

5535

2009-2010 Regular Sessions

I N S E N A T E

May 14, 2009

Introduced by Sen. FOLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law and the state administrative procedure act, in relation to ex parte communications before the public service commission

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The public service law is amended by adding a new section
2 20-a to read as follows:

3 S 20-A. EX PARTE COMMUNICATIONS. 1. A COMMISSIONER OR ANY EMPLOYEE OF
4 THE DEPARTMENT WHO IS ASSIGNED TO RENDER A DECISION OR TO MAKE FINDINGS
5 OF FACT AND CONCLUSIONS OF LAW IN AN ADJUDICATORY PROCEEDING BEFORE THE
6 COMMISSION SHALL NOT COMMUNICATE, DIRECTLY OR INDIRECTLY, IN CONNECTION
7 WITH ANY ISSUE OF FACT OR OF LAW, WITH ANY PERSON, PARTY, OR THE REPRESENTATIVE OF ANY PARTY, EXCEPT UPON NOTICE AND OPPORTUNITY FOR ALL
8 PARTIES TO PARTICIPATE. PROVIDED, HOWEVER, THAT ANY SUCH COMMISSIONER
9 (A) MAY COMMUNICATE WITH OTHER COMMISSIONERS, AND (B) MAY HAVE THE AID
10 AND ADVICE OF AGENCY STAFF OTHER THAN STAFF WHICH HAS BEEN OR IS ENGAGED
11 IN THE INVESTIGATIVE OR PROSECUTING FUNCTIONS IN CONNECTION WITH THE
12 CASE UNDER CONSIDERATION OR A FACTUALLY RELATED CASE.

14 2. A PARTY IN AN ADJUDICATORY PROCEEDING BEFORE THE COMMISSION OR THE
15 REPRESENTATIVE OF ANY SUCH PARTY SHALL NOT COMMUNICATE, DIRECTLY OR
16 INDIRECTLY, IN CONNECTION WITH ANY ISSUE OF FACT OR OF LAW WITH A
17 COMMISSIONER OR ANY EMPLOYEE OF THE DEPARTMENT WHO IS ASSIGNED TO RENDER
18 A DECISION OR TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUCH
19 ADJUDICATORY PROCEEDING EXCEPT UPON NOTICE AND OPPORTUNITY FOR ALL
20 PARTIES TO PARTICIPATE.

21 3. IF THE COMMISSIONER OR ANY EMPLOYEE OF THE DEPARTMENT SHALL RECEIVE
22 ANY COMMUNICATION, ORAL OR WRITTEN, CONTRARY TO THE PROHIBITIONS IN
23 SUBDIVISIONS ONE AND TWO OF THIS SECTION, HE OR SHE SHALL MAKE A RECORD

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 OF SUCH COMMUNICATION AND FILE SUCH RECORD PROMPTLY WITH THE SECRETARY
2 OF THE COMMISSION. THE SECRETARY OF THE COMMISSION SHALL SERVE COPIES OF
3 SUCH RECORD ON EACH PARTY TO THE ADJUDICATORY PROCEEDING. ANY PARTY MAY
4 PETITION THE COMMISSION FOR SUCH SANCTIONS AGAINST A PARTY THAT HAS MADE
5 SUCH COMMUNICATION CONTRARY TO THE PROHIBITION IN SUBDIVISION TWO OF
6 THIS SECTION AS MAY BE JUST IN THE CIRCUMSTANCES. ANY VIOLATION OF
7 SUBDIVISION TWO OF THIS SECTION SHALL BE SUBJECT TO THE PENALTY
8 PROVISIONS IN SECTION TWENTY-FIVE OF THIS ARTICLE.

9 4. FOR THE PURPOSES OF THIS SECTION THE TERM "ADJUDICATORY PROCEEDING"
10 SHALL BE DEFINED AS IN SUBDIVISION THREE OF SECTION ONE HUNDRED TWO OF
11 THE STATE ADMINISTRATIVE PROCEDURE ACT, EXCEPT THAT THIS SECTION SHALL
12 NOT APPLY TO PROCEEDINGS TO DETERMINE APPLICATIONS FOR INITIAL LICENSES
13 FOR PUBLIC UTILITIES OR CARRIERS.

14 S 2. Subdivision 2 of section 307 of the state administrative proce-
15 dure act is amended to read as follows:

16 2. Unless required for the disposition of ex parte matters authorized
17 by law, members or employees of an agency assigned to render a decision
18 or to make findings of fact and conclusions of law in an adjudicatory
19 proceeding shall not communicate, directly or indirectly, in connection
20 with any issue of fact, with any person or party, nor, in connection
21 with any issue of law, with any party or his representative, except upon
22 notice and opportunity for all parties to participate. Any such agency
23 member (a) may communicate with other members of the agency, and (b) may
24 have the aid and advice of agency staff other than staff which has been
25 or is engaged in the investigative or prosecuting functions in
26 connection with the case under consideration or factually related case.

27 This subdivision does not apply [(a) in determining applications for
28 initial licenses for public utilities or carriers; or (b)] to
29 proceedings [involving the validity or application of rates, facilities,
30 or practices of public utilities or carriers] BEFORE THE PUBLIC SERVICE
31 COMMISSION.

32 S 3. This act shall take effect immediately and shall apply to all
33 proceedings instituted after such effective date; provided, however,
34 that with respect to proceedings in process prior to such effective
35 date, this act shall apply as of the date specified in an order of the
36 public service commission in response to the motion of any party, or
37 ninety days after such effective date, whichever is earlier.