

**MINUTES OF THE PUBLIC SESSION OF THE  
October 29, 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:**

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

**Members**

**Absent:**

David Arroyo

**Staff:**

Monica J. Stamm, Chief of Staff and Deputy Counsel  
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 Tagliafierro, Director of Investigations and Enforcement  
Shari Calnero, Senior Counsel and Manager of Training  
Louis Manuta, Associate Counsel  
Deborah Novak, Executive Assistant  
Terence Mulderrig, Senior Investigator  
Jack Patterson, Confidential Investigator

**I. OPENING STATEMENT**

Chair Horwitz opened the Public Session.

**II. MINUTES - PUBLIC SESSION – SEPTEMBER 24, 2013**

Upon motion made by Commissioner Roth, which was seconded by Commissioner Yaroshefsky, the Minutes from the Public Session of the September 24, 2013 Commission Meeting were approved by unanimous vote.

**III. REPORT FROM STAFF**

**Academic FDS filing date – November 15, 2013**

Chief of Staff and Deputy Counsel Monica Stamm reported that the financial disclosure statements from academic filers are due on November 15, 2013. Staff is preparing for approximately 5,300 filings.

**Update on Lobby Data**

Monica Stamm discussed that the lobbying data on JCOPE's website has been updated. Earlier this year, JCOPE made available a downloadable spreadsheet of comprehensive lobbying data, and that has now been updated to include the first part of 2013. JCOPE also issued a press release analyzing this information to provide a snapshot of the activity during the legislative session. The data shows that there was an overall drop in lobbying spending attributable to the drop in advertising spending, but that compensation remained stable. The big client spenders for this period included big tobacco and the retailer coalitions against the proposed New York City ban on tobacco displays, as well as the teachers union, health care, major league soccer, and gambling interests.

**Second Quarter Financial Report**

Monica Stamm presented the Second Quarter Financial Report. As of the second quarter, JCOPE has spent approximately \$1.5 million in personal services, which is about 41% of its cash for personal services, and about \$300,000 in non-personal

services, which is about 38% of its cash for non-personal services. Overall, JCOPE has spent about 41% of its available cash for this fiscal year.

#### **IV. REGULATIONS**

##### **Update on Proposed Amended Source of Funding Regulations**

Monica Stamm reported that the source of funding regulations which were amended at the last Commission meeting, and became effective immediately on an emergency basis, have now been published in the State Register and are posted on JCOPE's website. JCOPE is accepting public comments through December 23, 2013. Chair Horwitz explained that later in the meeting there will be further discussion on the source of funding exemption process and a report from a subcommittee.

##### **Proposed Regulations**

Monica Stamm discussed that staff has been developing draft public service announcement regulations over the past year. Staff has engaged in an informal process, seeking informal comments and working with the regulated community, and is now ready to present proposed regulations for the Commission's consideration. If the Commission approves the proposed regulations, they will be subject to the SAPA process, published in the State Register, and there will be a formal public comment period.

Director of Ethics and Lobbying Compliance and Special Counsel Robert Cohen presented and discussed that the proposed regulations reflect a general public policy that supports and encourages public service announcements. The proposed regulations clarify that a public service announcement featuring a state officer or employee or a member of the legislature will ordinarily not be considered a gift under the Public Officers Law. At the same time, however, the regulations recognize that public service announcements that are published near an election in which an individual is running for office could be used or seen as a vehicle to promote that person's candidacy. So the regulations discourage the appearance of certain state officers and employees, the four statewide elected officials, members of the

legislature, and heads and executive directors of state agencies in public service announcements in the 90 days preceding any election in which they are a candidate for state office. The regulations effectuate this deterrence by making clear that when one of these individuals appears in a public service announcement during this 90-day blackout period and knows and intends that the public service announcement will be published during the 90-day blackout period that constitutes a violation of Section 74(3)(d) of the Public Officers Law. The Commission received some public comments on the regulations, as a result of which, staff has made some minor technical modifications to the proposed regulations. In sum and substance, the proposed regulations are very similar to what was published on the website for informal public comment. To the extent there were any concerns, they derived from a misunderstanding as to the intent and purpose of the regulations that was clarified by some minor changes.

Several Commissioners had questions and concerns about the proposed regulations. After some discussion, there was consensus that the Commission should defer action on all of the pending regulations, staff should work with a committee to review and revise the proposed regulations, and the regulations should be presented to the Commission for approval at the next meeting.

