, thus making the value of the lobbyist’s compensation contingent on the outcome of the lobbying. So that was precedent for many years. When we promulgated the regs originally in 2018, we tried to update this to allow for smaller, generally startup entities, who might be low on liquidity, to have better access to lobbying. We created a general presumption against the use of stock as lobbying compensation, but we established criteria that would be used to potentially overcome that presumption. As it turned out, unfortunately, the criteria really only went to situations where large companies could qualify, so it sort of defeated the purpose of our efforts. We still think the policy is right, and that is that it should generally not be used as compensation, but we just haven’t been able to properly tailor the regulations to that right set of criteria. The draft in front of you looks closer, as opposed to looking at the client
and its characteristics, we are looking at the lobbying itself.  
And so, between those two factors we think we can help sort of 
triangulate in and assess the impact of the government action 
on the value of the company. So, in addition, like I said to 
looking at the client, we are now going to look at the type of 
lobbying. Is it a regulation that they are seeking? A statutory 
change? A governmental procurement? We are going to look at the 
significance of the government action, not only to the client 
or as also to its competitors. If it is a procurement that they 
are seeking, has the client done something like this before? 
Something of this size? We might look at it whether the client 
has multiple business lines, and is the lobbying focused on 
something that would impact one or many of these business lines? 
So, these are some of the additional questions we are going to 
ask that we think might help us zero in on a better answer. 
While the proposal maintains the presumption against using 
stock as lobbying compensation, we think this takes at least a 
more focused look at the facts to make an accurate assessment 
of whether the lobbying really would have an impact on the 
value of the lobbyist compensation. 

Finally, we did clarify that in-house or employee 
lobbyists are generally eligible to receive stock as part of 
their overall compensation package, as long as the nominal size 
of the equity that they are being offered or the number of 
shares isn’t itself contingent on the success of the lobbying.
We think the risk factors are different for an in-house employee, especially in light of compensation that is often structured for companywide as opposed to specific individuals.

Unless there are questions about that proposal, I will turn it over to Carol to talk about coalitions.

Commissioner Yates: Before you get to coalitions, Martin, we had talked about a small language change that you said you agreed to. Are you going to discuss that or is that later?

Martin Levine: Carol is going to cover that in her brief.

Commissioner Yates: And my one other question is, does the statute say anything about stock or equity as constituting a banned contingent fee one way or the other?

Martin Levine: It does not. The treatment that we had only seen, the only treatment that we had seen, was this advisory opinion that pre-dated JCOPE that held in that case that it was impermissible and that has been the holding applied across the board until the regulations in 2018. Any other questions, if not, Commissioner Weissman.

Commissioner Weissman: Martin what, have the regulations taken a look at the question of whether an owner of a small startup who then becomes a lobbyist for it, how that would be treated? Because they would be, they may be a substantial minority or even a majority holder.
Martin Levine: Sure, I think, while the regulations don’t address that specific situation, I think they would be covered by the changes that talk about employee lobbyist. So, regardless if you are the owner or a staff member or a minority partner, if you are an employee or an owner of the business and you lobby, you’d be considered an employee lobbyist. And so, you’d be covered by this sort of presumption in favor.

Commissioner Weissman: Okay, thank you.

Martin Levine: Plus, they wouldn’t be able to give themselves additional shares based on the success of the lobbying. So that risk would be avoided. Like I said, it is sort of a nominal question, as long as, for the owner or employee, as long as their interests aren’t specifically contingent on specific legislative changes or executive. Carol Quinn is going to talk more about coalitions as well as the change to designated lobbyist, as Judge Yates mentioned.

Carol Quinn: Okay, thank you Martin. So first, I would direct your attention to page 5 and 6 which is definition of a designated lobbyist. So, at the top of page 6, we are going to address Judge Yates’s concern and avoid any ambiguity whatsoever with respect to board members. So, sub two will read, a board member, director, or officer of a client, whether compensated or uncompensated, here is where the change is, it will say selected, appointed, named or otherwise chosen to lobby on such client’s behalf. So, it carried through the
language which is really at the very beginning of the
definition. And that is just to avoid any ambiguity with
respect to board members. So that line is not in front of you,
but it would be included if we are allowed to proceed with the
revised rulemaking. Are there any questions on that? Okay,
so moving on to coalitions, which those sections start on page
59, and as Martin mentioned, we have continued to look at
provisions relating to coalitions in order to address any
confusion. We tried to consider all options and we ended up
making some significant changes to the coalition section. Our
goal always is to provide clear requirements that are easy to
follow and still shine the light on coalitions. Currently, I
think Martin mentioned some of this, but I will just go through
it for everyone’s benefit. Currently, 943 provides filing
options for coalitions, so you can choose to file as coalition
or, if the coalition chooses not to file, then the coalition
members disclose their contributions to coalitions in their own
filing. That option, that choice, allowing that choice, really
has created lots of confusion in the regulated community. It
has also led to double reporting, which occurs if a coalition
is filing as the coalition and yet its members also report in
their own filing whatever their contributions they might have
been. There is a decent amount of double reporting going on
and that type of confusion in reporting is affecting the quality
of the data in our system. So, in order to address these issues,
hopefully make everything much more clear, we are making
significant changes. So, the changes we are going to create
like a bright line, based on objective criteria. There is no
longer a choice, no longer discretion. If a coalition meets
certain criteria, it has to file as a coalition. There is no
longer a choice, and if it doesn’t, then the members disclose
their contributions to the coalition in their own report. I
will get into that in a little more detail in a second. So
yesterday, we also received an additional comment suggestion
from Commissioner Weissman that we like, and we plan to
incorporate into the text of what you have in front of you. It
will help further clarify and simplify, hopefully, the
coalition provisions and make it crystal clear when a coalition
must file as the coalition versus when the members have to
handle that. So, the suggestion really is just a label. We are
going to label coalitions as either structured coalitions or
unstructured coalitions. And I will get into what that means
in a second. But we are hoping that also just makes it easier
to read, easier to follow simply by adding that label. So, the
criteria, again, which hopefully will create this bright line
on whether a coalition has to file as a coalition or not, is
whether the coalition has a president, treasurer, or some
individual acting in that type of capacity. That is what we
would consider a structured coalition, that is the type of
cohesion that has no discretion; it has to file as a coalition.
Either that president, that treasurer, or that person acting in that kind of capacity, that is the person, one of those people would have to be the responsible party for the coalition filing, so that is the bright line test. If the coalition does not have those individuals, not that criteria, we will label that an unstructured coalition. Those coalitions cannot file as a coalition. The members instead will disclose the contributions to the coalition in the members’ filing. Again, this is all towards trying to create this bright line. Structured coalitions file as a coalition, just like other organizations. Unstructured coalitions, they can’t file as a coalition, and instead the members disclose it in their own filings. And we really hope and think that that will create this bright line, removing the choice that is currently in the regulations. Coalitions and members of coalitions will be clear on who should report the activities and how. Hopefully, that will prevent double reporting that has been going on and improve the reliability of the data that is in our system relating to coalitions. That’s it in a nutshell, and I guess I am available for questions on coalitions or anything else.

