

**MINUTES OF THE PUBLIC SESSION OF THE
JULY 22, 2014
COMMISSION MEETING
OF THE JOINT COMMISSION ON PUBLIC ETHICS
HELD AT THE COMMISSION'S OFFICE LOCATED AT
540 BROADWAY
ALBANY, NEW YORK**

Chair: Daniel J. Horwitz

Members: Paul Casteleiro (NYC)
Mitra Hormozi (Face-time)
Marvin Jacob (NYC)
Seymour Knox, IV
Gary J. Lavine
Hon. Mary Lou Rath (BUF)
David A. Renzi (*via* Webex)
Michael A. Romeo, Sr.
Renee R. Roth (*via* Webex)
George Weissman

Members

Absent: David Arroyo
Hon. Joseph Covello

Staff: Letizia Tagliafierro, Executive Director
Monica J. Stamm, Chief of Staff and Deputy Counsel
Martin L. Levine, Director, Director of Audit and Review and Special Counsel
John T. Milgrim, Director for External Affairs
Jeannine Clemente – Director for Administration
Stephen J. Boland – Director for Administration
Shari Calnero, Senior Counsel and Manager of Training
Louis Manuta, Associate Counsel
Joanna Weiss, Associate Counsel
Deborah Novak, Executive Assistant
Patrick E. Coultry, Chief Investigator
Terence Mulderrig, Senior Investigator
Peter Smith, Confidential Investigator
Lori Donadio, Confidential Legal Assistant

I. APPROVAL OF MINUTES – PUBLIC SESSION – JUNE 24, 2014

A motion was made by Commissioner Weissman, which was seconded by Commissioner Knox, to approve the minutes from the Public Session of the June 24, 2014 Commission Meeting. The motion was approved by unanimous vote. Commissioner Hormozi was not present during this portion of the meeting.

II. Report from Executive Director

Executive Director Letizia Tagliafierro discussed some of the Commission’s outreach initiatives. The Commission will be periodically issuing plain language guidance in the form of Ethics Reminders. An Ethics Reminder recently was issued to remind state agencies to be aware of post-employment restrictions when contracting with former employees. In addition, the Commission has developed an ethics training for lobbyists which will be available online. The Commission anticipates rolling out the new ethics training before the next commission meeting.

Director for Administration Jeannine Clemente presented the first quarter financial report. As of the end of the first quarter, the Commission spent \$740,000, which is approximately 17% of its cash allowance for the 2014/2015 fiscal year.

III. Regulations and Guidelines

• **Overhaul of Lobbying Guidelines**

Executive Director Tagliafierro announced that the Commission is undertaking a review of the Lobbying Guidelines to clarify the guidance provided about complying with the Lobbying Act. The Commission will solicit comments from the regulatory community and the general public about issues the Commission should address in the Guidelines.

• **Proposed Amended Public Service Announcement Regulation**

Executive Director Letizia Tagliafierro discussed the proposed public service announcement regulations, which are back before the Commission for final approval. The regulations provide guidance as to what constitutes a public service announcement

and create a blackout period for when a public official or legislator can appear in a public service announcement in advance of an election.

Chief of Staff and Deputy Counsel Monica Stamm presented an overview of the Commission's process to date in adopting the PSA Regulations. The Commission started developing the regulations more than a year ago in accordance with the statutory mandate in Executive Law §94(9)(d-1) and posted an initial draft for informal public comment last summer. After receiving comments, the Commission modified the proposed regulations, and they were presented to the Commission for approval in public session last fall. Commissioners raised several issues and created a Committee to review and revise the regulations. In February, the Commission approved proposed regulations and pursuant to the State Administrative Procedure Act, they were published in the State Register for a formal public comment period which ended on June 28, 2014. Based on the public comments, staff is proposing some amendments to the regulations for the Commission's consideration. In staff's view, the changes are not material and will not require another round of review and public comment. The regulations can be adopted and finalized today and be in effect for the upcoming election.

Commissioner Jacob noted the comments submitted by Cable Telecommunications Association of New York which request that the blackout period be modified to mirror certain federal regulations which apply to the 60-day period before an election. Commissioner Jacob asked why the PSA regulations should differ from these federal election campaign advertisement regulations.

Deputy Counsel Stamm explained that the purposes of the two sets of regulations are somewhat different. The Cable Association's comments refer to a federal regulation that defines a campaign advertisement as within 60 days of an election and require certain disclosures for those campaign ads. In comparison, the Commission's proposed regulations define PSAs, and clarify for the first time that it is not permissible for Covered Persons to appear in PSAs in the 90 days prior to an election. Deputy Counsel Stamm further explained that there are various time periods used in similar State and

federal rules. For example, the House of Representatives has a 90-day blackout period before an election for government mailings. The New York State Assembly reportedly has a 60-day blackout period for government mailings. There are other rules that use 30-day periods.