#### **V. APPLICATIONS FOR EXEMPTION FROM SOURCE OF FUNDING DISCLOSURE REQUIREMENTS**

Chair Horwitz thanked the members of that committee that worked on the process for handling exemption applications, Commissioners Arroyo, Lavine, Renzi, Roth, and Weissman. Chair Horwitz discussed that staff will make a presentation on the legal standards for the determinations on the source of funding exemption applications, and then Commissioner Lavine will report on the work of the committee. Then, pursuant to JCOPE's new process, the Commission will adjourn to Executive Session to determine the merits of the requests of three of the applicants for confidentiality and

then return to the Public Session to report the results of the Commission's deliberations.

Director Cohen provided a brief overview for the Commissioners on the applicable legal standards set forth in the Lobbying Law and Part 938 of the Commission's regulations.

Commissioner Lavine provided a summary of the work of the committee, which engaged in discussions on October 14, 2013 and October 18, 2013. The Committee considered the process for entertaining applications for exemptions and to consider the previous decisions made by the Commission in light of the Commission's determination to amend its regulations to utilize the statutory standard for review of an exemption application. A number of alternatives and options were carefully considered. Commissioner Lavine suggested that the Commission reserve any specific discussion for the executive session of the meeting, due to the potential for litigation concerning the changes to the regulations.

Chair Horwitz stated that the Commission has four exemption applications pending, three of which include requests for confidential treatment of materials that must be considered in the Executive Session, and when those deliberations are concluded, the Commission can come back into Public Session to complete the discussion of these exemption applications.

A motion to enter into Executive Session was made by Commissioner DeIorio, seconded by Commissioner Lavine, and was approved by unanimous vote. The Commission adjourned to Executive Session.

After the Commission returned to the Public Session, Chair Horwitz reported that during the Executive Session, the Commission discussed the three applications that include requests for confidentiality. Chair Horwitz stated that in light of the fact that these applications were submitted to JCOPE within days of the meeting, the

Commission has decided that it needs additional time to review the materials, and will adjourn consideration of these matters until the next meeting.

**VI. NEW AND OTHER BUSINESS**

Commissioner Yaroshefsky discussed the matter of the Commission's search for an Executive Director. Commissioner Yaroshefsky stated that a committee considered a number of applicants over several months, and she has since had discussions about employing a search firm to find additional candidates. Commissioner Yaroshefsky stated that search firms have been used by other organizations to hire executive directors, and she has found a reputable and highly regarded firm that is interested in meeting with the Commission to discuss a proposal. Commissioner Yaroshefsky made a motion for the Commission to hire a search firm to find candidates for executive director, notwithstanding that it may delay the process and cost money, because it is so important to the Commission to have an Executive Director who is independent of both the Legislature and the Executive Branch.

Commissioner Lavine raised a point of order that based on his experience serving on several boards, at the federal, state and county level, in all three branches of government, this type of personnel matter should only been discussed in executive session. There was a discussion among the Commissioners as to whether the issue is one of process or is a personnel matter.

Commissioner Jacob seconded Commissioner Yaroshefsky's motion.

Chair Horwitz discussed that the Commission had a robust process to search for an Executive Director candidate. The Commission posted advertisements in major news outlets, as well as its website. A committee reviewed 73 resumes, conducted 8 interviews, and narrowed the candidates down to 4. The concept of hiring an executive search firm was proposed and rejected the first time the Commission hired an Executive Director and the Commission ended up hiring an Executive Director who by all estimates served the Commission very well. The Chair stated that, under

applicable law, personnel matters, including the decision process and specific candidates, are handled in executive session.

Some Commissioners wanted to entertain the motion and began to discuss the merits. Commissioner DeArcy stated it was impossible to have a full discussion in the public session about Commissioner Yaroshefsky's proposal because it required discussion of specific candidates, and other Commissioners agreed with her. Commissioners discussed how to proceed.

The Chair made a ruling on Commissioner Lavine's point of order that Commissioner Yaroshefsky's motion is out of order because it is in contravention of the Commission's meeting guidelines which require that personnel matters be taken up in executive session.

**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. The motion was approved by a 9/4 vote. Chair Horwitz and Commissioners Covello, DeArcy, DeIorio, Hormozi, Knox, Lavine, Rath and Roth voted in favor of the motion. Commissioners Jacob, Renzi, Weissman and Yaroshefsky opposed the motion.

**VII. MOTION TO ADJOURN THE PUBLIC MEETING**

Upon return to the Public Session, Commissioner Yaroshefsky indicated her intention to resign from the Commission.

Upon motion made by Commissioner Rath, seconded by Commissioner DeIorio, which was approved by unanimous vote, the meeting was adjourned.