



SEN. ROGER J. KATZ, SENATE CHAIR
REP. CHUCK KRUGER, HOUSE CHAIR

MEMBERS:

SEN. CHRISTOPHER K. JOHNSON
SEN. DAVID C. BURNS
SEN. PAUL T. DAVIS, SR.
SEN. BILL DIAMOND
SEN. STAN GERZOFSKY
REP. MICHAEL D. MCCLELLAN
REP. RICHARD H. CAMPBELL
REP. ROBERT S. DUCHESNE
REP. ANNE-MARIE MASTRACCIO
REP. DEBORAH J. SANDERSON

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY

July 1, 2015

Accepted July 17, 2015

CALL TO ORDER

The Chair, Sen. Katz, called the government Oversight Committee to order at 3:03 p.m. in the Cross Office Building.

ATTENDANCE

Senators: Sen. Katz, Sen. Johnson, Sen. Burns, Sen. Davis, Sen. Diamond and Sen. Gerzofsky

Representatives: Rep. Kruger, Rep. McClellan, Rep. Campbell, Rep. Duchesne, Rep. Mastraccio and Rep. Sanderson

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Matthew Kruk, Senior Analyst, OPEGA
Scott Farwell, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

The members of the Government Oversight Committee introduced themselves for the benefit of the listening audience.

NEW BUSINESS

• Requests for an OPEGA Review of Matters Related to Funding for the Good Will - Hinckley School

Chair Katz explained that the GOC meeting was not a public hearing on the requests for an OPEGA review of matters related to funding for the Good Will - Hinckley School. The Committee would not be hearing from anyone in attendance and said there will be opportunity for that at a later date. He said at the meeting, the GOC members will be going through the requests that have come to the GOC/OPEGA, will review the GOC/OPEGA statutes, will hear from Director Ashcroft a proposed scope of work for the review requests for the Committee's consider and then the GOC would discuss how to proceed, or not proceed, with the review requests.

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Chair Katz said the events over the last few weeks involving Good Will - Hinckley School are troubling and, as often happens in partisan politics, it seems like at least some people immediately go to their corners and ready to fight. He thought it was also fair to say that most people in Maine just want to know what happened in a fair and open way and believes that is where the GOC and OPEGA can come into play. The GOC is unique and is set up to be different with six republicans and six democrats, no matter which party is in power in either House and those legislators are chosen, generally speaking, for their ability to be fair and impartial, leaving the politics at the door. He said the question for the Committee is does the GOC/OPEGA have any role in shining a light on this troubling chapter in the State's public life. If the GOC proceeds with a review of Good Will - Hinckley School he can assure people that OPEGA and the GOC will go about it in the right way.

Chair Kruger said yesterday he saw passionate people from all over the political spectrum converge on the State House to express their opposition, or support, for the Chief Executive. He said as legislators they are all hearing from constituents about the Governor's action and style. Chair Kruger said the job of the GOC/OPEGA is to find facts and not draw conclusions. It will be up to others to act, if appropriate, on the facts that are found regarding a review. He said as Committee Co-chair all he asks of the other members of the Committee is to be deliberate, thoughtful, respectful and open-minded. The challenge of the GOC is to focus on the task at hand, try their best to not get distracted by tangential issues. Chair Kruger said they must remember that the requests for review of the Good Will - Hinckley School are not about republicans or democrats, independents or unenrolled, it is about the people of Maine in making sure they are getting the best government possible.

Chair Katz said the GOC assigns tasks to OPEGA and does so on the basis of requests from legislators. The Committee has received two requests and he asked Director Ashcroft to summarize them.

Director Ashcroft said both review requests have been submitted due to concerns the GOC Chairs had referred to. One letter is from Representatives Evangelos, Chipman and Warren and the second letter is from Senator Saviello. (Copies of both letters are attached to the Meeting Summary).

