



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
November 12, 2015
Accepted January 8, 2016

CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:00 a.m. in the Cross Office Building.

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 Etta Connors, Adm. Secretary, OPEGA
Agency Officers and Staff Providing Information to the Committee:	Linda Pistner, Chief Deputy Attorney General, Attorney General's Office

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

Without objection Chair Katz moved to **Follow-up on Information Brief on State Funding for Good Will-Hinckley.**

82 State House Station, Room 107 Cross Building
Augusta, Maine 04333-0082
TELEPHONE 207-287-1901 FAX: 207-287-1906

Follow-up on Information Brief on State Funding for Good Will-Hinckley**- GOC Questions to State Employees, GWH Representatives and Others**

Chair Katz noted that the purpose of the meeting was to gather additional details and understanding of the events, communications, explanations and impacts described in OPEGA's Information Brief on State Funding for Good Will-Hinckley.

Chair Katz said there are three Statutes relevant to the inquiry being conducted by the GOC. Those are the statute governing Legislative Investigating Committees, the OPEGA statute and the Freedom of Access Law. He noted that the GOC Chairs had consulted with Chief Deputy Pistner on how those statutes relate to each other and to the proceedings for this inquiry.

Chair Katz said the first order of business was for the GOC to decide if testimony should be taken under oath. He said statute calls for two subpoenaed witnesses to be sworn in, but there are a number of other witnesses that have been invited to the meeting to answer questions who have not been subpoenaed. The question for the Committee is whether or not the testimony of those individuals should also be taken under oath.

Sen. Burns thought anyone that speaks at the meeting should be under oath.

Motion: That all testimony taken at today's GOC meeting be under oath. (Motion by Sen. Burns, second by Chair Kruger.)

Discussion:

Rep. Sanderson asked if the letter sent to those who were not subpoenaed included any mention of them having to be under oath. Director Ashcroft noted all the individuals who received the letter also received a communication regarding the statutes that were going to be governing the proceeding, including the full legislative investigating committee statute which describes and discusses the points of procedure that the Committee would need to determine. In this way, they would have been aware that the GOC would likely consider whether or not to put them under oath.

Sen. Diamond did not think it would make any difference but if the Committee is starting with the two individuals that had been subpoenaed and they are testifying under oath, then he thinks it would be consistent to do it with all the witnesses.

Vote: Above Motion passed 11-1. Rep. Sanderson voted against the Motion.

Chair Katz said the GOC next needed to discuss and vote on the order of procedure, which he proposed as follows:

- All proceedings and testimony will be held in public session and will be broadcast over the internet and available to televising and filming as is normal protocol and required under the Freedom of Access Law, with exception of possible Executive Sessions for the purpose of the GOC consulting with its attorney on the Committee's legal rights and duties under Title 1, section 405-6 (E) or for other purposes allowed under Title 3 Chapter 21.
- All subpoenaed witnesses and others the GOC has voted to place under oath will be placed under oath prior to the taking of their testimony.
- All witnesses will then provide any records they have with them prior to testimony being taken.

- Testimony will be taken in the following order: Aaron Chadbourne, Cynthia Montgomery, Thomas Desjardin, Suzan Beaudoin, Rich Abramson, Sara Vanderwood, Jay Nutting, William Brown and Gregory Powell.
- All questions to the witnesses will come from GOC members or GOC staff. Any staff questions will be posed through the Chairs and Leads unless the Chair directs otherwise.
- There will be no questioning of witnesses by other witnesses or their counsel.
- After all testimony is taken, the GOC will provide an opportunity for any witnesses to offer further or clarifying information.
- After all testimony is taken, the GOC may recall particular witnesses for further questions.

Motion: That the Government Oversight Committee agrees to the above stated procedures. (Motion by Sen. Diamond, second by Sen. Davis, passed by unanimous vote, 12-0.)

Chair Katz said witnesses will be offered an opportunity to make a brief statement, if they wish, prior to any questioning by the GOC. Chair Katz noted that each witness was also asked to produce any documents that might be relevant to this matter that had not already been provided to OPEGA. He asked Director Ashcroft to briefly summarize information gathered from any documents that had been provided in advance.