Martin Levine: If there are no questions staff would request a motion to commence a revised rulemaking.

Commissioner DiPirro: Commissioner DiPirro, so moved.

Chair Rozen: Yeah, I just got totally cut off, no team connected, no nothing.
Walter McClure: Chair, you are back on.

Commissioner DiPirro: Commissioner DiPirro will make a motion to move it.

Martin Levine: Yes, we did Commissioner DiPirro we are giving the Chair a second to reconnect.

Chair Rozen: Oh okay, I am back.

Monica Stamm: And just to be clear, Commissioner DiPirro, your motion is with respect to both sets of regulations, the comprehensive lobbying regulations and the source of funding regulations.

Commissioner DiPirro: Absolutely.

Martin Levine: So, we actually, there are separate rule makings, so we are going to treat them as two motions if the Commissioners don’t mind. We have a motion, we do not have a second. Commissioner Weissman has seconded. This would be the motion on the lobbying regulations alone. Is that acceptable, Commissioner DiPirro?

Commissioner DiPirro: Yes, it is.

Martin Levine: Thank you, all in favor. Okay I see Commissioner Dering, Fisher, Weissman, Horwitz, McNamara, Yates, and Rozen, no I do not see Rozen, so I will hold on that. And the remaining, Commissioner Cohen?

Commissioner Cohen: Yes.

Martin Levine: Commissioner DiPirro?

Commissioner DiPirro: Yes.
Martin Levine: Commissioner Jacob? I’ll come back.

Commissioner Lavine?

Commissioner Lavine: Yes.

Martin Levine: Judge McCarthy?

Commissioner McCarthy: Yes.

Martin Levine: Commissioner Jacob again.

Commissioner Jacob: Yes.

Martin Levine: Thank you, and Chair Rozen?

Chair Rozen: Yes.

Martin Levine: That is 12 in favor, the motion passes. I need a motion on the source of funding regulations. Those changes would just carry through from lobbying, they are nothing you haven’t seen before.

Commissioner Fisher: Fisher makes a motion.

Martin Levine: Thank you Commissioner Fisher, is there a second?

Commissioner Dering: Dering seconds.

Martin Levine: Commissioner Dering seconds. All in favor please raise your hands, again I see Dering, Fisher, Weissman, Horwitz, McNamara, Yates, remaining, Commissioner Cohen?

Commissioner Cohen: Yes.

Martin Levine: Commissioner DiPirro?

Commissioner DiPirro: Yes.

Martin Levine: Commissioner Jacob?
Commissioner Jacob: Yes.

Martin Levine: Commissioner Lavine?

Commissioner Lavine: Yes.

Martin Levine: Judge McCarthy?

Commissioner McCarthy: Yes.

Martin Levine: Chair Rozen?

Chair Rozen: Yes.

Martin Levine: Motion passes, 12-0.

Chair Rozen: Can you see me, Martin?

Martin Levine: Now I can, I can see you now. Okay, Thank you. We will commence that rule making.

Chair Rozen: Okay, let’s move on to new and other business, item five.

Commissioner Lavine: If I may, Mr. Chairman.

Chair Rozen: Go ahead.

Commissioner Lavine: Can you hear me sufficiently?

Chair Rozen: That’s fine.

Commissioner Lavine: At the last meeting, there was a discussion about an Executive Order issued during the public health emergency by the Governor, which I will paraphrase. So-called volunteers assisting and advising the state are exempt from the public officer’s law, which has the practical impact of exempting those individuals from filing a financial disclosure statement with us. I believe where we left off the discussion, an inquiry was going to be made by staff to the
executive chamber. The inquiry specifically attempting to elicit whether there is actually a list of these individuals who fall within the ambit of the executive order provision. And what their associations or potential conflicts are and whether any recusal arrangements have been made with respect to those conflicts or potential conflicts. Does the staff have a report?

Commissioner Horwitz: Mr. Chairman?

Chair Rozen: Yes, go ahead.

Commissioner Horwitz: Yeah, this is Dan Horwitz. I am going to repeat what I said at the last meeting. We have been advised, and it is not in dispute, that we don’t have jurisdiction over this issue, and this is just a waste of our valuable time. We don’t have jurisdiction. We don’t ask the legislature to give us reports on their statistics. You know, this is just another cynical attempt to raise an issue, where again, we just don’t have the jurisdiction. You know, respectfully, I don’t know what the answer to the question is, frankly, I don’t really care because we don’t have jurisdiction. Let’s focus on the things that we actually have jurisdiction. We have a big book, we have a lot of things to do today, let’s get to them. And if we are going to start asking these kinds of questions, then let’s start asking them of the legislature. How come we don’t ask the legislature for statistics on the things that they do, and they track? We don’t do it. I don’t hear Commissioner Lavine asking for those
things. As I have said, I think this is a waste of time, respectfully. So, I will stop, I have made my point. Let’s try to move on. Thank you, Mr. Chairman.

Chair Rozen: Thank you, Commissioner.

Commissioner Lavine: Mr. Chairman, if I may renew the inquiry I believe where the discussion left off last meeting, staff was going to make an inquiry. Was the inquiry made?

Monica Stamm: So I just, this is Monica Stamm, I just want to clarify that what you described was what your proposed inquiry was and that the resolution of that discussion was that I would merely inquire whether or not there is a process in place. And I made that inquiry, and I do not have a response as of today.

