



**NEW YORK STATE THRUWAY AUTHORITY
NEW YORK STATE CANAL CORPORATION**



MINUTES

GOVERNANCE COMMITTEE MEETING NO. 8

September 16, 2009

Minutes of a meeting of the New York State Thruway Authority/Canal Corporation Governance Committee, held in the Board Room at Administrative Headquarters, 200 Southern Boulevard, Albany, New York 12209.

The meeting began at 9:30 a.m.

The following Members of the Governance Committee were present, constituting a quorum:

Present:

Chairman John L. Buono, Governance Committee Member (ex officio)
Kevin Plunkett, Chair, Governance Committee
Erin Crotty, Governance Committee Member
Brandon R. Sall, Governance Committee Member

In addition, the following staff were present:

Michael R. Fleischer, Executive Director
Kevin Allen, Acting Director, Audit and Management Services via telephone
Wendy Allen, Deputy Chief of Staff
Diane Galuski, Director, Bureau of Management Analysis and Projects
Harry Lennon, Senior Investigator
Katherine McCartney, Deputy Counsel
William Estes, General Counsel
Daniel Gilbert, Chief of Staff
Betsy Graham, Acting Director, Public Information
Elizabeth Yanus, Special Assistant

Also in Attendance:

John Armstrong, Assistant Television Engineer, New York Network

PUBLIC SESSION

Mr. Plunkett, Committee Chair, called the meeting of the Governance Committee to order.

Ms. Warner recorded the minutes as contained herein.

Item 1

Approval of Minutes of Governance Committee Meeting No. 7

After full discussion, on the motion of Ms. Crotty, seconded by Mr. Sall, without any objections, the Governance Committee approved the minutes of Governance Committee Meeting No. 7, held January 21, 2009.

Item 2

Review and Acceptance of the Governance Committee Charter

Ms. Allen reported that the Governance Committee's Charter requires annual review and approval by the Committee as well as a report to the Board of any proposed changes. The Bureau of Management Analysis and Projects has reviewed this Charter and recommends no changes at this time.

Mr. Plunkett stated that the Charter, which the Committee worked hard on when it began in March of 2008, seems to still be viable.

After full discussion, on the motion of Mr. Sall, seconded by Ms. Crotty, without any objections, the Governance Committee accepted the Governance Committee Charter with no revisions as recommended by staff at this time.

Item 3

Review and Approve a Code of Ethics Policy for Board Members for Board Action

Mr. Estes stated that the Code of Ethics had been worked on for some time prior to his arrival at the Authority, mostly on the staff level by Kathy McCartney, Deputy Counsel to the Authority, and as such she would present this Item to the Committee.

Ms. McCartney stated that Public Officers Law (POL) Section 74 sets out a general Code of Ethics for all State officers and employees, including public authority Board Members. POL Section 73 sets out specific restrictions for State officers and employees. Most of these do not apply to Authority Board Members because they are not compensated, with the exception of one particular provision. In 2004 the Board adopted a Code of Ethics, which incorporated all of Section 74 as required, and voluntarily adopted a number of the provisions in Section 73. Since that time there have been a number of changes. In 2005 when the Public Authorities Accountability Act (PAAA) was enacted, the Authority Budget Office (ABO) was created. One of the many things the ABO did was put together a Model Code of Ethics for public authorities to use as a guide. In 2007 the Public Employee Ethics Reform Act (PEERA) was enacted and this changed a variety of different ethics provisions in various provisions of law. As such, Authority staff thought it was an opportune time to update the Authority Board Code of Ethics. Staff incorporated a number of provisions from the ABO Model and mirrored some of the changes that were made in relevant statutory provisions in an attempt to update the Code and make it easier to use as a reference. Ms. O'Connor presented a revised Code to the Committee in July of 2008 and Committee Members had a number of questions which Authority staff, along with outside counsel, have sought to address. The revised Code is now being brought back to the Committee for its review. The Code has been re-organized and re-formatted so that like provisions are grouped together. The General Provisions is a new section that consolidates some of the text of the existing Code along with some of the provisions of the ABO Model. The Conflicts of Interest section also incorporates text from the existing Code and the ABO Model and more closely tracks the provisions of POL Section 74. The Recusal Procedure section has been updated to reflect how the Authority Board operates with respect to those issues. The Gifts section was revised to pick up some of the changes that were made in the PEERA; and the Post-Service Restrictions section was updated to reflect current statutory language.