Director Ashcroft said that all the witnesses provided their documents in advance with the exception of Jay Nutting. OPEGA did have the opportunity to review those documents prior to the meeting and she thanked the witnesses for providing the documents in advance. She had informed the witnesses that they did not need to bring hard copies of those documents to this meeting. She said nearly all the documents OPEGA received were documents they already had obtained as part of the review from other sources and information from them are reflected in the Information Brief. There were a few documents received that provided OPEGA with an additional level of evidence for particular dates or times that things happened that were described in the Brief and other documents received related to other information OPEGA already was aware of.

Director Ashcroft said as far as new information, there were a couple of emails received that she would bring to the GOC's attention. The first relates to a conversation OPEGA reported on that the GWH Board Chair said he had with Mr. Chadbourne where Mr. Chadbourne informed him that their lawyer would like to speak with him. OPEGA now has an email chain that suggests that the lawyer was Ms. Montgomery and that there was a meeting set up between she and Mr. Moore. That meeting was supposed to be for July 23rd but she had to reschedule and OPEGA does not have any further information about whether that meeting was actually held. Director Ashcroft said the second email was from Commissioner Desjardin to Ms. Montgomery asking about whether or not he should provide OPEGA with a couple of additional points of information following his interview with them.

Chair Katz recognized **Aaron Chadbourne** and his Attorney **Clifford Ruprecht**.

Mr. Chadbourne was sworn in by Chair Katz.

Mr. Chadbourne's testimony begins at 0:17:30 on the audio recording at www.legislature.maine.gov/uploads/originals/goc-11-12-2015.mp3.

Chair Katz recognized **Cynthia Montgomery**, Chief Counsel in the Governor's Office. Attorney **Clifford Ruprecht** was also counsel for Ms. Montgomery.

Chair Katz swore in Ms. Montgomery.

Ms. Montgomery's testimony begins at 1:03:55 on the audio recording www.legislature.maine.gov/uploads/originals/goc-11-12-2015.mp3.

During questioning by the GOC, Ms. Montgomery claimed attorney/client privilege in declining to respond to questions regarding the Governor. Chair Kruger noted that the GOC's process appeared to be stalled around these questions and so offered the following motion.

Motion: In accordance with Title 1, section 405-6 (E) I move that the Government Oversight Committee go into Executive Session to consult with our Attorney concerning our legal rights and duties in connection with the current situation of the witness refusing to answer on attorney/client privilege. (Motion by Chair Kruger, second by Rep. Mastraccio.)

Discussion:

Sen. Diamond was uncomfortable going into Executive Session on the issue. He asked if the Chairs could be more specific about what they were going to discuss with Chief Deputy Pistner in Executive Session. Chair Katz said the reason to go into Executive Session would be to get further advice from the Committee's attorney about whether or not to press forward with inquiring about conversations Ms. Montgomery may have had with the Governor on this subject.

Sen. Johnson clarified that the question of whether or not to press forward would be a matter of their understanding what their rights and powers were versus those that have been communicated and where the line is drawn on what they may proceed with within the law. Chair Katz agreed.

Vote: The above motion passed 12-0.

EXECUTIVE SESSION

The Government Oversight Committee entered Executive Session at 10:22 a.m. and ended Executive Session at 10:40 a.m.

Chair Katz explained that the Committee Chairs went into Executive Session for the purpose of getting legal advice from Chief Deputy Pistner about the rules regarding attorney/client privilege and it was appropriate to have done that in Executive Session. He said that was the only thing that was talked about.

Chair Katz said the attorney/client privilege as it relates to public officials is extremely narrow and is governed by a specific rule of evidence. The attorney/client privilege does not apply to communications between a public officer or agency and its lawyers. However, if the Court, or in this case the Committee, determines that disclosure will seriously impair the public officer's or agency's ability to process a claim or carry out a pending investigation, litigation or proceeding in the public interest then the attorney/client privilege will apply to communications concerning the pending investigation, claim or action. He said that it is clear to him that the privilege does not apply to the questions asked of Ms. Montgomery so far so he asked her to answer questions about her conversations with the Governor on the subject of this matter. The exception being that if the Governor asked her for advice then that statement by the Governor asking for advice, or anything Ms. Montgomery may have told him in terms of giving advice, would be privileged, but nothing else would be.

Chair Katz swore in **Deputy Commissioner Desjardin**. The Chair noted that Mr. Desjardin had wanted to be at the GOC's last meeting, but because of medical issues was unable to do so.

