



August 31, 2012

Ellen Biben
Executive Director
Joint Commission on Public Ethics
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Albany, New York 12207
Email: investigations@jcope.ny.gov

VIA EMAIL

Dear Ms. Biben,

As a good government watchdog organization that monitors and comments on ethics reform and the integrity and actions of public officials, Citizens Union requests that the Joint Commission on Public Ethics (JCOPE) commence two investigations regarding the sexual harassment allegations against Assemblymember Vito Lopez: the first concerning how the State Assembly handled the investigation and settlements related to Assemblymember Lopez's misconduct, and the second concerning Lopez's alleged sexual harassment of members of his staff as it relates to his duties as a public officer.

While Speaker Sheldon Silver and the Assembly Ethics and Guidance Committee last week took decisive action against Assemblymember Lopez which it shared immediately with the public, Citizens Union is concerned that earlier charges of sexual harassment against Lopez were secretly handled without the necessary transparency, sufficient public knowledge, or involvement of the Assembly Ethics and Guidance Committee. We also have questions about why these matters were not initially referred for investigation to the newly created Joint Commission on Public Ethics (JCOPE), because our view is that these charges should have also triggered an investigation by JCOPE for potential violations of the Public Officers Law.

With New Yorkers' trust and confidence in our state government again shaken and new details emerging each day, JCOPE's investigation must now also include examining how the Assembly and Speaker Silver handled the charges against Lopez to assess the underlying circumstances of these matters, determine what procedures were followed, evaluate the actions taken, and examine possible violations of the Public Officers Law.

Citizens Union is deeply disturbed that there was a confidential, private settlement in which public funds were used. Such secret action raises questions about the interests behind the confidential settlement. As attorneys for the complainants are still publicly taking issue with the Speaker's professed belief that the settlement agreement resulted in halting any further action by the Assembly, there needs to be a

determination as to which view is correct and determine why the Assembly did not feel the need to take further action.

JCOPE's investigation should address the following issues:

1. The Assembly's handling of the sexual harassment settlements and investigations into Assemblymember Lopez's misconduct must be examined to ensure a public accounting of the internal process that was used and a full vetting of potential ethical violations. JCOPE should examine whether the state's Code of Ethics, §74(3) of the Public Officers Law under subsections d, f, and h, was violated by Assemblymember Lopez, staff or other members of the Assembly and whether sexual harassment in itself is an ethical violation.¹ This review should assess the following:
 - a. Whether Speaker Silver, Assemblymember Lopez, other assembly members, or staff improperly used or attempted to use their official positions in the handling of the investigations and settlement of these sexual harassment cases to obtain "privileges" or "exemptions" for themselves in violation of subsection d of §74(3) of the Public Officers Law. The lack of a public process and disclosure in the "quiet" settlement of incidents of sexual harassment raises questions whether it also was used to avoid possible negative publicity and public scrutiny. It should be determined whether the settlement was used to avoid scrutiny of how the Assembly handles sexual harassment given its handling of prior incidents and whether Lopez's significant political clout and leverage played a role in how this matter was addressed.
 - b. Whether the use of public funds for the initial settlement with the victims was appropriate and whether a private act of sexual harassment by a part-time elected official falls within the realm of employment matters where the state should be held financially responsible.
 - c. Whether Speaker Silver or staff gave a "reasonable basis for the impression" that Lopez "improperly influenced him...in the performance of his official duties" under subsection f of §74(3) of the Public Officers Law by settling the initial sexual harassment claims rather than referring the claim to the Assembly Ethics and Guidance Committee.
 - d. Whether sexual harassment violates the public trust standard under §74(3) of the Public Officers Law and is an ethical violation.

¹ Public Officers Law, §74(3) d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

2. The degree of involvement of the offices of Attorney General and Comptroller should be reviewed since it has been reported that the Comptroller's office approved the payment and that the Attorney General's Office provided informal legal consultation to the Assembly.
3. JCOPE should establish greater clarity regarding the proper procedures for handling instances of sexual harassment and associated ethical misconduct by public officers and under which circumstances the Ethics and Guidance Committee of the Assembly or Senate should notify JCOPE when it investigates complaints of sexual harassment that may also be a violation of the Public Officers Law.
4. It should also be made known why the Ethics and Guidance Committee was not advised of the initial settlement reached in June when it was investigating further cases against Assemblymember Lopez even though Speaker Silver has stated that he was precluded from providing the Committee information due to the confidentiality agreement.
5. It should be determined what further review or actions, if any, the Assembly chose to take after the first settlement to ascertain the full scope of the problem of sexual harassment in Assemblymember Lopez's office given reports this week that the office environment was sexually hostile, with pervasive harassment.
6. The public needs to be informed independently whether there are other recent settlements of sexual harassment charges using taxpayer funds that were confidentially handled without involvement by the Assembly's Committee on Ethics and Guidance or disclosure to the public.

This investigation presents JCOPE in its young existence with an opportunity to assert its oversight authority over ethical misconduct charges of state legislators and legislative employees. It is important that these matters be investigated and resolved thoroughly, fairly, publicly, and expeditiously, as the public deserves to know whether these matters were handled properly by the Assembly and whether Speaker Silver, Assemblymember Lopez or others in addressing this matter may have violated the Public Officers Law.

Though Citizens Union is very troubled by what it has learned about this matter and how it was handled, it urges that there be no rush to judgment until the facts and circumstances are established and made public. We very much hope when JCOPE presents its findings and suggested actions to the Legislative Ethics Commission that in the interest of good government and holding our elected officials accountable this legislative body will make public a report that lets New Yorkers know fully what happened and why. The principles of open democracy and accountable government demand nothing less.

Sincerely,



Dick Dadey
Executive Director