Mr. Plunkett stated that this Code was revised to reflect changes to Conflicts of Interest, Recusal Procedures, Gifts and Post-Service Restrictions and would be applicable to all Members of the Board. Ms. McCartney concurred and stated that with Committee approval the revised Code would go before the full Board for its review. Mr. Plunkett inquired if it was absolutely necessary for the Committee to adopt the Code today or could it wait until the next meeting in case the other Members needed time to digest all of the revised language. Ms. Crotty stated that she had reviewed it and was fine with moving it to the Board.

Mr. Plunkett inquired as to why staff changed the language on page two of the Code, with regard to applicability, by removing the word majority. Ms. McCartney responded that staff believed using the word majority there was redundant to the statute which already requires a majority vote. Mr. Plunkett inquired if the statute is somehow incorporated in the Code. Ms. McCartney stated that the voting requirement is in the Thruway Authority Act. Mr. Plunkett also noted that the Definitions section was revised and moved to the end of the Code. Ms. McCartney concurred and stated that duplicative language was removed from that section.

Mr. Sall stated that Board Members would be entitled to receive something of value from someone provided it's not meant to influence them, but an elected official can't accept anything over a \$10 value so there's a distinction for Board Members. Ms. McCartney stated that, with regard to gifts, Members can only accept items with a nominal value. Mr. Sall asked for clarification with regard to the portion that states if the Board Member does not believe the gift is given to influence them as Board Members then there would be no restriction. Ms. McCartney stated that under those circumstances the prohibition does not apply. Mr. Plunkett stated that those terms were a little different than what the Committee discussed last year when Members couldn't accept even a cup of free coffee. Ms. McCartney stated that this relates to when Members are serving in a different capacity and when it's clear that it's not intended to have anything to do with their Board Member responsibilities. Mr. Estes added that some sections of the Ethics laws are written for full-time government employees, whereas here the Authority Board Members all have other jobs so there are times when they may receive gifts in their other capacities. Mr. Plunkett requested additional clarification with regard to the last sentence under

the Gifts section which states that this provision shall not pertain to gifts received by Board Members while serving in other capacities when it is clear that such gifts were not intended to influence the Board Members. He inquired if the gift is from a friend then there's no prohibition one way or the other. Ms. McCartney concurred, adding that if you go to an event as a Member of the Board you cannot accept a gift. However, if you are attending an event in the capacity of your private practice there may be a distinction with regard to acceptance of gifts. Mr. Plunkett inquired if there are times that the Board hat can be taken off and offered the following hypothetical example: Assume an individual works at one of the investment houses employed by the Authority but Mr. Plunkett has known them for years socially because of his profession as an attorney. If that individual calls and invites Mr. Plunkett to a Yankee game, and they have gone to Yankee games together for years prior to Mr. Plunkett becoming a Board Member, can he still go to the game? Ms. McCartney responded the concern is that if that particular investment house does business with the Authority you would have to worry about the appearance of accepting that invitation. Mr. Sall stated that it's his belief that the last sentence under the Gifts section would allow Mr. Plunkett to attend the Yankee game because it would be clear to him that the invitation is not meant to influence him as a Board Member due to his prior relationship with the individual. Mr. Estes responded that he would caution that this is a sticky area and should be approached on a case-by-case basis, adding that the Legal Department is more than happy to work through any concerns that the Board has. Even an appearance of influence can have a negative effect, although it's hard to talk about these things hypothetically. When staff attends ethics seminars they are given a synopsis from very specific cases or rulings of the Ethics Commission and it's often difficult to draw the line. Mr. Plunkett stated that you don't always have a lot of time to decide whether or not you should attend a Yankee game when the call comes in at four in the afternoon, but added that Mr. Estes' caution is well received and understood.

Ms. Crotty inquired as to where the appearance language is in the revised Code. Ms. McCartney stated that it should be under Conflicts of Interest. Ms. Crotty stated that she sees the intent language but not the appearance prohibition under POL. Ms. McCartney stated that under Section 4d it states Board Members should not engage in any business, transaction or professional activity or incur any obligation of any nature which is in actual, potential or

apparent conflict with the proper discharge of the Board Member's duties, adding that the appearance issue comes through when reviewing the opinions of the Ethics Commission. Ms. Crotty stated that the POL has specific provisions on this that apply to public employees. Ms. McCartney responded that Section 4 of this Code pretty closely tracks all of Section 74 of the POL which is the general code that applies to all officers and employees.

Mr. Sall questioned Section 7 pertaining to Post-Service Restrictions, specifically wondering if that Section tracks the two-year restriction on prior Board Members appearing before the Authority and if there is similar language that would apply to an employee who leaves. Ms. McCartney responded affirmatively adding that this section is from POL Section 73 and does not apply to the Board by law. The Board voluntarily adopted this language with the prior Code. Mr. Sall stated that the language seems to also prohibit someone who leaves this Board and then serves on another Authority Board from appearing before the Authority Board or doing business with the Thruway Authority. Ms. McCartney stated that under POL Section 73 if you need to appear before the Board of your prior employer in an official capacity there is an inter-governmental exception that would allow you to do so.