Deputy Commissioner Desjardin's testimony begins at 1:59:00 on the audio recording at www.legislature.maine.gov/uploads/originals/goc-11-12-2015.mp3.

RECESS

Chair Katz recessed the Government Oversight Committee at 12:40 p.m.

RECONVENED

Chair Katz reconvened the GOC meeting at 1:13 p.m.

Chair Katz swore in **Suzan Beaudoin**, DOE Director of School Finance and Operations.

Ms. Beaudoin's testimony begins at 3:38:30 on the audio recording at www.legislature.maine.gov/uploads/originals/goc-11-12-2015.mp3.

Chair Katz swore in **Rich Abramson**, former GWH Interim President.

Mr. Abramson's testimony begins at 3:52:33 on the audio recording at www.legislature.maine.gov/uploads/originals/goc-11-12-2015.mp3.

Chair Katz swore in **Sara Vanderwood**, lobbyist for GWH.

Ms. Vanderwood's testimony begins at 4:42:00 on the audio recording at www.legislature.maine.gov/uploads/originals/goc-11-12-2015.mp3.

Chair Katz swore in **Jay Nutting**, a lobbyist with Maine Street Solutions, and former GWH Board member.

Mr. Nutting's testimony begins at 4:59:15 on the audio recording at www.legislature.maine.gov/uploads/originals/goc-11-12-2015.mp3.

Chair Katz swore in **Bill Brown**, Chair of the MeANS Board.

Mr. Brown's testimony begins at 5:11:45 on the audio recording at www.legislature.maine.gov/uploads/originals/goc-11-12-2015.mp3.

During GOC questioning of Mr. Brown, Chair Kruger objected to Rep. Sanderson's line of questioning regarding the qualifications GWH advertised it was seeking for the President's position and when it appeared those had changed over the course of the selection process. He referred to the scope set for OPEGA's review and believed this line of questioning was outside of that scope. Chair Katz commented that there had been a good vetting of what process the Board had gone through in selecting its President, but would agree with Chair Kruger that the wisdom of the Board's decision in selecting the Speaker, or the lack of wisdom of the Board in selecting the Speaker, was not what the Committee was there to do. He asked Committee members to attempt to restrict their questions to the scope of the review agreed upon earlier.

Rep. Sanderson made the following motion:

Motion: To overrule the Chair's ruling. (Motion by Rep. Sanderson, second Sen. Davis.)

Discussion:

Sen. Burns said he heard a phrase earlier in the meeting that put this in context. Somebody mentioned this was politics to some extent on both sides. Whether you're talking about the Administration, or you're talking about the Board's process, the GOC's focus had been to determine what happened and maybe why it happened. If they are going to answer those two questions you have to go a little bit further than just one side of the equation. He thought that was the effort that was currently going on and cutting off the discussion on one side of the equation could mean never getting to know why something took place. He thought to narrow the equation down to one side is inappropriate and felt the questions asked were in line with the scope.

Sen. Johnson said he agreed the line of inquiry that Chair Katz ruled on was not part of the Committee's question and how the Chief Executive feels about the Speaker's qualifications for the position was not the subject of the GOC's inquiry. The actions regarding funding were.

Rep. Duchesne said he understood the charge of the GOC to be fact-finding. They were concerned about the what, and don't care that much about the why. Other people later can figure out the whys.

Sen. Davis agreed with Sen. Burns. In any investigation done, you look at the whole thing to find the facts as to the whole situation, so to leave out the questions that have been asked is wrong. There had been numerous times during this meeting when he thought that the questions being asked should not have been asked and the Chairs should have stopped the questioning. He thought Rep. Sanderson's question should go forward as presented.

Rep. Campbell said he agreed with the premise that the mission is the what, and not the why, but in fact the what becomes two sided. He felt if he didn't know the other side then the what happened as a result of what happened isn't going to be clear.

Rep. Sanderson agreed the Committee was talking about the funding regarding GWH and what may, or may not, have happened. She said, however, when you are trying to build a basis, you have to have a solid foundation. The Committee talked about GWH's selection process several times throughout the course of the hearings and meetings on the subject, and had just talked about it with Mr. Chadbourne. She thought having the opportunity to question Mr. Brown, who is a member of the MeANS Board and can give an indication on the Board's thoughts on the process, was equally important as questioning someone from the Governor's Office or other entity. She hoped her colleagues on the Committee would vote in favor of the motion to overrule the ruling and continue.