Reps. Evangelos, Chipman and Warren's letter request an OPEGA investigation of:

- The funding allocated and threatened to be withheld.
- Any actions taken by the Governor to withhold intended payments.
- All relevant communications between the Governor, the Governor's Office, the Department of Education, the Good Will – Hinckley School, the Alford Foundation and any other relevant entities.

Director Ashcroft said the Representatives had a specific request that if the findings that come from an OPEGA review substantiate allegations made that the findings be directed to the House of Representatives for consideration under the authority vested by the Constitution of the State of Maine, Article 4, Part 1, Section 8.

Sen. Saviello's letter requests an OPEGA review of:

- 1) Outline an appropriate scope of investigation to reasonably determine whether allegations of political use of state resources are justified.
- 2) Review of allocation process for funding specific to the Good Will – Hinckley situation.
- 3) Review the allocation process of other discretionary funding available to the Administration.
- 4) Report any examples of improper or potentially inappropriate discretionary use of State resources.

Chair Katz referred to the GOC/OPEGA statute and noted in Chapter 37, Section 991 – OPEGA “is created for the purpose of providing program evaluation of agencies and programs of State Government” and also to ensure that public funds provided to any agency or nonprofit corporation “are expended for the purposes for which they were allocated, appropriated or contracted.” He said Chair Kruger and he asked Director Ashcroft

to draft a proposed scope of work that the GOC might consider to help the Committee begin their discussion regarding the two review requests.

Sen. Diamond referred to the fourth bullet in Sen. Saviello's letter and asked if the Director knew if he was looking for a broader review. Director Ashcroft said it was her understanding, based only on what she had read in the newspaper, that Sen. Saviello indicated that he set it out as a broad request, but understands it might be narrowed.

Director Ashcroft said the normal process when a review request is received by the GOC/OPEGA is for OPEGA to first look at whether the subject matter fits within their jurisdiction under Statute and is in line with the Committee's own policies and procedures that it has set forth. She said in this case, given the timing of these requests, OPEGA has done that in concert with the Committee Chairs and with input from the Attorney General's Office with regard to interpretation of the statute. Based on all that consideration and what the requestors have asked to be reviewed, Director Ashcroft developed a propose scope that keeps the review to fact-finding only. It would not draw any conclusions about whether actions fall into particular categories or description because OPEGA would not have good standards to compare to. She thinks those conclusions are best left, as Sen. Katz said, to others to make use of the facts OPEGA might find.

Director Ashcroft said the potential scope for OPEGA review of funding to Good Will – Hinckley School is:

To determine the facts associated with alleged proposed changes to State funding for Good Will – Hinckley for the upcoming biennium and any impacts to the school of those changes.

Director Ashcroft said the focus is on the funds and thinks that between that and limiting the scope to fact finding she feels the GOC/OPEGA are well within their jurisdiction.

Chair Katz said the scope does not pre-suppose that the Committee is going to vote to do anything, but is simply for the purposes of starting a discussion.

Rep. McClellan referred to the challenge the Governor's Office had made that OPEGA did not have appropriate reach to examine this matter and asked Director Ashcroft where she was inferring that OPEGA can examine the case. Director Ashcroft said specifically the challenge to OPEGA's authority was around whether they could investigate the Governor's use of his executive authority and whether the authority he used was justified. She said OPEGA is not going to make a judgment or conclusion about whether it was justified, but was only going to determine the facts. Also OPEGA's statute under section 991 – OPEGA's authority to determine or follow State funding has been consistently supported by the AG's Office anytime she has had to ask for an interpretation of the statute. Good Will – Hinckley is a nonprofit corporation so it would be State funding to a nonprofit, which is specifically covered by the statute. OPEGA would be performing research in terms of fact finding which is within the definition of the work that they are set out to do for the Legislature. She also referred to Section 992 – 6 of the statute which defines that ““State agency” means each state board, commission, department, program, office or institution, educational or otherwise, of this State.” and said she takes that to include the Office of the Governor within the confines of the other pieces of OPEGA's statute. She believes the Governor's Office falls under the definition as a state agency as laid out in the statute.

