



Commissioners
New York State Joint Commission on Public Ethics (JCOPE)
540 Broadway
Albany, NY 12207

February 27, 2018

Re: Approvals of outside activity by heads of public authorities and state agencies

Dear Commissioners:

We write to request that the Joint Commission on Public Ethics (JCOPE) examine [Title 19, Part 932 of the New York Codes, Rules and Regulations](#) promulgated by your agency entitled Outside Activity Restrictions and Approval Procedures.

Specifically, we ask JCOPE to consider revising the rule to require:

1. the head of any public authority to acquire approval for outside activity by public vote of his/her respective board of directors *and* the Commission;
2. JCOPE to publish Outside Activities approvals it has provided to the heads of state agencies or public authorities even if they are Informal Opinions. (We note that JCOPE is allowed under statute to do so.); and
3. the head of any public authority or state agency to get approval for outside activity, regardless of whether the person serves on an unpaid or per diem basis.

Our understanding is the rule currently requires a policy maker in state government to get permission for certain outside activities, if serving on other than an unpaid or per diem basis, from the head of the state agency the policy maker works for and from JCOPE.¹ The rules, however, only require a head of a state agency to get approval for outside activities from JCOPE itself.² This approval procedure makes sense within the governance structure of a state agency, where there is only a single figure responsible for agency operations who is appointed by the Governor. However, we believe for authorities, which have their own governing boards with a fiduciary duty to the public

¹ [Title 19, Part 32 of the New York Codes, Rules and Regulations](#), 932.5(a).

² [Title 19, Part 32 of the New York Codes, Rules and Regulations](#), 932.5(b).

authority, the head of that authority, a “head of agency” in JCOPE rules, should also have to get permission publicly from the Board of Directors of the public authority for which they work. At a bare minimum, heads of agencies should be required to share the JCOPE determination on outside activities with their authority board during a public meeting.

This issue has come to the fore because of the outside activities of Joseph Lhota, Chairman of the Board of the Metropolitan Transit Authority (MTA). We do not know if JCOPE has provided Chairman Lhota with advisory opinions regarding his outside activities with New York University Langone, and the Madison Square Garden Companies.

However, we do know the MTA Board was not made aware of Chairman Lhota’s outside activities nor did they have the opportunity to weigh in on whether they were appropriate for a chairman to participate in.

In the case of Chairman Lhota, Madison Square Garden is located directly over the MTA’s Penn Station, one of the MTA’s most important facilities. The State of New York and MTA are in the process of relocating Penn Station to Farley Post Office, and Madison Square Garden and Penn Station are at the center of one of the largest State-supported economic development projects. This potential conflict in our view deserved disclosure and review by the MTA Board consistent with the Authorities Budget Office (ABO) [Recommended Practice on Conflict of Interest Policy](#), which states:

Board members and employees of state and local public authorities owe a duty of loyalty and care to the authority and have a fiduciary responsibility to always serve the interests of the public authority above their own personal interests when conducting public business. As such, board members and employees have the responsibility to disclose any conflict of interest, including any situation that may be perceived as a conflict of interest, to the authority board and the public.³

Thank you for considering our request to change this rule to create a procedure more tailored to the governing structure of the state’s many authorities. We welcome further conversation regarding this matter. Please contact Alex Camarda, Senior Policy Advisor at Reinvent Albany, at alex@reinventalbany.org should JCOPE wish to discuss this matter further.

Regards,

³ NYS Authorities Budget Office, [Recommended Practice on Conflict of Interest Policy](#), p. 1.

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