

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

January 24, 2007

The Honorable Eliot Spitzer
State Capitol
Executive Chamber
Albany, New York 12224

Dear Governor Spitzer:

Re: Public Authorities

We write on behalf of the State Affairs Committee of the City Bar. In general, our Committee is charged with the responsibility of examining issues relating to state government and making recommendations for improvement whenever possible.

By way of this letter, we are pleased to have the opportunity to express our views concerning the troubling issues relating to public authorities. Like many concerned citizens in this State, we believe that the spiraling number of public authorities and their unaccountability present serious problems for the State that the new administration should address as a top priority. Specifically, as we discuss below, we urge Governor Spitzer to appoint a commission under the Moreland Act to investigate the manner in which public authorities are created and operated and make recommendations to the Governor and the legislature for improvements to the system.

The Problem

As noted in the February 2005 report of the New York State Comptroller, as of December 1, 2004, there were more than 730 Public Authorities in the State and more were scheduled to be created thereafter. The Comptroller was not even sure of the exact number of public authorities that existed because certain of the public authorities had quietly ceased functioning over the years while others had been spawned by public authorities themselves.¹ Nevertheless, over a three year period, the Comptroller was able

¹ Certain of the public authorities have the power, either directly or indirectly, to create new public authorities to perform functions within the creating public authority's purview. Thus, the Thruway

to audit approximately 120 of the public authorities. The usefulness of these audits was hampered by the enormous variation between the audit and reporting practices of the different authorities, making comparisons difficult. In particular, certain authorities report results according to generally accepted accounting principles while others do not, making comparisons extremely difficult.

In his 2005 report, the Comptroller expressed the additional concern that the public authorities were unaccountable to the people. The Comptroller noted that the public pays for public authorities in the form of tolls, rates and fees. Moreover, tax dollars are used to offset tax exemptions for public authorities and bondholders pay debt service on behalf of the authorities. Nevertheless, the public has no control over how their dollars are being used and has virtually no influence over authority decisions. And although public authorities are formed as corporations, there are no shareholder meetings and the process is virtually invisible to the public.

Finally, the Comptroller expressed concern about the mounting debt raised through so-called “backdoor borrowing” by public authorities. Projections in the Capital Plan are that the total debt incurred by public authorities is expected to account for more than 95% of the state-funded debt in 2009-10. By comparison, in 1985, only 60% of the public debt was attributed to public authorities. Obviously, legislators and the executive are finding it more convenient to conceal what should be conventional budget debt within the less transparent form of public authorities.

In his perceptive book, “Three Men In A Room”, former State Senator Seymour P. Lachman noted that public authorities have no practical oversight in the legislature. Although both the Senate and Assembly have oversight committees designed to supervise authorities’ activities, Mr. Lachman advises that, while he was a member of the Senate Finance Committee, there was never any substantive review of the authorities (p.125-126). Moreover, Mr. Lachman notes that although public authorities borrowed more than \$43 billion (out of a total of \$70 billion in debt on behalf of state government in 2005), the members of the authorities are not paid and must rely on staff members to advise them on the merits of the proposals upon which they vote. The net result is that much of the governmental process is being outsourced to unpaid third parties who are not really subject to the political process. We believe that reform is necessary.

Power to Appoint Commissions

As Attorney General, you were instrumental in raising the public consciousness about the importance, and potential for abuse, of public authorities, and in achieving legislation to address certain practices of authorities. You also identified public authorities as a priority in your State of the State address. However, we believe the scope of the issues raised by public authorities in New York is far broader than earlier initiatives have addressed. We urge that, before further measures are undertaken, the

Authority begat the Canal Corporation, which Attorney General Spitzer found in 2002 had engaged in bid-rigging.

scope of the issues posed by public authorities be fully considered. As Governor, you are in a unique position to accomplish that.

Section 6 of the Executive Law, popularly known as the Moreland Act, provides the governor with the power to investigate the management and affairs of any department, board, bureau, or commission of the State. N.Y. Exec. L. § 6. In fact, Governor Carey used the Moreland Act to investigate certain public authorities some 30 years ago. *See* New York State Moreland Act Commission on the Urban Development Corporation and Other State Financing Agencies, *Restoring Credit and Confidence: A Reform Program for New York State and its Public Authorities* (1976).²

The Committee is aware that the new governor has had extensive experience of his own with public authorities during his tenure as attorney general. During the beginning of his first term, we urge the governor to focus on possible reforms with respect to the manner in which public authorities are created and managed so as to make them more responsive to elected officials. In addition, we urge that consideration be given to a plan that can bring increased uniformity to the manner in which financial and operational results are reported to the public. In order to accomplish these goals, we believe that the first step is the appointment of a non-partisan commission to investigate and report as to the scope of the problem and proposed solutions. Such a commission could build upon the Comptroller's report and access resources that were not available to the Comptroller.

Conclusion

The Committee looks forward to meeting with one or more members of your staff to discuss how we can be helpful in advancing the reforms relating to public authorities as well as in other areas.

Very truly yours,

The Committee on State Affairs

Christina Daigneault, Chair

Paul D. Wexler,
Chair, Subcommittee on Public Authorities

² Governor Pataki appointed the New York State Commission on Public Authorities, but the Commission did not have Moreland Act powers and its mission was limited.