Commissioner Horwitz: Mr. Chairman, may I be heard for one more moment please?

Chair Rozen: Sure.

Commissioner Horwitz: Monica, have we ever made a similar request for that kind of statistical information from the legislature? Have we ever done that? Has any Commissioner ever asked to do that? Have we done that?

Monica Stamm: No, we have never discussed it, and I have never done it.

Commissioner Horwitz: And in your view, if we ask the legislature for information that they’re not obligated to
give us, your experience, do you think the legislature would give us that information?

Monica Stamm: No, I mean, the Legislative Ethics Commission has the exclusive purview to give guidance and advice to the legislature and they will not disclose to us the guidance that they give, or information relating to the guidance that they give.

Commissioner Horwitz: I see. Thank you. Mr. Chairman, can we now get back to regular order and try to do some business where we, again, actually have some jurisdiction? Thank you, Mr. Chairman.

Commissioner Lavine: If I may, Mr. Chairman, put an inquiry to our general counsel. Would you identify, can you hear me?

Chair Rozen: Yup, go ahead.

Commissioner Lavine: Would you identify, madame general counsel, to whom you made this inquiry, whatever it was, however it was characterized with respect to the subject in the executive chamber?

Monica Stamm: I made the request to counsel in the executive, in the chamber’s office.

Commissioner Lavine: And there was no response whatsoever?

Monica Stamm: Not as of today, no.
Commissioner Lavine: Okay, let me reiterate, Mr. Chairman, what I stated at the last meeting. In any crisis, the governor ought to have advising him or assisting him anyone he deems appropriate to serve the public interest, even if there is a conflict. My point, however, is that there ought to be disclosure of who falls within the ambit of this exception and I renew my motion of the last meeting. Staff be directed to pursue who is on the list that falls within the ambit of the executive order exemption.

Chair Rozen: Are you asking that we, well, are you asking that we vote on that motion? One second, Commissioner Horwitz. Gary, are you actually moving that?

Gary Lavine: I will move it if I discern correctly that staff has determined that there will be no further inquiry made of the executive chamber on the subject of the exemption. If the staff is just going to await the word from counsel in the executive chamber, then I am very happy to be patient until the November meeting.

Chair Rozen: Commissioner Horwitz, go ahead.

Commissioner Horwitz: I was just going to say it is premature, I’d say a motion, that we don’t need, but that motion would be out of order because again, we don’t have jurisdiction. I mean, there are things that we have the power to do; this is not one of them. And Commissioner Lavine knows that. He is just trying to score some points here, he is trying to get another
headline in the Times Union. You know, truly, I would ask that we, you know, return to the business where we actually have jurisdiction. We have a lot of things to do, we have a big book. Look, Mr. Chairman, here is our big book of things that we that have to do where we actually have jurisdiction. Not things that we don’t have jurisdiction over that, frankly, Commissioner Lavine, again, I don’t know what is in his head but you know, there is now a track record, you know, I can only imagine what his motivation to see yet another article in the Times Union. Here is one that we don’t have jurisdiction and I would ask again, why don’t we ask the legislature for this kind of information. I mean, the reason is because we don’t have jurisdiction and as Monica said, if we ask the Legislative Ethics Commission or the legislature for this information, they would tell us, no, we don’t have jurisdiction over you, you are not entitled to that information, and Commissioner Lavine knows that. Thank you, Mr. Chairman.

Chair Rozen: Thank you. Commissioner Yates?

Commissioner DiPirro: Mr. Chairman, this is Commissioner DiPirro.

Chair Rozen: One moment, Commissioner DiPirro.

Commissioner Yates go ahead.

Commissioner Yates: Okay, thank you. Colleen, I will defer to you at any point but if you don’t mind, I will go ahead.
Commissioner DiPirro: No problem.

Commissioner Yates: Thank you. I just want some clarifications, so I know exactly what the issue is that we are talking about. As I understand it, the executive law last spring was amended with a temporary empowerment to the governor. And it said in there, one of the provisions is that he could suspend certain laws or directives, but it also says no suspension shall be made that is not in the interest of the health or welfare of the public and which is not reasonably necessary to aid in the disaster effort. Now what I am trying to understand here is there is a directive which we don’t have in front of us, I guess, which says that certain people are exempt from, and this is my question to Monica or Martin, are exempt from, does the directive say they are exempt from filing or they’re exempt entirely from the public officers conflict of interest laws and other ethics rule and from our purview? I just want to understand because I am trying to think about it if the Order that we are talking about fits within the legislative authorization and that is that it is in the interest of health or welfare and necessary for the disaster effort.

Monica Stamm: This is Monica. To answer your question as best as I can, again, this is based on the plain reading of the executive order, and it is executive order 202.6, which was modified by 202.7, but it basically says that a volunteer that is assisting in the COVID-19 emergency response is not a state
officer or an employee subject to the public officers law. In other words, they are not within the definition of state officer or employee within section 73 and 74 of the public officer’s law. So, there is several effects of that, and that would be that they do not have to file a financial disclosure statement. That they are not subject to the conflict’s provisions of the public officer’s law. They are not subject to post-employment restrictions when they leave state service. There are other provisions in 202.6 which relate to the solicitation of aid in response to the COVID-19 health crisis and to the application of the post-employment restrictions to people who have left state service and want to continue to assist the state as a contractor. So, there are different provisions. But that is how this reads, and then 202.7 clarifies that the provisions that are not subject to the public officer’s law are for people who are volunteers or paid a nominal salary, probably per-diems.

Commissioner Yates: A lot of that makes sense to me. You know, you’ve got someone rushing in as a volunteer to help temporarily during a crisis and we should encourage that and not encumber them with rules about filing financial disclosure forms etcetera or be bound by post-employment restrictions, that all makes sense to me. The only one that sort of raises an antenna for me a little bit is the conflicts of interest issue, and has there been any discussion by staff or with staff
and other people about the whole idea of a volunteer coming and being exempted from any conflict of interest provision?

Monica Stamm: I should clarify, Commissioner Yates, that in one of the provisions they do reference that there needs to be a recusal policy in place and that these individuals will have to adhere to that recusal policy. So, it sort of left it to, I guess, the agencies and the volunteers to set in place a recusal policy that would handle conflicts.