Sen. Katz said the Governor's Chief Legal Counsel, Cynthia Montgomery, sent a letter suggesting that because of the separation of powers issue the GOC should not have a role in going forward with a review. He said Chief Deputy Attorney General Linda Pistner had been consulted regarding the separation of powers issue and the scope of the review was crafted with her advice in mind.

Rep. Duchesne thinks the funds the GOC/OPEGA are looking at are in a budget line of the Dept. of Education and that Department would fall within the scope of what the Legislature reviews for executive departments all the time. OPEGA would be focusing on those funds, how they were used, were they used appropriately and that would be well within the GOC's scope.

Sen. Johnson said there are a lot of concerns that have been expressed by constituents and the public around the alleged reasons and actions in altering funding and conditions of the funding for Good Will – Hinckley. He hopes the Committee can get the necessary facts within the scope to determine the reasons for the changes in funding.

Sen. Katz asked the Director for the time frame if the GOC moved ahead and how OPEGA would proceed to try to get the facts out.

Director Ashcroft said the GOC can tell her whether they want particular projects to be prioritized, but it is within her responsibility to determine the schedule of OPEGA reviews. There are some that come to their attention that it is obvious the review would be of a timely nature and if it was decided the review should be done, it ought to be done right away. Director Ashcroft said the Good Will – Hinckley review is one of those. She said although OPEGA is fully engaged with other reviews, she would find some resources to get started on a Good Will – Hinckley review and if the Committee approved a scope similar to the one mentioned above, the review could be accomplished within a timeframe where you can get the different facts together and report those out. She thinks the work would involve primarily interviews and review of documents that OPEGA would seek to obtain.

Sen. Diamond asked if OPEGA's legal counsel is the Attorney General's Office or can OPEGA engage private investigators, attorneys, etc. Director Ashcroft said if OPEGA is looking for interpretation of State Law she contacts the AG's Office for an interpretation and they have been very responsive. She believes she has the authority to spend OPEGA resources to hire independent counsel should the GOC/OPEGA find need to do that.

Sen. Diamond asked if the Director felt comfortable calling on the GOC if she felt the need to hire outside counsel. Director Ashcroft said she did.

Rep. Duchesne noted that OPEGA works independently of the GOC. The GOC assigns tasks and helps scope out a review and then OPEGA operates on its own to accomplish its mission and when done reports the findings to the GOC.

Rep. Mastraccio asked for more information regarding the timeline of the review. Director Ashcroft said if the GOC voted to put the review on OPEGA's Work Plan, or asked OPEGA to gather additional information, OPEGA would report on the status of the review at the next GOC meeting. She said if there was an impediment to OPEGA getting the information needed to complete the work, then she would seek GOC's assistance in helping OPEGA get the that information.

Chair Kruger asked if there was any compulsion about acquiring documents on the part of State agencies to provide them in a timely fashion or could the GOC anticipate that it would take an extensive period of time to locate certain documents. Director Ashcroft said OPEGA generally has very good cooperation from the agencies, but that does not mean that they are always in a position to provide information the next day. She understands that, so there is often a discussion of what a reasonable time frame is for them to provide the documents and OPEGA keeps contacting them until the information is received. She said it would depend on what was being asked for whether she would consider a week or month to be a reasonable time frame.

Rep. Sanderson asked if proposed changes of State funding for Good Will – Hinckley was going to include details for the entire discretionary budget that falls within the Dept. of Education or just specific funds for Good Will – Hinckley alone. She would prefer to have a picture of the entire account, which she knows has some mandatory and discretionary spending, the initial proposed budget, changes within the budget and the actual dispensation of where all the money ended up going. She asked if receiving that information was possible within the proposed scope for the review. Director Ashcroft said that was not envisioned as part of the scope, but the GOC is always free to add another piece to whatever else a review will look at. She said that may be a piece of information that OPEGA could examine as a different special project.

