



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



MINUTES

GOVERNANCE COMMITTEE MEETING NO. 5

July 16, 2008

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

The meeting began at 10:00 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
Daniel Gilbert, Chief of Staff
Kevin Allen, Acting Director, Audit and Management Services
Wendy Allen, Deputy Chief of Staff
John Bryan, Chief Financial Officer
Diane Galuski, Director, Bureau of Management Analysis and Projects
Katherine McCartney, Deputy Counsel
Sharon O'Connor, General Counsel
Jill B. Warner, Board Administrator
Betsy Graham, Acting Director, Office of Public Affairs

Elizabeth Yanus, Special Assistant
Richard Garrabrant, Division Director, Syracuse Division

Also in Attendance:

John Armstrong, Production Coordinator, New York Network
Cathy Woodruff, Reporter, *Albany Times Union*

PUBLIC SESSION

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

Ms. Warner recorded the minutes as contained herein.

Mr. Plunkett introduced new Committee Member Brandon R. Sall. He stated that Mr. Sall is an attorney in the lower Thruway region and is well respected by his colleagues and peers. He believes that Mr. Sall will bring a great level of expertise to the Thruway Authority and Canal Corporation Board and Mr. Plunkett welcomed him as a member of the Governance Committee

Item 1

Approval of Minutes of Governance Committee Meeting No. 4

After full discussion, on the motion of Ms. Crotty, seconded by Chairman Buono, without any objections, the Governance Committee approved the minutes of Governance Committee Meeting No. 4, held April 25, 2008.

Item 2

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

Ms. O'Connor requested that the Governance Committee review and approve for Board action a revised Code of Ethics Policy for Board Members.

Section 74 of the Public Officers Law (POL) sets forth a general statutory Code of Ethics for all officers and employees of state agencies and is applicable to Board Members. POL

Sections 73 and 73a set forth instructions for financial disclosure and specific provisions for the business and professional activities of state officers and employees. While Section 73a regarding financial disclosure applies to Board Members, many of the provisions under Section 73 do not by law apply to the Members of the Thruway Authority and Canal Corporation Boards because such Members are not compensated for their service. However, the New York State Ethics Commission, now the Commission on Public Integrity, has adopted rules which require that public authority boards adopt a code of ethical conduct covering conflicts of interest and outside activities, including business and professional activities.

In 2004 the Thruway Authority Board adopted a Code of Ethics Governing Board Members. That Code includes all of the required elements of POL Section 74 and the Board voluntarily adopted a number of provisions in POL Section 73. Since that time, the Public Authorities Accountability Act and Public Employees Ethics Reform Act have been adopted. In addition, Executive Order No. 2 (EO2), signed January 1, 2007, imposed additional restrictions that also apply to Board Members. The proposed revised code has been reviewed by the Authority Budget Office (ABO) and the Commission on Public Integrity. Both offices concurred that the code incorporates elements of the ABO Model Code and mirrors recent changes to relevant statutory provisions.

Some highlights of the revised code include:

An update to the code with regard to gifts. Typically this portion of the POL does not apply to Authority Board Members who are not compensated; however, the Board's code has always included this restriction. The statute previously stated that gifts could be no more than \$75, but changes in the Ethics Reform Act have reduced that amount to no more than a nominal value. The revised code for Board Members mirrors this change.

In addition, EO2 prohibits Board Members from inquiring about an Authority/Corporation employee contract and a grant recipient's political affiliations, including whether or not they have made political contributions or how they may have voted in any election. In addition, Board Members cannot ask individuals to make political contributions to

the Office of the Governor or Lieutenant Governor, nor can they themselves make or offer to make contributions to those offices. These provisions have been added to the new code as well.

Regarding Section 73, the provision pertaining to post-Board service restrictions on contact with the Authority is not statutorily imposed, but has been adopted by the Board in the past. State employees are prohibited from contacting their place of employment when they leave for a period of two years (in terms of doing business for compensation) and can face a lifetime bar on matters that they were directly involved in when they were working. The statute does not impose those restrictions on uncompensated Board Members, however the Authority Board has in the past imposed that restriction on themselves in terms of contacting the Authority/Corporation once their service ends. This restriction is in place in the revised code and both the ABO and Commission on Public Integrity recommend that it remain in place.

After full discussion, Ms. Crotty made a motion, which was seconded by Mr. Plunkett, to submit the Revised Code of Ethics Policy for Board Members to the Authority/Corporation Board for consideration. Additional discussion followed.

Chairman Buono questioned whether the restrictions on political contributions were limited to the Office of the Governor. Ms. O'Connor responded that it is restricted to the Offices of the Governor and Lieutenant Governor under the Executive Order. Ms. Crotty stated that while she understands the genesis of EO2 was to insure that staff working for the Governor, or Lieutenant Governor, do not feel pressured to contribute financially, but Authority Board Members are not compensated and she does not appreciate being told what she can or cannot do with her money as it relates to a political campaign. She assumes that the language pertains to the Governor and Lieutenant Governor in office and not to a person who may, in the future, be running against them. She stated that there is a difference between an uncompensated Board Member and, for example, the Commissioner of the Department of Environmental Conservation or other executives. She stated that the request seems incompatible with the level of service provided by the Authority Board. Chairman Buono concurred, stating that there is no language pertaining to the opponent versus the incumbent. Ms. O'Connor stated that the language in the draft policy mirrors that of EO2. Mr. Fleischer stated that he believes it goes back to the

Governor not wanting to impose real or perceived pressure on his employees. Ms. Crotty stated that it is her understanding that Board Members are not employees of the State. Ms. O'Connor replied that EO2 does specifically reference public authority Board Members. Ms. Crotty concurred, stating that they can request Board Members do things, but cannot direct them to do things because they have no authority over the Board. She stated that she suspects they are requesting that Board Members to take a look at EO2 and make a decision based upon that review. She continued to say that the Executive does not have control over public authorities, which is why they were formed in the first place; there have to be checks and balances.