Commissioner Yates: Recusal meaning that you would not have a financial interest in some action that you are taking on behalf of the governor.

Monica Stamm: I mean, I would assume, or whatever conflicts might apply, the language is provided that any recusals shall be adhered to if it is determined necessary by the appointed entity.

Commissioner Yates: So is there a policy or it’s a case-by-case determination?

Monica Stamm: I can’t answer that. This is the chamber’s executive order. Again, I have asked the question that I was directed to ask at the last meeting which is, is there a process in place, and I can continue to follow up on that question, but it is really, as far as I’m concerned, it is not for us to interpret and apply the executive order and dictate what it means for the chamber.
Commissioner Yates: Just, okay, this will be the last thing I say on that, and that is I half agree with Gary and I half agree with Dan and that is, I agree that, you know under the circumstances, maybe it’s not time to be worried about post-employment rules or financial disclosure rules, but I don’t think it is quote, outside our jurisdiction, unquote, to ask are people being exempted from conflicts of interest provisions because it is in the interest of the health, welfare, and reasonably necessary to deal with the pandemic effect, or are we being told not to look at conflicts of interests in cases where maybe we shouldn’t be exempted or excepted. That’s all I want to say about that.

Chair Rozen: Okay, Gary, are you making a motion?

Commissioner Lavine: Well, thank you, Mr. Chairman. If I understand correctly, the inquiry has been made, as has been characterized by our general counsel, and that if the staff, or general counsel, is going to renew the inquiry for a response prior to our November meeting, then I will withdraw the motion and simply await the response of the executive chamber.

Chair Rozen: Okay, great, so Commissioner DiPirro, I am sorry I forgot you.

Commissioner DiPirro: That’s okay. As long as the motion’s been withdrawn, I will hold my comments.

Chair Rozen: So, anything else before we move on?
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Commissioner Lavine: Yes, Mr. Chairman, I have another topic I would like to address with the staff.

Chair Rozen: Alright.

Commissioner Lavine: This is the provision 932.5 sub B, which addresses approval by the Commission, outside activity by constitutional officers and state agency heads. Now do I understand correctly that the practical approach that has been taken is that these advisory opinions are being rendered by staff without a vote of the Commission?

Monica Stamm: I just want to make sure I understand what your question is. This is for the last, for the existence of JCOPE and our predecessor agencies, this approval process in the outside activity regulations has been part of the authority that has been delegated by the Commission to staff and then no vote of the Commission has been required.

Commissioner Lavine: Yes, but the regs state that outside activity for a constitutional officer or a state agency head shall be on approval of the Commission.

Monica Stamm: It does.

Commissioner Lavine: So, it’s the position of staff that we have in effect abrogated our own authority to approve these outside activity arrangements?

Monica Stamm: Absolutely not. The position of staff is that the statute authorizes the Commission, if a vote is not required by law, the Commission can delegate the authority to
the staff, and there is nothing about 932 that requires a vote of the Commission. It is the same language that is in all of the Executive Law 94 that the Commission shall, and lays out the various powers of the Commission in 94(9), most of which have been delegated to staff to be able to run the day-to-day operations of the Commission between meetings, with the exception of those provisions of the statute that require a vote of the Commission. And those provisions are explicit, when they require a vote of the Commission, as in 94.13 and 14 for example, as in the appointment of an executive director, for example. Everything else is what the Commission shall do, and it is covered by the delegation that was done in 2012 and carried over between executive directors. And is based on the same delegation of authority that was done by our predecessor agency.

Commissioner Lavine: I certainly understand, Madame general counsel, the proposition that certain administrative functions, as a practical matter, can and should be delegated to the executive director, or in the current circumstance it would be the co-acting executive directors, but if I am not mistaken, the regulations state outside activity by a constitutional officer or an agency head shall be approved by the Commission. Doesn’t that imply that we should take a vote?

Monica Stamm: I do not agree it implies a vote is required. Again, the statute talks about where a vote is
This language for what, eight or nine years, has never been interpreted to require a vote of the Commission, our predecessor never interpreted the outside activity regulation requiring a vote of the Commission and as I have said, 94(9) says the Commission shall, same thing, and then, these aren’t just administrative functions, we grant and deny exemptions, that’s been delegated to staff with respect to financial disclosure statements. We send 15-day letters that’s by staff, the Commission shall, but there are many more functions that I think are more than administrative that have been delegated to the Commission. I don’t think the word “shall” implicitly means a vote is required. I think when the law says, a vote is required, it is expressed, and these are regulations, not even the law, and there has never been a discussion that the Commission would vote on outside activities. And again, that is not how we have been proceeding for the last several years. So, I am not really sure why now, you’re reading the word shall to mean it requires a vote, but regardless, the statute doesn’t require a vote and the outside activity regulations fall under the guidance that has traditionally been delegated as a staff function.

Commissioner Lavine: Well, Mr. Chairman, if I may, I don’t want my participation in this colloquy to imply that I am challenging the validity of prior advisory opinions. I will say, however, emphatically if I might, I believe this is a bad
policy, a bad practice, a bad protocol. Therefore, I move, on a prospective basis, all applications or request from agency heads or constitutional officers for outside activity be presented to the Commission for a vote. My motion.

Commissioner Weissman: Mr. Chair, may I ask Commissioner Lavine a question regarding that motion?

Chair Rozen: Go ahead.

Commissioner Weissman: If I understand your motion, Gary, when you speak to constitutional officers, it would also include all members of the legislature.

Commissioner Lavine: We don’t have the jurisdiction over the legislature, I have been advised by counsel, for this purpose. It would be confined to the governor, the lieutenant governor, the attorney general, the comptroller, and agency heads. The application is made, it should be presented to the full Commission, and there should be a vote by the Commission per our reg. That’s my motion.

Commissioner Weissman: Is that, to our general counsel, is that the way the statutes work currently that outside activity requests go to the Legislative Ethics Commission?