Sen. Burns asked if Rep. Sanderson could elaborate a little as to what the value of her request would be.

Rep. Sanderson said there has been a lot of talk about funds that had initially been transferred to other areas and she thinks it is important to know if the GOC was taking a look at the overall funding processes of schools. If the money was there in the discretionary fund and it was moved, where did it go?

Rep. Mastraccio said if what is being looked at is State funding for Good Will – Hinckley in the Dept. of Education’s budget, if you start with that and it leads you somewhere else then OPEGA will come back to the GOC and say that that is a natural progression. She felt broadening the scope of the review now would lose sight of their focus. She thought the point of looking at the Good Will – Hinckley issue was to try to shine some light and to make sure the Committee has the facts. Rep. Mastraccio said she is not saying it might not lead them there, but thinks the review has to start in a focused way and the potential scope was well written for what she envisioned the Committee doing.

Chair Katz said the money came from a discreet account within the Dept. of Education and the question of what was the intent for those funds, and how they actually flowed out of the account, he suspected would be something OPEGA would be exploring in fact finding. Director Ashcroft said her basic understanding of the overall fund at this point in time is that a number of specific pieces of funding would go out of that account, and yes OPEGA could catalogue what all of those are as part of the review. To then take every one of those and explore whether there has been, or there is, an intent to change, or what transfers have been made between accounts, is a different piece of work than trying to explore what the impact has been for Good Will – Hinckley.

Rep. Sanderson said for clarification, they could narrow it down to what the fund is there for. She knows that there are some specific accounts that are mandatory, such as the School for the Blind and then there are other lines that have been included as discretionary. She said maybe a more in depth overall list of what the Director just mentioned would be appropriate and she will dig other places to try to find a different trail for more of the information that she thinks is probably necessary in gaining some insight.

Rep. Duchesne said the Committee has received a specific request from legislators which is the GOC’s process. They have asked that the Committee look at this particular issue. One way of analyzing that would be to see if this account was treated differently than other accounts. As part of the process you would look to see other budget lines and how decisions were made about those and see how those decisions compared to this issue. You would not do all of the Dept. of Education’s budget, but if there are some analogous ones that might be worth using as comparisons, that would be the appropriate way to go and would still limit the scope of the review to what the Committee was directed by the legislators requesting the review to do.

Director Ashcroft said a description of the nature of the fund from which this stems, was included in the scope she had proposed in the interest of providing the GOC background and context. OPEGA would get into each one of the relevant pieces and look if there have been changes, and what has happened with all of that relevant funding specifically. Describing the fund and how it is broken down is something OPEGA would do as a natural part of background to the review. She agreed with Rep. Duchesne that a logical piece of this might be to look at how changes to funding for this item differ from how they normally handle changes to funding for any of the items in that particular budget. She imagined that to already be within the scope.

Rep. McClellan said there is no budget to look at. Money was not sent somewhere. Everyone is being told that threats were made, but he did not know if you could look at a budget and say something happened. He also serves on the Education and Cultural Affairs Committee and said he had the Dept. of Education’s budget information. He referred to Rep. Sanderson’s comments and thought she was asking about the flow of funds when it hit the school and asked if that was what Rep. Sanderson was talking about?

Rep. Sanderson said what she was asking for was perhaps an excel spreadsheet on what monies were in that fund and she referred to bullet 3 in Senator Saviello's request letter. She said that would include other discretionary funding within the overall larger fund. She thought the spreadsheet would include what was proposed in this budget and what was changed in the overall budget. Rep. Sanderson said there is a line for miscellaneous funds and it would be interesting to find out how that relates to any of the Good Will – Hinckley School's allocations. Director Ashcroft asked if she was talking about the original budget proposed by the Governor compared to the budget that the Legislature just passed. Rep. Sanderson said yes – what were the changes and where were they? Director Ashcroft said her understanding of how the budget process works is that all of this would have been appropriated to General Purpose Aid for Local Schools. There would have been a line for Personal Services and a line for All Other. In the All Other line there is a miscellaneous account that includes specific funding for Good Will – Hinckley as well as any other number of entities. Unless they changed the budget line overall for General Purpose Aid for Schools in such a way that OPEGA would be able to see it all the way down to some sort of subset, she is not sure she would be able to take it all the way to that level.