Mr. Sall requested that the Committee table this matter until further clarification is provided as to how EO2 pertains to uncompensated Board Members. Mr. Plunkett asked if EO2 does in fact apply to public authority Boards and whether or not the language needs to be included in the Board's Code of Ethics. Ms. O'Connor stated that she believes that the EO2 language could be removed from the proposed Code of Ethics, but the question still remains whether it was the intent of the Governor to impose the Executive Order on public authority Board Members. Ms. Crotty stated that she believes none of the Executive Orders apply to public authority Boards. Ms. O'Connor responded that staff has looked into this issue in the past because Governors have issued many Executive Orders that direct public authorities to undertake certain activities. There is no case law relating to this as no public authority has ever challenged the applicability of Executive Orders. Ms. Crotty stated that she remembered Executive Orders issued under the Pataki administration (specifically one related to the watershed issue) were worded to request that Boards consider adopting certain provisions; they did not read: you shall adopt the following Executive Order and that was based on the legal guidance at the time. She stated she agrees with Mr. Plunkett that the applicability of EO2 to the Authority Board is a legal issue. Ms. O'Connor responded that she will have a conversation with the Governor's Counsel Office because she believes the language on its face says it is applicable, but she agreed with Ms. Crotty that there is a question regarding the ability of the Governor's Executive Orders to direct public authorities to undertake certain activities.

Chairman Buono stated that the Board has an issue before them regarding the Minority and Women-owned Business Enterprise Program (MWBE), based on an Executive Order

pertaining to bankers and their selection and he has questioned whether the Governor can direct the Board to do that. Mr. Fleischer responded that the issue with the MWBE Program is different because the Authority is involved in transactions involving State funds.

After full discussion, on the motion of Mr. Sall, seconded by Ms. Crotty, without any objections, the Governance Committee tabled submission of the Revised Code of Ethics Policy for Board Members to the Authority/Corporation Board for consideration, pending further discussion at another meeting of the Committee.

Item 3

Review and Discuss as Necessary the Following Items

- a. Ethics Violations**
- b. Ethics-Related Publications**

Ethics Violations

Mr. Fleischer reported that to date for calendar year 2008, there have been no cases of ethics violations referred to the New York State Commission on Public Integrity.

Ethics-Related Publications

Mr. Fleischer advised that four ethics-related publications had been issued since the Committee last met in March:

Executive Instruction - Political Activities

This Instruction is issued annually to all Authority/Corporation employees and provides guidance with respect to ethics-related laws and regulations including, but not limited to:

- seeking an advisory opinion before accepting an appointment, nomination, or otherwise becoming a candidate for election or re-election to public office; and

- prohibiting: (1) certain political campaign activities; and (2) policymakers serving as officers of any political party or political organization, or as members of a political party committee.

The Instruction was revised this year to include the prohibition of an elected official or candidate for elective office from appearing in any advertisement that is paid for in whole or in part, directly or indirectly, by any State agency or public authority, or if any State agency or public authority resources are utilized in the creation of such advertisement.

Executive Instruction - Portable Computing Devices

This Instruction was issued to all Authority/Corporation employees to facilitate a statewide directive strictly prohibiting the connection of any type of personally-owned computer equipment or accessory to an Authority/Corporation owned resource (e.g., computer, network, telephone line, etc.). Examples of such equipment and accessories include, but are not limited to: flash/thumb/smart drives; memory cards; Personal Digital Assistants (PDAs), laptops and other similar portable computers; audio/video players (e.g., MP3 player, iPod, etc.); telephones (e.g., iPhone, Blackberry, etc.); digital cameras, printers, and scanners.

Executive Instruction - Public Officers Law Booklet

This Instruction was issued as a transmittal for sending all Authority/Corporation employees a copy of the updated Public Officers Law Booklet (Booklet), dated January 2008, published by the Commission on Public Integrity. The Booklet contains excerpts from the Public Officers Law and other laws and regulations related to ethics in New York State government. The Booklet can also be reviewed on the “ETHICS: Do the Right Thing!” page on the Intranet.

Executive Bulletin - Whistleblower Policy

At Legal’s recommendation, the Whistleblower Policy, governed by Section 75-b of the Civil Service Law, was revised to incorporate statutory language and approved by the

Authority/Corporation Board on April 25, 2008. This Bulletin was updated and reissued to all employees to provide them with a copy of the revised Policy.

Adjournment

There being no further business to come before the Governance Committee, on the motion of Ms. Crotty, seconded by Mr. Sall, without any objections, the meeting was adjourned at 10:16 a.m.