Monica Stamm: I don’t know that outside activity approval is required for legislative staff and members of the legislature, but JCOPE does not provide guidance to the legislative staff and members of the legislature. We only
provide guidance, on request, to members of the executive branch, employees, and officers, and so I don’t know what the requirements are for legislators with respect to getting pre-approval. And again, this falls under guidance and it’s meant to be a way to run through conflicts in advance of someone engaging in an outside activity. As we have discussed multiple times, this isn’t, not following the outside activity procedure is not a violation of public officers’ law 74. It is meant to be sort of a review process to prevent potential conflicts in advance.

Commissioner Weissman: Thank you. I am going to second Commissioner Lavine’s motion. I just wanted to be able to ascertain, and probably respond, to Commissioner Horwitz’s comments regarding the legislature that occurred earlier in this colloquy.

Commissioner Horwitz: Mr. Chairman?

Chair Rozen: Go ahead.

Commissioner Horwitz: Yeah, I have a question of the staff. Can you, because we have had a lot of technical details here, this rule, that rule, and I guess the takeaway is that the staff’s position is, and apparently it has been the position of the Commission and our predecessor agency, that we have the authority to delegate and, unless is explicitly permitted by the statute. Can you explain what the policy is behind this delegation of authority, like what is the policy, as a
Commission or a predecessor agency, delegating these kinds of
decisions to the staff and how that plays in terms of the day-
to-day operations of the Commission?

Monica Stamm: With respect to just guidance, or
everything?

Commissioner Horwitz: Well, generally everything,
but guidance as well.

Monica Stamm: Well, okay, well with respect to all
of the various powers that have been delegated to staff, you
know we have a full staff, we have lots of activities and
operational concerns that take place every single day, many of
which include exercises of discretion, and rely on the
expertise of things that both our filing specialists in the
lobbying area, filing specialists in the financial disclosure
statements, our auditors, our investigators, all of those
daily operations are covered in the statute and are part of the
delegation. With respect to guidance, the principal that has
been established is that, you know, we get, what, 30-40 requests
for guidance just on the ethics side alone every month, and
that includes requests relating to can someone accept a gift,
can someone engage in an outside activity, can someone take a
job based on post-employment concerns, if someone is coming
into state government, what do I do about these particular
conflicts that I might have from my prior work. And the concept
is these questions need timely answers, they need these
considerations. We have the authority to answer their questions if there is Commission precedent on point. If it is a novel or new question, then we bring it to the Commission. But if there is already precedent about these issues and questions and how to analyze them, then we follow that precedent that has been set by the Commissioners over the last 30 years and we apply it and we give that advice and guidance in a timely way. We tend to turn around those requests within a week, if not a few days, because people need answers in a timely basis. And our staff, some of whom have been working for the agency since 2012, are very familiar with our precedent and what the law is and how we have been answering those questions over the years, and how our predecessors have answered those questions, and so we give that guidance, what we call internally, informal guidance, rather than the formal guidance that it is in the form of an advisory opinion. So that has traditionally been delegated to staff so that we can do our job on a timely basis and that the state officers and employees who are trying to do the right thing can receive the guidance that they need and be able to conduct themselves accordingly with the law.

Commissioner Horwitz: Ok, thank you. So I heard you say a number of times that in addition to the volume of requests, that there is often a need for a timely response, and part of that, I guess, if I understand what you are saying, is that the staff has this authority that’s been delegated to the
staff because we as the Commission, we couldn’t possibly keep
up with the requests that are made in a timely basis, given A,
our meeting schedule, which is basically once a month, and the
volume of other work that we have to do, is that another
consideration for the delegation?

Monica Stamm: Yes, I mean the Commission meets monthly
from 10:30-1:30 or 2:00, and we have full agendas for each
meeting. Staff puts a lot of time and thought into how much
we can actually fit into any one agenda. We often have to carry
over items to the next meeting, so to the extent that we get,
like I said, 40,41 requests, and not all of those relate to
agency heads or elected officials but often they do, and so it
would be a lot of additional work to present those to the
Commission with all the precedent and the advisory opinions
that they are based on and what we have done with this in the
past.

Commissioner Horwitz: Okay, let’s talk about a couple
points. I’m sorry, if can you just indulge me a bit more because
this is a very serious motion and I think that there is a lot
behind it, it’s complicated, and we haven’t considered this
before, so I think it is important to get the details. So does
the staff, with respect to, so first of all, you know one sort
of framing question, which is, to the extent that the staff who
makes a decision and gives advice to a state employee, if the
state employee then violates the public officers law, the fact
that there has been a delegation and the staff has given advice, that doesn’t take away our jurisdiction to enforce violations. In other words, if we give an opinion to a public employee, whoever that is, you know, somebody who mows the lawn at a state park or the governor or the comptroller, or the attorney general, if they don’t follow the advice or they engage in conduct that violates the public officers law, we still have jurisdiction to pursue an enforcement action, isn’t that right, Monica?

Monica Stamm: Yes, and I would add to that if it turned out that any of the representations that were made in seeking the request for guidance turned out to be inaccurate, or that they were omitted from the request, that would also call the guidance in respect to the guidance into question, which that has happened, and we have pursued enforcement actions under those circumstances in the past.

Commissioner Horwitz: Yes, I recall a number of those instances over my years on the Commission where we did pursue enforcement actions against individuals, who, notwithstanding the good advice that we gave to them, they went ahead and violated the public officers law. One other thing, Monica, I’m assuming that the staff keeps track of the requests that the Commission gets for advice and the advice that it gives, whether it’s formal or informal, isn’t that right?
Monica Stamm: Yes, there is a log that is kept by the ethics group, and that anyone who gives advice and guidance enters into the log all of these, both formal and informal guidance, is tracked there, and then all of the written responses and materials received are saved on our central drive. In addition, at the request of some Commissioners, we have been providing a list of guidance that is given to certain individuals. We started providing that to the Commission, I think, within a few months ago.

Commissioner Horwitz: Wait, I’m sorry could you say that again, I missed that, I didn’t hear that, what did you say about other Commissioners?

Monica Stamm: At the request of Commissioners starting two months ago, we started providing a certain subset of our full log that involves guidance given to the individuals that they specified, we now provide that to the Commission, so that can see the sort of description of the guidance that we have provided.