Chair Horwitz questioned whether the Cable Association had raised this issue in the past. Deputy Counsel Stamm explained that the Cable Association had previously commented on the regulations, but this is the first time they have questioned the time period even though it has been in the regulations for over a year. Staff has been advised by the Cable Association that the 90-day time period will not be burdensome and they do not have a strong objection.

Commissioner Roth suggested it would be better if all the agencies had the same time period, and Commissioner Jacob questioned the basis for using 90 days. Deputy Counsel Stamm reiterated that there are a lot of different time periods related to election campaigns for different purposes, but there are no analogous public service announcement regulations. There are examples of 90 days which were taken into account in deciding to use a 90-day blackout period for the proposed PSA Regulations. Thus, even if the Commission reduces the time for the blackout period from 90 days to 60 days, other agencies will continue to use 90-day and even 30-day periods. There is no possibility of one consistent time period across the board.

Chair Horwitz stated that comparing the Commission's regulations to other regulations appears to be apples and oranges, as the other entities are not regulating Public Service Announcements. Chair Horwitz asked the staff to address the procedure for considering the proposed regulations, which may be relevant to the questions that Commissioners Jacob and Roth have raised.

Deputy Counsel Stamm explained that if the Commission adopts the regulations as proposed, they would not require another round of public comment and could be finalized and put into effect in time for the coming election. If the Commission decides to reduce

the blackout period from 90 days to 60 days, it would be a material change, and the regulations would need to go back out for further comment. Unless the Commission adopts the regulations on an emergency basis, they would not be in effect for the coming election. In short, there would be no blackout on Covered Officials appearing in PSAs prior to the election.

Chair Horwitz asked for staff's recommendation. Deputy Counsel Stamm recommended that the Commission adopt the regulations as proposed on an emergency basis so they will be final and effective as soon as they are submitted to the State Register and in advance of the 90-day blackout period before the General Election. Chair Horwitz agreed that it is important that the regulations should be in full force and effect for this election cycle.

Commissioner Casteleiro stated that it appears that an incumbent facing a primary challenger will have a longer blackout period and questioned whether there should be a shorter time period applicable to primary elections. Chair Horwitz suggested that the regulations be finalized as proposed, given that they have been under review for more than a year, but the Commission is free to take them up again in the future to consider amendments such as Commissioner Casteleiro proposes pursuant to State administrative procedures.

Commissioner Roth questioned whether the time period could be changed and the Commission could still adopt the regulations on an emergency basis so they will be in effect for this election cycle. Deputy Counsel Stamm confirmed that the Commission could adopt the regulations with a material change to the blackout period, put them out for a 30-day public comment period, and still adopt them to go into effect on an emergency basis while the rulemaking continues.

Commissioner Roth made a motion to adopt the proposed regulations with a 60-day blackout period, and commented that 90 days seems to be inordinately long. Commissioner Weissman responded "so is the political season." Chair Horwitz clarified

that Commissioner Roth is proposing to reduce the blackout period from 90 days to 60 days. Deputy Counsel Stamm explained that public officials running for election would be able to appear in PSAs for up to 60 days prior to the general election.

Commissioner Jacob seconded the motion. The vote was 3/8. Commissioners Casteleiro, Jacob, and Roth voted in favor of the motion. Commissioners Hormozi, Horwitz, Knox, Lavine, Rath, Renzi, Romeo, and Weissman were opposed to the motion. The motion did not carry.

A motion was made by Commissioner Weissman, which was seconded by Commissioner Romeo, to adopt the Public Service Announcement regulations as proposed by the staff and to adopt them on an emergency basis. The motion was approved by unanimous vote. Deputy Counsel Stamm clarified that the regulations will become effective upon submission in the State Register and the 90-day blackout period will be in effect for this election cycle.

IV. NEW AND OTHER BUSINESS

There was no new or other business.

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

A motion was made by Commissioner Romeo, which was seconded by Commissioner Hormozi, to enter into Executive Session pursuant to Executive Law §94(19)(b). The motion was approved by unanimous vote.

VI. PUBLIC ANNOUNCEMENT OF ACTIONS FROM EXECUTIVE SESSION

Chair Horwitz announced that during the Executive Session, in the course of discussion of litigation issues around the source of funding exemption appeals of four groups, the Commission resolved to grant a two-year period of exemptions to these groups, and they will not be required to reapply until July, 2015. A motion was made to this effect by

Commissioner Roth, which was seconded by Commissioner Casteleiro, and approved by a unanimous vote of the Commission.

In addition, the Commission discussed several investigative matters, approved a settlement agreement, and approved an application for an exemption from the two-year bar pursuant to Public Officers Law §73(8-b).

VII. MOTION TO ADJOURN THE PUBLIC MEETING

A motion was made by Commissioner Weissman, which was seconded by Commissioner Romeo, to adjourn the Public Meeting. The motion was approved by unanimous vote.