Rep. Mastraccio asked the Committee Chairs for clarification of the review process because of something Rep. Sanderson said. As a Committee member she had concerns and wanted to clarify that Committee members do not participate in an OPEGA review. She said she may have misunderstood what Rep. Sanderson said, but wanted to make it clear that she did not intend to do any investigation.

Chair Katz said once the GOC tasks OPEGA with a particular scope of work, the Committee is out of it. He said if a member, or anyone, goes into OPEGA and asks about the review, that person will be told that OPEGA cannot tell anyone about what they are doing or finding. He said OPEGA's report will come back to the GOC and that is when the Committee will have an opportunity to ask questions and decide what, if anything, the GOC wants to do.

Rep. Sanderson noted that what she would be looking at is not part of the scope that OPEGA will be doing so she does not believe there is anything that prevents her, out of curiosity and a true knowledge of wanting to understand the flow of money in certain accounts, from just asking for the information of where did the dust final settle.

Sen. Johnson said the scope of the review proposed by Director Ashcroft is about right. There are no alleged actions or concerns expressed in any letter or anything that has come to the GOC regarding the Education budget as a whole. He thinks looking at the portion of the budget relevant to Good Will – Hinckley and seeing where that leads you is an appropriate way to begin the investigation.

Rep. Campbell thinks the budgeting process and the funding in terms of background would be important. He said the budget the Legislature just passed was fairly unusual and was not an open process. The process of where funds were allocated and where they were moved might be of value. Director Ashcroft said that would be outside the realm of what the review requestors have put before the GOC and what she was envisioning in drafting the scope for the review. If that is something the Committee would like OPEGA to do, she thinks it would be an entirely different project than the one outlined.

Sen. Diamond said the information Rep. Sanderson asked for would be helpful, but he also thinks the review needs to be controlled. Having an understanding of the Appropriations and Financial Affairs Committee and how it functions is that a lot of the information that is going to be helpful is already there. The information that Rep. McClellan referred to is also already there. He noted that Committee members were not going to investigate, but they were certainly going to ask questions, as they go through the process and he thinks that is appropriate.

Sen. Gerzofsky asked whether OPEGA would be limited in pursuing any sign of other improprieties that came up during the review. Chair Katz said Director Ashcroft may come back to the Committee and ask for a redefinition of the scope of work based on any information they find during the review.

Sen. Burns said he has been trying to think through the issues to determine if the GOC was the proper venue for the review request. He always asks whether it is the GOC's venue, or is there another entity that would better serve the request. He said as Director Ashcroft has narrowed the scope down to the use of State funding, he has come to the conclusion that the GOC is the most appropriate forum to answer the questions. Sen. Burns said if the review is kept to the scope that has been proposed, he thinks OPEGA and the GOC is the right venue.

Motion: That the Government Oversight Committee approves putting on OPEGA's Work Plan a review of State funding for Good Will – Hinckley with Scope as proposed being to determine the facts associated with alleged proposed changes to State funding for Good Will – Hinckley for the upcoming biennium and any impacts to the School of those changes. (Motion by Sen. Diamond, second by Rep. Campbell, passed, unanimous vote, 12-0).

UNFINISHED BUSINESS

None

REPORT FROM OPEGA DIRECTOR

No Report

NEXT GOVERNMENT OVERSIGHT COMMITTEE MEETING

The next Government Oversight Committee meeting was scheduled for Friday, July 17, 2015 at 9:00 a.m.

ADJOURNMENT

Sen. Katz adjourned the Government Oversight Committee meeting at 3:35 p.m.