Commissioner Horwitz: Great, so I see some of us are already tracking the advice that has been given. So Mr. Chairman, I have to say, and there is a motion and it’s been seconded so I appreciate everybody’s indulgence in my asking these questions, which I felt were important for me to understand the answers, and understanding the policy so I can make an informed decision about whether this actually makes
sense and whether it is a meaningful proposal or whether is it just another cynical proposal dressed up in sheep’s clothing to take away authority from the staff and perhaps unfairly go after certain members of the public employ, so I am going to oppose this motion, because, what we’ve have heard is, we’ve heard a number of things. One, that this is a practice that’s longstanding, this delegation, and it certainly predates JCOPE, number one. Number two, there is a tremendous amount of effort and thought given by our professional staff, the experts who know the public officers law. Now, while some of us, over time, and maybe not so much over time, you know, have become knowledgeable about the public officers law, I don’t think there is a single Commissioner who would say that their judgment, their experience, and their knowledge of the public officers law is better or more informed then the men and women who form our professional staff, number two. Number three, given the volume and the nature and the timeliness of the requests and the other business, a delegation of authority for these kinds of issues makes eminent administrative and efficient sense. To the extent that Commissioners like Commissioner Lavine or Commissioner Weissman or anybody else have a concern about whether a public officer, again, be that person the governor, the attorney general, or somebody mowing the lawn in the state park, if they have complied or not complied with the public officers law, there is no way that we
are divesting ourselves of jurisdiction if our staff gives
advice. And as Monica said, there is countless instances where,
not countless but there are numerous instances where we have
engaged in enforcement actions against public employees who,
notwithstanding our advice, have violated the public officer’s
law. For all of those reasons, I am going to oppose this motion.
Thank you, Mr. Chairman, and thank you Commissioners for
indulging me in asking my questions. Thank you so much.

Chair Rozen: Thank you, Commissioner Horwitz.

Commissioner Weissman?

Commissioner Weissman: Yeah, as a general rule, I
think both Commissioner Lavine and I agree with the delegation
to staff, okay, and I am not going to call a person mowing the
lawn a constitutional officer, nor am I going to call him the
head of a state agency. I think what is driving this here is
the inability, at times, for Commissioners to get information
on advice provided by staff, pure and simple, and that to me
causes a problem. Now, it appears possibly, prospectively, we
have dealt with this, but it sits very uneasily within me that
questions asked went unanswered and told they would not be
answered where Commission staff had information and it was not
provided to Commissioners. Thank you, Mr. Chair.

Chair Rozen: Commissioner Dering.

Commissioner Dering: I just want to say that, echo
some things that happen in terms of, I think when people need
advice from JCOPE, they need it quickly. The staff at JCOPE, from my view, they’re outstanding. They’re the experts, they provide it on a timely basis, and the delegation has been working for years, including with JCOPE’s predecessor, and I just don’t see the reason why we would change that.

Chair Rozen: Thank you. Commissioner Yates, are you interested in chiming in here?

Commissioner Yates: Yeah, thank you. I have two questions really. First of all, I look at the statute, and the statute, under subdivision 9, says that the Commission can delegate authority to the executive director between meetings, assuming we have done it in writing, specific powers, but cannot delegate decisions that require a vote of the Commission. Then, there is another provision about advisory opinions at 16, and it says that a person can, on written request, can ask for an advisory opinion, and then the Commission shall render a written advisory opinion that may be relied upon by that person. So my two questions are this, I am assuming for the moment that the prior resolution, which I didn’t see because it predated me, gave authority for this, that might be an open question, but for my purposes I will assume that, and that is, I am looking at the statute, and does an advisory opinion, it says an advisory opinion by the Commission, so would an advisory, it can be delegated, or it can’t be delegated if it is something that requires a vote of the Commission, so does an advisory
opinion by the Commission require a vote of the Commission, because if so, we can’t delegate that, that is number one. And then number two, when I look at the advisory opinions section, it talks about that person who requested the advisory opinion being able to rely upon it in good faith. I am totally for that, I mean, of course, a person who gets an opinion from the Commission, or by the staff if they’re authorized to do it, should be able to rely upon it, but my question is does that mean it is binding upon us even if it wrong in future similar situations? And I know we have had one or two situations where staff gave advice and then the Commission didn’t agree with it later. And so, the question is, does that mean then we are bound because staff went ahead and gave advice, and the Commission or the majority of the Commission doesn’t agree with it, that somehow or other implicitly we took a vote on that, authorized it, under 16? Those are my two questions and I will simplify it again because I know it went on for a bit. My two questions are, number one, does an advisory opinion require a vote of the Commission under subdivision 16, because if it does, we can’t delegate that, and my question number two is, is it binding upon us for any other similarly-situated person beyond the specific person who asked for advice?

Monica Stamm: So, Chair, if I could address Commissioner Yates’s questions, this is Monica.

Chair Rozen: Go ahead.
Monica Stamm: So, I just want to break this down, but advisory opinions have been interpreted by this Commission to be the formal advisory opinions that we post on the website. Those require a Commission vote. What has been delegated to staff is in the delegation, it reads pursuant, to executive law 94.16 and legislative law section 1~d(f), to issue informal letter opinions when the response to an inquiry is based solely on Commission precedent. So, what has been developed in practice over the years by JCOPE and all of its predecessors is this practice of providing informal guidance. And that is based on what has been done in advisory opinions over the years, and so we follow our precedent and apply it to the questions that we are asked. If we get a question that is unprecedented or raises a new issue that we think needs to be addressed or clarified by the Commission, we bring it to the Commission. But that is the way the statute has been applied and interpreted. So the guidance that staff has given is called informal and it doesn’t require a vote, and that is the majority of the guidance that is provided, because over the years, most of the questions about interpretation of the law have been addressed by this Commission and the Commission on Public Integrity and the State Commission on Ethics, they have addressed a lot of the questions, so that is how the law is interpreted and applied.

Commissioner Yates: So I have to follow up on that, I’m sorry, respectfully, I don’t think my two questions were
really answered, and that is the statute talks about advisory opinions by the Commission, but you are saying not written in the statute is a practice of informal advisory opinions that are not authorized necessarily by the statute but not barred by the statute, one way or the other. And then number two, you didn’t answer my question, respectfully, about how binding is that upon similarly-situated people.

