

**MINUTES OF THE PUBLIC SESSION OF THE
JULY 30, 2013
COMMISSION MEETING
OF THE JOINT COMMISSION ON PUBLIC ETHICS
HELD AT THE COMMISSION'S OFFICE LOCATED AT
540 BROADWAY
ALBANY, NEW YORK**

Present:

Chair: Daniel J. Horwitz

Members:

David Arroyo (*via Skype*)
Hon. Joseph Covello
LaShann DeArcy
Hon. Vincent DeIorio
Mitra Hormozi
Marvin E. Jacob (*via Teleconferencing*)
Seymour Knox, IV
Gary J. Lavine
David A. Renzi
George H. Weissman
Ellen Yaroshefsky (*via Teleconferencing*)

Members

Absent:

Hon. Mary Lou Rath

Staff:

Monica J. Stamm, Chief of Staff and Deputy Counsel
Jeannine Clemente, Director of Administration
Robert Cohen, Special Counsel and Director of Ethics and Lobbying
Compliance
Martin L. Levine, Director of Audit and Review and Senior Counsel
John T. Milgrim, Director for External Affairs
Letizia Tagliaferro, Director of Investigations and Enforcement
Pei Pei Cheng-deCastro, Senior Investigative Counsel
Louis Manuta, Associate Counsel
Deborah Novak, Executive Assistant
Terence Mulderrig, Senior Investigator
Jack Patterson, Confidential Investigator
Lori Donadio, Legal Assistant
Ben Novogroski, Intern
Kyra Thornton, Intern
Erica Rickards, Intern

I. OPENING STATEMENT

Chair Horwitz opened the Public Session and announced that Commissioner Patrick Bulgaro had resigned, effective July 30, 2013. The Chair thanked Commissioner Bulgaro for his service and wished him well.

II. MINUTES - PUBLIC SESSION – JUNE 25, 2013

Upon motion made by Commissioner Weissman, which was seconded by Commissioner DeIorio, the Minutes from the Public Session of the June 25, 2013 Commission Meeting were approved by unanimous vote.

III. REPORT FROM STAFF

Update on Roundtable discussions with Regulated Community

Chief of Staff and Deputy Counsel Monica Stamm informed the Commission that a productive roundtable discussion was held on June 28, 2013 on the random audit program under the Lobbying Law. Staff will continue to host these discussions and will announce them *via* e-blasts and JCOPE's website. Staff has various topics planned in the coming months but invites suggestions.

Update on Annual Financial Disclosure Statements

Monica Stamm discussed that the Commission has now received the filings from the Legislature and, for the first time, the financial disclosure statements submitted by elected officials have been posted on JCOPE's website. Overall, the Commission has received approximately 22,000 financial disclosure statements, which staff are processing.

First Quarter Financial Report

Director for Administration Jeannine Clemente provided an update on the first quarter of 2013-14. The Commission has spent approximately 20% of its total cash allowance for the year: \$726,308 on personal services and \$158,238 on non-personal services, for a total of \$884,546.

IV. REGULATIONS

Update on Pending Regulations

Monica Stamm provided an update on several regulations before the Commission. First, the draft Public Service Announcement regulations, as discussed at the last meeting, were posted on the Commission's website to begin an informal public comment process while staff continued to work with the community on regulations to present to the Commission for adoption and proposed rulemaking process under the State Administrative Procedure Act (SAPA). Comments will be accepted through August 16.

Gift and related regulations will be published in the State Register on August 14, 2013, which will begin the 45-day public comment period that will end on September 28. Once the proposed regulations are published, they will also be available on JCOPE's website and an e-blast will be sent to the regulated community. After reviewing comments, staff will re-present the regulations to the Commission for further discussion.

The Source of Funding regulations that the Commission adopted in April will be finalized shortly. In June of 2012, the Commission held a public hearing to begin an informal review process on the Source of Funding regulations. The regulations were then adopted in July 2012, and they were subject to the formal public comment process under SAPA. The regulations have been through several rounds of comments and amendments. The Commission adopted the final version of the regulations in April 2013. The public comment period ended earlier this month, and no comments were submitted. No further Commission action is required. The regulations adopted by the Commission will become final and effective when they are published in the State Register, which staff anticipates would be August 14, 2013. Until then, the regulations continue to be in effect as emergency regulations. The emergency regulations have been in effect through two filing periods: the January and July filings.

Commissioner Renzi raised an issue concerning one aspect of the Source of Funding regulations. He discussed the process for organizations to seek a "blanket exemption" from the source of funding disclosure requirements. He stated that the Commission may have made a mistake along the way, and that for transparency, the debate on the exemption applications should take place publicly, given that it involves potentially tens of millions of dollars to be exempted from review. Commissioner Renzi does not believe there would be any harm if the discussion about the applications, the issues of law, publicly-available information, and determinations, is in the open session.