Chair Katz suggested that members look at the language of their charge which is that on July 1st this Committee directed OPEGA to determine the facts associated with alleged purposed changes to the State's fiscal year 2016 and 2017 Department of Education funding for GWH and the impact of those proposed changes to the School. The charge might have also been to look into the wisdom, or lack thereof, of the hiring decision, but that is not what was in their charge and that is why he ruled the way he had.

Vote: The above motion failed 5-6-1. Voting for the motion: Reps. Sanderson, Campbell, and McClellan, Sens. Burns and Davis. Abstaining from the vote: Sen. Katz.

Chair Katz asked Rep. Sanderson to continue with her questions with the ruling in mind. Rep. Sanderson said she did not have any further questions.

Sen. Katz swore in **Greg Powell**, Chairman of the Board of Trustees of the Harold Alfond Foundation.

Mr. Powell's testimony begins at 5:56:28 on the audio recording at www.legislature.maine.gov/uploads/originals/goc-11-12-2015.mp3.

Chair Katz noted that the Committee had now heard testimony from all the people either subpoenaed or asked to come to the meeting. He said the procedures voted on by the Committee now provided for an opportunity for the GOC to ask to recall any witnesses who had previously testified. He asked if there was any such request from the Committee. There were none.

The procedures the Committee approved also provide that anyone who testified would now have an opportunity to provide further, or clarifying information, for the Committee. Chair Katz asked if there was anyone at the meeting who had testified who would like to provide any further or clarifying information to the Committee. No one accepted the opportunity.

Chair Katz said the next item is for the Committee to vote on what the record is going to be of this hearing.

Motion: In accordance with Title 3, Section 429 I move that testimony shall be released only as a full audio recording of the testimony today. (Motion by Chair Kruger, second by Rep. Mastraccio.)

Discussion:

Sen. Johnson asked what the alternatives to that would be.

Chair Katz said another alternative might be to have a full transcript prepared which would probably cost in the thousands of dollars and would be at the expense of OPEGA's budget. If anyone wants to have such a transcript made, they can certainly access the audio tape themselves and have it made. He did not think it was a wise use of taxpayer money for the GOC to ask OPEGA to do that.

Sen. Johnson wondered if someone does wish to cover the costs of the transcription, it may then be available to others. He thought the motion as it stands would preclude them from doing that.

Chair Katz did not think so because the GOC would make this the official record of the hearing so the official record would be by definition available to anyone.

Rep. Sanderson noted that once the audio is released that means that anybody who chooses to may disseminate that information in any form of media they wished.

Chair Katz agreed.

Vote: The above motion passed by unanimous vote 12-0.

Chair Katz said the Committee was now at the point of a Work Session on the Report when they would ask staff any questions they wished to and then decide what, if any, further action the Committee was going to take. He knew members had other commitments so asked what the pleasure of the Committee was. He suggested they adjourn for today and meet again soon to discuss those things and to conclude this matter.

Motion: That the Government Oversight Committee recess for the day and reconvene the Committee at the earliest opportunity. (Motion by Rep. Campbell, second by Sen. Diamond).

Discussion: Following a discussion, the members decided that the next GOC meeting would be scheduled for December 3, 2015. Director Ashcroft will work on drafting a full Agenda for that meeting for the Chairs' consideration.

- **Further Consideration of Possible GOC Action**

Not discussed.

- **Committee Vote**

Not discussed.

NEW BUSINESS

None

UNFINISHED BUSINESS

None.

REPORT FROM DIRECTOR

- **Status of Current Projects in Progress**

Not discussed.

- **Staffing**

Not discussed.

SCHEDULE NEXT GOC MEETING DATE

Discussed above.

SUMMARY OF THE OCTOBER 15, 2015 GOC MEETING

That the Meeting Summary of October 15, 2015 be approved as written. (Motion by Sen. Burns and second by Rep. Campbell, passed unanimous vote, 12-0.)

ADJOURN

That the Government Oversight Committee be adjourned. (Motion by Rep. Duchesne, second by Sen. Burns, unanimous vote 12-0). The Chair adjourned the GOC meeting at 4:18 p.m.