Monica Stamm: Well, the informal guidance is not public, so it only applies to the individuals who requested it, but how binding is it on others, I am not sure, they are not binding on others, but if what your question is when the Commission disagrees with informal guidance, I think then the Commission can decide how it wants to act, but once someone has sought guidance on something, and if they’ve acted in accordance with that guidance and the representations that they made were accurate, then, you know, the Commission would have to consider what, if any, action it might take with respect to it. For example, are you going to pursue someone for violating public officers’ law when they sought guidance and followed it? If someone takes a job based on guidance, are you going to then find that they can’t take that job after the fact? Someone has taken on other obligations or legal obligations or an outside activity, so I think that would always be the question. People get this guidance so that they can conduct themselves accordingly, and they rely on it and they take steps. People
leave jobs, people take jobs, people undertake obligations, and
so, that really would be a question for the Commission if the
Commission comes a time where they think that something is
potentially engaging is a conflict, and so far, we have been
able to work through those issues when they arise. And I should
also mention when something high profile comes in, we do notify
the Commission, so the Commission is aware of it. That has been
our practice as well. Did I answer your questions this time?

Commissioner Yates: I have a lot more questions, but
I don’t want to, I want to let other people speak, so I will
shut up for the moment.

Chair Rozen: Is there anybody else who wants to opine
on this?

Martin Levine: Commissioner Weissman would like to
be heard.

Commissioner Weissman: Chair, I have one very quick
question for our general counsel. Commissioner Lavine’s motion,
how many requests for guidance would fall within that motion
within the last six months?

Monica Stamm: I am sorry. I am trying to go to the
log. I don’t know the answer.

Commissioner Weissman: Well can you….

Monica Stamm: The last six months is a little skewed
because of COVID so, you know, we didn’t receive as many
requests as we normally do, but we normally get 40 to 41
guidance requests a month...

Commissioner Weissman: No, no, no, Monica, that is
not the question. The motion that I believe Commissioner Lavine
made went to constitutional officers, we have determined those
don’t include the legislature, and state agency heads. Those
two categories, let’s say over the last year, that may be a
broader period, how many requests have you gotten from those
two categories?

Monica Stamm: I’ve got to check. I just don’t know
the numbers off the top of my head, but again, I think all of
2020 is kind of skewed because of the shutdown and restrictions
on travel and the way people are operating, but I think, and
Keith or Michael, correct me if you think I am wrong, but I
would estimate that we get at least, I don’t know, four or five
a month, and you are only talking about outside activities as
opposed to we requests about reimbursements for travel, we get
conflicts requests, we get gift requests.

Commissioner Weissman: No, we are only speaking to
the outside activity.

Monica Stamm: Only outside activities. Yeah, outside
activities, I think we were estimating, I think, four to five
a month, pre-COVID. I am trying to look at the older charts.
Commissioner Weissman: And that would be from the state agency heads and constitutional officers? On only outside activities?

Monica Stamm: Again, I am, I don’t have it at my fingertips, for 2019 is what I am trying to look at, it is just not searchable at this time (inaudible).

Commissioner Weissman: Mr. Chair, may I ask Commissioner Lavine to withdraw his motion until such time that we can get an accurate number, I mean, and again as a general rule, I believe staff should be doing these types of activities, but with Commissioner Lavine has put a motion forward, which may or may not have a limited effect, and I think we should know what we are voting on, yay or nay, before moving forward.

Commissioner Lavine: Seems reasonable to me. I have operated on the assumption, and I want to be disabused of the premise if I am incorrect, that the number or requests for outside activity emanating from the four constitutional officers and the agency heads would be a very tiny subset of the total requests that are received from the tens of thousands, hundreds of thousands of state employees, potentially, but if I am wrong with that premise I want to be informed of that. Happy to put the motion over to the next meeting, Mr. Chairman.

Chair Rozen: Okay, anybody else on this?

Commissioner Lavine: Well, I want to say one more time, and I will reiterate it at the next meeting. I want to
address the proposition, if I heard it correctly and am characterizing it accurately, staff has a greater capability of discernment than the Commissioners. We have an outstanding staff but the logical extrapolation of that proposition is, why bother to have a Commission deliberation, and the regulation, may I end with where I began, says, with respect to the four constitutional officers and the agency heads the application shall be made to us, the Commissioners, and shall be subject to our approval or disapproval, but I will wait to hear from staff at the next meeting.

Chair Rozen: Yes, Commissioner Fisher?

Commissioner Fisher: I would like to make a motion to put this back on the table so I can vote against it because it is a waste of our time. This is just a waste of our time. We have more important things to do and so does staff, so is there a way to to call a vote today so we don’t have to hear this again?

Commissioner Horwitz: Mr. Chairman, I will second that motion. Well said, Commissioner Fisher. Let's vote, let’s not waste any more time. Take a vote right now.

Chair Rozen: Hold on, hold on, Commissioner Fisher, at the risk of offending you, which I do not intend to do, was your motion serious?

Commissioner Fisher: Yeah, I’m serious. I would like to call a vote and I intend to vote against it.
Chair Rozen: Okay, there is then a seconded motion, so if you don’t mind, please restate the motion so we know what we are voting on.

Commissioner Fisher: I did not record what Commissioner Lavine’s motion was, but if it was recorded and can be read back, please?

Martin Levine: There was a motion to require that outside activity requests from the four statewide elected officials and agency heads be brought to the Commission for a vote. I will say, in effect, what you would be doing is amending the delegation resolution with respect to that point, but that was not how it was framed. I am just telling you how it would be effectuated.

Commissioner Fisher: I would like to move that.

Monica Stamm: So, Commissioner Fisher is in effect making the motion that he plans to vote against and then Commissioner Horwitz is seconding that motion.

Commissioner Yates: Now, I don’t understand the motion.

Monica Stamm: So the motion, Commissioner, if I understand it, Commissioner Fisher is making a motion to amend the delegation, with respect to outside activities to that the delegation would be revoked with respect to the agency heads and the statewide elected officials, that is the motion, and Commissioner Horwitz, you would be seconding that motion. And
then you both stated you are going to vote against your own motion.

Commissioner Fisher: Correct.

Commissioner Horwitz: Mr. Chairman, can we call the vote, the roll?