Chair Horwitz agreed that the need for transparency is very important -- the underpinning of JCOPE's statute -- but asked staff to address the parameters of the statute which should guide the Commission's discussion. Monica Stamm explained that the exemption from the disclosure requirements for certain 501(c)(4) organizations is created by statute and can be found in two sections of the Lobbying Law. The statute then gives the Commission the discretion to promulgate regulations to implement the exemption process. This is just a small part of the source of funding regulations, which the Commission has been developing for the past year and are currently in effect on an emergency basis. Section 938.8 of the regulations provide that the exemption process is confidential but the Commission has the discretion to make the fact of the application public. This was an attempt to balance the need for transparency -- the public interest in knowing that there has been an application and the Commission's determination -- with the purpose of the exemption -- to protect individuals who are affiliated with these 501(c)(4) organizations and face a reasonable probability that they will be subject to threats or harm due to their affiliation with these organizations.

Commissioner Weissman inquired whether there is a requirement in PIRA that the information relating to the application be kept confidential. Director of Ethics and Lobbying Compliance Robert Cohen responded that there is no statutory mandate to keep the materials confidential, but the Commission is authorized by the statute to

adopt regulations as it sees fit. The provision in the regulations mandating confidentiality was motivated by the underlying purpose of the exemption, a concern that making the materials publicly available might have a chilling effect on applicants, which would undermined the very purpose of the statutory exemption.

Commissioner Weissman admitted that he missed this issue in the past, but suggested that the Commission consider finding some middle ground, as most of the information submitted with these applications is already in the public domain. There is nothing in the law that precludes the Commission from retaining the discretion to determine which materials should be confidential and which materials should be publicly released.

Commissioner Yaroshefsky acknowledged that all the Commissioners missed the issue. She believes most organizations will consent because the information already is in the public domain, but there may be circumstances in which an organization can make a reasonable request to keep a portion of the information confidential.

Chair Horwitz noted that the Source of Funding regulations are essentially a signature away from becoming final regulations. He suggested that the Commission should finalize the current regulations, which apply to the entire disclosure process not just the exemptions, and represent more than a year's worth of work, and then continue to have a discussion about whether to amend the process for seeking an exemption. Monica Stamm added that timing is an issue -- the Commission has a year from commencing the formal rulemaking process under SAPA to finalize the regulations, and the emergency regulations will expire at the end of that year, in early September. If the regulations adopted by the Commission in April become final on August 14, the Commission could expeditiously adopt amended regulations and submit them to the SAPA process.

Commissioner Lavine reiterated the view he expressed previously that there ought to be a separate amendment to the regulations whereby we would require entities that

are granted an exemption to submit to JCOPE a list of their donors to be maintained in confidence.

Several Commissioners discussed the proposal and that the pending exemption applications should be tabled pending the discussion about amending the regulations. There was a consensus that the staff would look at these issues, including the legislative history, and present options to either the full Commission or a subcommittee. Chair Horwitz clarified that, at this point, no further Commission action is required as to the existing regulations because the Commission adopted the regulations at the April meeting.

Commissioner Jacob asked whether the Commission could hold off on submitting the final regulations and consider amendments at the August meeting. Chair Horwitz explained that there are two issues with Commissioner Jacob's proposal. First, as previously discussed, the Commission is not meeting in August. Second, there is a statutory comment period on any proposed rulemaking, and therefore, the amended regulations could not be completed within the one-year period allotted under SAPA. The Chair reiterated his proposal that the Commission finalize these regulations, work through the proper process to address the proposed amendments, including fully vetting legal issues with the staff, so that the Commission is well positioned to move forward.

Commissioner Yaroshefsky made a formal motion to defer consideration of any exemption applications currently before the Commission until such time that the Commission reconsiders part 938.8. Commissioner Renzi seconded that motion. After some discussion as to whether a motion was required, the motion was approved by unanimous vote.

Commissioner Hormozi was not present for the remainder of the meeting.

V. NEW AND OTHER BUSINESS

There was no new or other business.

VI. MOTION TO ENTER INTO EXECUTIVE SESSION PURSUANT TO EXECUTIVE LAW §94(19)(b)

A motion to enter into Executive Session pursuant to Executive Law §94(19)(b) was made by Commissioner DeIorio, seconded by Commissioner DeArcy, and was approved by unanimous vote.

VII. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

Chair Horwitz reported that during the Executive Session, the Commission considered applications for exemptions from the "Revolving Door" requirements pursuant to Public Officers Law §73(8-b) and discussed a number of investigative matters.

VIII. MOTION TO ADJOURN THE PUBLIC MEETING

Upon motion made by Commissioner DeArcy, seconded by Commissioner Renzi, which was approved by unanimous vote, the meeting was adjourned. Commissioner Weissman was not present for this portion of the meeting.