



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
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REP. RICHARD H. CAMPBELL
REP. ROBERT S. DUCHESNE
REP. ANNE-MARIE MASTRACCIO
REP. DEBORAH J. SANDERSON

**MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE**

**MEETING SUMMARY
December 3, 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.

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
Scott Farwell, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

Others Providing Information to the Committee: Justice Daniel Wathen, Court Master, Riverview Psychiatric Center

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

NEW BUSINESS

None

UNFINISHED BUSINESS

- **OPEGA Information Brief on State Funding for Good Will-Hinckley**

- **Committee Work Session - Further Consideration of Possible GOC Action**

Chair Katz referred to the Draft Report of Actions of the GOC on OPEGA's Information Brief on State Funding for Good Will-Hinckley in the Committee's materials. He explained that the document will be a Committee addendum to the Brief and summarizes what has occurred since the Brief was presented.

Director Ashcroft reminded the Committee that they had revised this part of the Report procedure in February 2015. The Committee had approved a definition to clarify what a vote of endorsement on OPEGA's report meant. The vote on endorsement is an indication of the GOC's public approval and support for OPEGA's reported results and recommendations. Generally the Committee will fully endorse the report if it finds: (a) the reported results are credible, objectively derived and sufficiently relevant and complete in regard to the assigned scope for the review and (b) the reported recommendations are reasonable and appropriate for addressing the issues identified.

Director Ashcroft said the Draft Report of GOC Actions is prepared on completion of the GOC's work sessions on an OPEGA report. OPEGA drafts a report summarizing the Committee's activities and actions regarding the Report that also reflects the Committee's vote on endorsement of the Report, including any formal comments from members regarding their individual votes that they want to have included. The GOC will review and approve that Report and it would then be posted to OPEGA's website and issued to those who receive a hard copy of OPEGA's Report.

Director Ashcroft summarized the Draft Report of Actions on the Information Brief on State Funding for Good Will-Hinckley. (A copy is attached to the Meeting Summary.)

The GOC's comments and questions regarding the Draft Report included:

Rep. Mastraccio noted that the GOC has not received additional information through its actions so far that changed the results in OPEGA's Brief.

Sen. Diamond referred to the section of the draft titled Additional Information gathered and asked the Director if the information she would be adding there was based on the scope of what the Committee voted on to do. Director Ashcroft said that was correct, it would be the scope of the Report.

The GOC considered a possible approach for getting the GOC addendum reviewed, revised and approved by GOC members via email so as not to delay release of it until January. During discussion, Committee members identified concerns about the transparency of that process and agreed to wait and do the GOC's final review and approval of the GOC Addendum at its public meeting in January. Director Ashcroft will distribute a final draft of the document to GOC members before then and collect proposed changes or other concerns members have which will be considered at that meeting.

Chair Katz directed the GOC to vote on endorsement of OPEGA's Information Brief.

- **Committee Vote**

Motion: That the Government Oversight Committee moves to fully endorse OPEGA's Information Brief on State Funding for Good Will-Hinckley dated September 8, 2015. (Motion by Chair Kruger, second by Rep. Campbell)

Discussion:

Chair Katz thought the Committee's job was to get the facts out for everyone to see and for everyone to draw their own conclusions and the GOC did a good job of that. He said the Committee's job was going to be done that day and it was up to others if anything happens from here. He said as you look at what happened he thought all twelve members of the GOC had approached this work in a bipartisan manner. It shouldn't make any difference how they review the facts whether this Governor happens to be a Republican or a Democrat, whether his name is Baldacci or LePage or any other name. Chair Katz said they were talking about the facts of these events only involving Good Will-Hinckley. Others have suggested that the GOC should view these events in a larger context of some pattern of conduct by the Chief Executive, but that is not what the GOC's job had been. That was not the GOC's mandate and the Committee has not done that.