Ms. Crotty inquired if Section 7B is meant to be the lifetime bar on transactions and asked if other public authorities had adopted the Post-Service Restrictions. Ms. McCartney stated that they had. Ms. Crotty asked if a majority had done so or only a few. Ms. McCartney stated that she was unsure of how many but knew that the MTA has a similar post-service restriction. Mr. Estes added that the proposed Code of Ethics for Board Members has been vetted by the Authority Budget Office and the Commission on Public Integrity.

After full discussion, on the motion of Mr. Sall, seconded by Ms. Crotty, without any objections, the Governance Committee approved and authorized submission of the Code of Ethics Policy for Board Members to the Authority/Corporation Board for consideration.

Item 4

Review and Approve Board Member Qualifications for Board Action

Mr. Estes reported that the Public Authorities Law (PAL) Section 2824(7) requires that the Governance Committee of every Public Authority advise its appointing authority on the skills and experiences required of potential Board Members. This was an amendment to the PAL that was part of the Public Authorities Accountability Act of 2005. The Governance Committee Charter provides that the Governance Committee will provide such skills and experience to the appointing authority. Staff has prepared a document for transmittal to the Governor's Appointments Office which explains the authority of the Governance Committee and sets forth a list of qualifications for potential Board Members. Relevant skills and experience include government and public policy, transportation and traffic management, capital planning, engineering and construction, public finance and debt issuance, legal, human resources and labor relations, real property transactions and land use, environmental issues, audit, technology, marketing and tourism, and navigable waterways. Mr. Plunkett stated that these are the criteria the Committee would like potential Members to be experienced in one or more of. Mr. Estes concurred, adding that in voting on this today the Committee would authorize the Executive Director to transmit the document to the Appointments Office of the Governor.

After full discussion, on the motion of Mr. Sall, seconded by Ms. Crotty, without any objections, the Governance Committee approved and authorized the Executive Director to transmit to the Governor's Appointments Office the Board Member Qualifications document.

Item 5

Review and Discuss as Necessary the Following Items:

- a) **Ethics Violations, if Applicable**
- b) **Ethics-Related Publications, if Applicable**
- c) **Cost Reduction Measures Publications**

Mr. Fleischer presented the above Items for review and discussion.

Ethics-Related Violations

For the calendar year 2009 to date, the Authority/Corporation has not referred any cases to the NYS Commission on Public Integrity.

Ethics-Related Publications

Four Executive Instructions were revised since the Governance Committee last met in January. Members were provided with copies of the following publications to update their Governance Committee Reference Manuals: Ethics Law Restrictions on Communications Related to Post-Government Employment Opportunities; Financial Disclosure; Political Activities; and Outside Activities and Honoraria.

Mr. Plunkett inquired if these documents were available on the website. Mr. Fleischer responded that they were provided to employees and were available via the Intranet.

Responses to Recent Memorandums from the Governor's Office

Reducing Printing Costs

In response to the July 14, 2009 memo regarding containment of printing costs, Executive Instruction 2009-10 entitled CONTAINMENT OF PRINTING AND COPYING COSTS was issued to all employees to highlight the Authority's initiative aimed at mitigating the budgetary and environmental costs associated with copying and printing.

Reducing Personal Travel Costs

In response to the August 10, 2009 memo on reduction of personal travel costs, Executive Instruction 2009-13 entitled COST CONTAINMENT TRAVEL GUIDELINES AND ENERGY CONSERVATION was revised to include, among other things, the following mandate: a trip

calculator will be used by the Chief Financial Officer to ensure that the most cost effective mode of transportation is being utilized.

As a result of travel controls put in place since 2007, the Authority/Corporation has already demonstrated a minimum of 25% travel savings for the fiscal year beginning January 1, 2009.

Item 6

Other Business

Ms. Crotty inquired as to what happened to the overhaul of the Public Authority Accountability Act that was supposed to apply to all public authorities. Mr. Fleischer asked if she meant the legislation, she responded affirmatively. Mr. Fleischer responded that the legislation is still pending, it has not been sent to the Governor for approval yet. He stated that he spoke with Mr. Sall this morning regarding one of the provisions at issue which would eliminate the ability for public authorities to dispose of property at less than fair market value. Several Authority/Corporation projects would be affected if the legislation is approved as is.

Adjournment

There being no further business to come before the Governance Committee, on the motion of Mr. Sall, seconded by Ms. Crotty, without any objections, the meeting was adjourned at 9:53 a.m.