127th Legislature
Senate of
Maine
Senate District 17

Senator Thomas B. Saviello
3 State House Station
Augusta, ME 04333-0003
(207) 287-1505

June 29, 2015

Government Oversight Committee
82 State House Station
Augusta, ME 04330-0082

Chairman Katz and Chairman Kruger,

Recent reports, if accurate, offer a chilling example of a potential overstep of executive authority by the Governor. As you know, Speaker Eves was recently hired by Good Will-Hinckley to become the school's next President. As has been reported, prior to hiring Eves, Gov. LePage lobbied the school in opposition to this potential hiring. After the school decided to proceed with hiring Eves as their President, Gov. LePage apparently called on the school to rescind the offer. As part of this effort, it has been alleged that Gov. LePage threatened to withhold approximately \$500,000 annually in funding for the school if they did not terminate their contract with Eves.

Like you, I take my role as an elected official seriously and firmly believe that our responsibility is not simply to protect the wellbeing of this state, but also to protect the sanctity of our democracy. For that reason, I am deeply troubled by recent highly-publicized reports suggesting the administration may have used state funding as a tool to target political opponents. In keeping with the legislature's role as a check and balance to potential executive overreach, I am writing to formally request that OPEGA investigate whether this administration has crossed legal or ethical lines by leveraging state resources for political purposes.

On June 24, 2015, Good Will-Hinckley School reversed their decision to hire Speaker Eves.

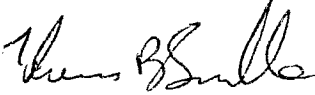
My request to OPEGA is as follows:

- 1) Outline an appropriate scope of investigation to reasonably determine whether allegations of political use of state resources are justified
- 2) Review the allocation process for funding specific to the Good Will-Hinckley situation
- 3) Review the allocation process of other discretionary funding available to the Administration

- 4) Report any examples of improper or potentially inappropriate discretionary use of state resources

This request is made with the intent of clarifying for the public what occurred and ensuring that the balance of power between the executive and legislative branches remains equal. Thank you for your consideration. I look forward to your response.

Sincerely,



Senator Thomas Saviello

CC: John McGough, Office of the Governor
Representative Ken Fredette, House Minority Leader
Representative Jeff McCabe, House Majority Leader
Senator Garrett Mason, Senate Majority Leader
Senator Justin Alfond, Senate Minority Leader
Speaker Mark Eves, Speaker of the House
President Michael Thibodeau, President of the Senate

RECEIVED JUN 29 2015

Government Oversight Committee
82 State House Station
Augusta, ME. 04333-0082

June 29, 2015

Dear Chairmans Katz and Kruger,

Please consider this a follow-up to the request made Friday, June 26, 2015, to your Committee regarding concerns we have in reference to Governor Paul LePage's conduct surrounding all of the issues associated with Speaker Mark Eves's termination of employment from the Good-Will Hinckley School.

It has been alleged that Governor LePage threatened to withhold State funding from this private school and took action to do so. It is also our understanding that the threat to withhold these public funds affected the Alfond Foundation's willingness to follow through on grant commitments made to the school.


We consider this to be an act of intimidation, misuse of State funds, abuse of power, conduct unbecoming of a public official sworn to uphold the law, and a violation of Mark Eves's 14th Amendment rights.

We are requesting an OPEGA investigation of the facts surrounding this situation and the funding involved. Specifically, the scope of this investigation is to include, but not limited to:

- The funding allocated and threatened to be withheld
- Any actions taken taken by the Governor to withhold intended payments
- All relevant communications between the Governor, the Governor's office, the Dept. of Education, the Good-Will Hinckley School, the Alfond Foundation and any other relevant entities

If these allegations are substantiated in the OPEGA/Government Oversight investigation, in addition to standard protocols, please refer all findings to the Maine House of Representatives for consideration under the authority vested in the Constitution of the State of Maine, Article 4, Part 1, Section 8.

Respectively submitted,


Rep. Jeffrey Evangelos


Rep. Ben Chipman


Rep. Charlotte Warren