Chair Katz also thought they needed to keep in mind, as some have reminded them, that this was done in the context of politics which is sometimes a rough and tumble sport and they could not be naïve about it. He said many people will ask if any laws were broken, but that analysis is also beyond the scope of the GOC's work and the Committee has not looked at that question, nor have they sought any legal opinion on that question and this is not the forum to answer that question.

Chair Katz said the question was what had the Committee learned after a rather exhaustive process which involved numerous interviews, review of many documents and a full day of testimony under oath. What he thinks he has learned is as follows. That GWH needed a new President. That their Board undertook a recruitment and application process and as a result of that process the Board decided it was in the best interest of the School to hire Mark Eves and the Board voted unanimously to do so. The Board then offered the job to Mark Eves and he accepted. The Chief Executive learned of the hiring and was upset by it. The Governor believed that GWH was making a mistake. He believed that Mark Eves lacked the credentials to be an effective leader of the School. At that point, a number of Administration Officials, including the Acting Commissioner of Education, a Senior Aid to the Governor and the Governor himself all communicated to GWH that if Mark Eves were hired then discretionary State funding of approximately \$500,000 a year might well be withdrawn. That money that the School was depending on would be pulled. Learning of this, the Harold Alfond Foundation became concerned about its own investment in the School. The Chairman of the Foundation's Board worried that if State funding were withdrawn the School might not be able to expand its student population and meet other performance goals. Based on that, the Foundation itself decided to re-evaluate its own multi-million dollar financial commitment to the School and communicated that to School Officials. GWH now found itself in a terrible position. The School now faced the possible loss of State funding and the possible loss of Harold Alfond Foundation funding, both of which could cause the School to default on a bank loan and lead to potential foreclosure on some of its School real estate. In the face of these facts the Board decided to fire Mark Eves.

Chair Katz said a question that has been explored here is whether members of the Administration actually threatened to withdraw the funds. On this question, from his perspective, the GOC has the testimony of four people. Jack Moore, the Chair of the Board of the School, Rich Abramson the Interim President of GWH, Sarah Vanderwood, the lobbyist for the School and Greg Powell the President of the Alfond Foundation. All four of these people are highly skilled in the use of the English language. All four of them could not have been more clear in their testimony to the GOC. All four of them reached exactly the same conclusion. The members of the Administration conveyed to them that if Mark Eves were hired, that State funding would likely be pulled at the direction of the Governor. Chair Katz said he reached that conclusion himself beyond a reasonable doubt. It quacks like a duck, it walks like a duck, he thinks it is a duck.

Chair Katz noted that on top of that the most compelling evidence comes from the Governor himself who stated in no uncertain terms on television that he had threatened the funding withdrawal.

Chair Katz noted that some will say that is exactly what happened, but that the Governor was completely justified in what he did. That it was perfectly appropriate to step in because of his belief that Mark Eves was unqualified for the job for President of the School. Chair Katz said he did not agree with that for a couple of

reasons. First, GWH is a private non-profit institution. It may receive some government funding, but it is still a private organization. As such, he thought they had the right to make their own hiring decisions without fear of interference by anyone, especially someone from the government. There are literally hundreds of similar private entities that receive some State of Maine funding and he worries about the precedent this case sets if this kind of Executive action becomes the new normal. He asked if we were entering an era when private institutions will feel a need to give politicians a veto power over their internal hiring decisions. He hoped that was not the road they were going down. Chair Katz said this is hardly speculative thinking. He has already heard in the last few months about another private organization that had exactly this concern as it went through a hiring process of its own.

Chair Katz said the second concern he had was with respect to his colleagues in the Legislature, present and future, and the First Amendment. He said it is a citizen Legislature and most legislators have other jobs. He hopes it does not get to the point where legislators start weighing their votes worrying if they push the wrong button that their own present or future employment might be in jeopardy. Legislators cannot do their job if every vote, every floor speech, is viewed through the lens of what if.

Chair Katz said this was one person's view, one of twelve. He prides himself of the work on the GOC and OPEGA and respects the view of each and every one of his colleagues, all of whom are struggling to do the right thing.