Chair Rozen: One second, I saw Commissioner Yates’ hand up.

Commissioner Weissman: Martin is looking up whether it is actually permitted.

Martin Levine: I believe it is.

Commissioner Weissman: I believe it is too.

Martin Levine: It think it just requires a second.

Commissioner Horwitz: It is permitted, and there is precedent of the Commission for this.

Commissioner Yates: Do I have the floor, or…

Chair Rozen: Hold on, one at a time, one at a time everybody. I get that this has gotten a little heated, but one at a time because otherwise no one can understand anything, and we end up spending more time going back over the things that everybody’s talked over.

Commissioner Yates: Do I have the floor?

Chair Rozen: Go ahead.

Commissioner Yates: My problem is this. I would hate to see this put to bed permanently, because the statute says that the Commission votes on advisory opinions. The statute
says that the Commission cannot delegate something that it has to vote on. The work-around on this apparently, in the past, has been outside of the statute, we have been giving, staff has been giving advisory opinions that are not authorized by the statute explicitly, but they are calling them informal, and somehow or other, they have become binding on the Commission, which is exactly what the statute says we can’t do, so without a vote, we couldn’t bind ourselves but now we are allowing the staff to bind us? So, I do agree that in the normal course, we need speed and it is a minor matter and it can be quickly resolved and relied on precedent, that informal opinions from staff are a wonderful thing for the individual concerned, as long as it doesn’t bind the Commission in subsequent matters. But I am a little concerned that we are going way outside of the statute here by letting the staff do something that we’re not allowed to do and give an informal opinion, to give an opinion without a vote. So, I am not necessarily speaking in favor of Gary’s motion, because I wanted to know more about it, but I am definitely speaking against the notion that we just walk away from this issue and pretend this doesn’t exist as a problem. Which means when all is said and done, I guess I am voting for the motion, reluctantly, even though I don’t want to vote for the motion, because if the net result is that we are never going to analyze the statutory problem here, that’s just wrong.
Chair Rozen: Okay, anyone else?

Commissioner Jacob: I am sitting here, hello, Mike?

Chair Rozen: Go ahead.

Marvin Jacob: Yeah, I am on a telephone and I have to confess I don’t know what the motion is with any clarity, there has been so much back and forth.

Chair Rozen: I will join you in that, Marvin, I was just going to say the same thing.

Martin Levine: Commissioner Fisher, please correct me if I misstate your intentions, but the vote was to amend the delegation of authority to staff to remove the approval of outside activity requests by or on behalf of the four statewide officers and state executive agency heads.

Commissioner Fisher: Yes, that is correct.

Chair Rozen: So, you are basically re-moving Gary’s motion?

Martin Levine: Correct.

Commissioner Fisher: Yes, correct.

Chair Rozen: And Dan, that is what you seconded.

Commissioner Horwitz: Correct.

Chair Rozen: Okay, is that clear?

Commissioner Weissman: What vote I?

Chair Rozen: Marvin, is that clear.

Commissioner Jacob: Yes.

Chair Rozen: Okay, so let’s vote then.
Martin Levine: On the motion to change the delegation to remove outside activity approval and remand that back to the Commission, all votes in favor please raise your hand. I see Commissioner Weissman, Yates, and McNamara voting in favor, I will call the roll for the remainder. Commissioner Dering?

Commissioner Dering: No.

Martin Levine: Commissioner Fisher?

Commissioner Fisher: No.

Martin Levine: Commissioner Horwitz?

Commissioner Horwitz: No.

Martin Levine: Chair Rozen?

Chair Rozen: No.

Martin Levine: Commissioner Cohen?

Commissioner Cohen: No.

Martin Levine: Commissioner DiPirro?

Commissioner DiPirro: No.

Martin Levine: Commissioner Jacob?

Commissioner Jacob: Yes.

Martin Levine: Commissioner Lavine?

Commissioner Lavine: Yes.

Martin Levine: And Commissioner McCarthy?

Commissioner McCarthy: Yes.

Martin Levine: That is 3, 4, 5, 6 in favor, and 6 against.

Monica Stamm: Does not carry.
Martin Levine: Correct, motion fails.

Chair Rozen: Let’s move on please. Item six on the agenda, we need a motion to enter into executive session, please.

Commissioner Dering: I’ll move. 

Commissioner DiPirro: So, moved.

Martin Levine: I have Commissioner Dering and Commissioner DiPirro. On the executive session motion, all in favor raise your hand please. Visually, I see Commissioner Dering, Fisher, Weissman, Horwitz, McNamara, Yates and Rozen in favor. Commissioner Cohen?

Commissioner Cohen: Yes.

Martin Levine: Commissioner DiPirro?

Commissioner DiPirro: Yes.

Martin Levine: Commissioner Jacob?

Commissioner Jacob: Yes.

Martin Levine: Commissioner Lavine?

Commissioner Lavine: Yes.

Martin Levine: Judge McCarthy?

Judge McCarthy: Yes.

Martin Levine: Thank you. Motion carries.

[The Commission went into Executive Session]

[The Commission returned to Public Session]

Chair Rozen: Okay, thank you.

Walter McClure: We are back in public session.
Chair Rozen: Thank you. Monica.

Monica Stamm: Sure. During executive session, the Commission approved one settlement agreement, the Commission commenced four substantial basis investigations, and the Commission authorized steps in several investigative matters, closed one matter, and discussed several other investigative matters.

Chair Rozen: Thank you. This concludes the October meeting of the Joint Commission on Public Ethics. Can I have a motion to adjourn please?

Commissioner Dering: I’ll move.

Commissioner Weissman: Second.

Chair Rozen: Thank you, Martin.

Martin Levine: All in favor please raise your hand. Okay, I see Dering, Fisher, Weissman, Horwitz, McNamara, Yates and Rozen. Cohen?

Commissioner Cohen: Yes.

Martin Levine: DiPirro?

Commissioner DiPirro: Yes.

Martin Levine: Jacob?

Commissioner Jacob: Yes.

Martin Levine: Lavine?

Commissioner Lavine: Yes.

Martin Levine: Judge McCarthy?

Commissioner McCarthy: Yes.
Martin Levine: Motion carries.

Chair Rozen: See everybody in November. Thank you.