Chair Kruger said the role of the Committee is to shine a light. The actions of Governor LePage as they relate to GWH and Speaker Eves raise serious questions about the government and political system. The GOC had questions before them about the abuse of public office and tax payer dollars, and allegations that threats were made and carried out toward an organization for at risk youth in order to exact retribution against a political rival. He said these are questions that could shake the faith of Maine people in their government and the GOC owed it to them to get to the bottom of the matter. If an elected official is able to use the power of his office to punish a lawmaker for his voting record who among them was safe. Every day Mainers and independent organizations need to go about their business without worrying about crossing the wrong person in power. As elected officials, their conscience and constituents, not the fear of intimidation and retribution, must be the guide for their actions. He said these serious concerns moved some legislators, republicans, democrats and independents, to request an investigation. The GOC, as a Committee, unanimously determined that OPEGA should investigate. That strong bipartisan vote showed how seriously GOC members take their duties. They remained committed to them when others tried to undermine the effort and even attacked their work and mission.

Chair Kruger said OPEGA produced an excellent, impartial report that spelled out what happened. They now know with complete certainty that the Governor did use State dollars to threaten GWH because it hired Speaker Eves, and that funds were withheld and restored only after Speaker Eves was fired from his new post. He said now, with the GOC's fact finding mission drawing to a close, it is going to be up to others outside the GOC to decide what comes next. He believes the investigation and report can be valuable tools and urges the Legislature to take action so nothing of this sort ever happens again. Chair Kruger said that is what is needed to ensure that the people of Maine can have confidence in the system.

Sen. Gerzofsky agreed with the Chairs on the GOC's process and what they were charged to do. He understood from the beginning that they voted on a fairly narrow scope of what was going to be reviewed on GWH. He was sad that when they voted on the scope of the review it did not include a review of what was legal and what was not legal. He said at the same time he thought they were looking at how politics related to Maine's governing. He said he was voting on the report from the perspective of his constituents and what their concerns are.

Rep. Sanderson said she would not be voting to accept OPEGA's Report on GWH as a whole, but will be voting to accept the Report in part. She thought there was an important piece in the Report that Committee members should have been allowed to question and find the answers to, but they were not allowed to continue down that path at the last GOC meeting. She referred to page 21 of the Report regarding the hiring process

and said that she was not referring to Speaker Eves, as he applied for the job in good faith. She said it was about the hiring process and some of the information that came forth when Mr. Brown was speaking in front of the GOC at their last meeting. When she asked Mr. Brown if he offered any tips, he admitted that he had coached Speaker Eves. When you have an individual who may have recused himself from the Speaker's interview, yet sat in on the other five and admitted that he had coached Speaker Eves, then you do not have a fair hiring process, especially when the criteria and qualifications initially posted for the position changed drastically at the other end of the process. She said anybody who had had those goal posts changed on them probably would feel the same, that something wasn't exactly right. Rep. Sanderson said she was going to reject the piece on page 21 that says "GWH established in advance, and consistently adhered to, a candidate selection process that was well documented, thorough, thoughtful, and fair for all candidates". She did not think it was fair for all candidates. All the other candidates were not being coached about what the School may, or may not, have been looking for.

Chair Katz asked Director Ashcroft to explain what the process would be for different actions taken by the GOC on an OPEGA report.

Director Ashcroft said the way the Committee decided to deal with multiple votes on an OPEGA Report would be captured for the record in the GOC's Report Addendum. Multiple members could vote differently on the Report and the comments that they have with regard to the way they vote will be captured there.

Sen. Johnson thought the Committee Chairs had summed up the situation well. He shared a great deal of concern. It was clear from the Information Brief that the scope to find the facts regarding what was done with the GWH funding and how that was handled, have been captured. He was concerned that they have an abuse of power with the Governor threatening GWH with funding and admitting as much. Sen. Johnson felt strongly that the matter needed to be taken to its conclusion because it is a threat to the institution and not the kind of government wanted where persons in private organizations, or in public office, feel they are personally, or financially, threatened by someone else in power. He said it was not the GOC's job to draw conclusions on how to follow through on making a determination of impeachable offenses, laws broken, etc. because those things are for other people and other bodies.

Rep. McClellan said his take away from what has been looked at is that the story involves a very poor process and behavior on behalf of the three entities talked about. He did not hear that the threatening of funding is what happened. When someone says they are taking support away that could mean a lot of things. He had asked several people at the last meeting if this even was extraordinary, or was it just the nasty business of politics. The Committee heard from someone under subpoena that some of Leadership in the House and Senate had once sent a letter to an organization doing something similar. There was an allegation, and he didn't know if it was true. Rep. McClellan said he has thought about things he has heard on the House floor and things he observed that are nasty and similar to what the Committee was talking about. He noted that earlier remarks addressed precedence and asked how many stories were going to fall into the same category as this. When legislators are called into Leadership Offices because they are going to vote against a bill and they come out crying. You could assume they were being told if they didn't vote for that bill, they were not going to be a legislator next time. Rep. McClellan said precedence is important, and as serious as he thinks this situation and behavior was, and the bad process, it is a really big deal to set precedent and hopes everyone thinks about that.

Rep. Mastraccio thanked the Chairs for articulating what she thinks OPEGA's Report was about. She had been thinking about what it means to have a leader who uses unethical behavior and the power of their position to influence a process. To her it was not about process and politics, but about modeling behavior at the top. The most powerful person in the State is showing everyone this is how you get something done and, in her estimation, it is unethical and whatever happens she thought OPEGA did a great job in gathering the information.

Rep. Duchesne said what the last few GOC meetings demonstrated is that the original Report was extraordinarily accurate and nothing came up that contradicted anything in the Report. The Report did outline some gray areas and he thinks that is what the Committee delved into as they went forward with the additional compelled testimony and the cooperation of other witnesses the Committee asked to attend a meeting. He said that process cleared up a number of questions about whether anybody else in the Governor's staff acted on their own authority without the permission, or knowledge, of the Governor. He can now accept what the Governor said in public, yes I did it, and that he was responsible. He put it in writing and on camera and told Commissioner Desjardin he did not want to spend any more money than was legally required. Rep. Duchesne thought this matter was extraordinary because, if it isn't, it should be going forward. To him there was a difference between whatever political horse trading and arm twisting may happen on a bill, or a matter, before the Legislature and attacking a man's employment and the income it takes to feed his family. He said that is extraordinarily different.

Sen. Diamond thought the review of these topics strikes to the heart of what the GOC is about. He has been on past GOCs and was involved with three major reviews and each time the Committee rose to the occasion and for the most part, acted in a very bipartisan manner. He saw this review as the most significant because it deals with the most powerful person in the State and the precedent it may set. Sen. Diamond thought OPEGA's review was complete and what other organizations do, they do, but the GOC's role was significant and important because they laid the ground work. He said the public and the media have sometimes misunderstood what the GOC's role is. The Committee's role in this instance was not to come to a conclusion and make a recommendation, but to gather the facts and present them and that is what has been done. He thanked the members of the Committee for staying tuned to what they had to focus on.

Rep. Campbell referred to the key word "support" which was repeated over and over in the recent testimony. He said "support", in most instances, did not get directly to the word funding, though everyone probably understands that is probably it. He thinks the action by one prompts a reaction by another and then that reaction becomes an action and a reaction by the previous, so he was not sure that everybody didn't have a part in this. Testimony from the heads of GWH continually mentioned the fact that they didn't want to be partisan and were non-political, but by their actions and choices it became political. In terms of what the Chief Executive said, although you don't always appreciate his process or his words, he does have a fiduciary responsibility for the funds and use of funds, especially discretionary. Rep. Campbell said Committee members were not able to get into the hiring process as much as he would have liked to at the last meeting. He thought OPEGA's Report was valuable, extensive and the quality was high, but he agrees with the exception noted by Rep. Sanderson.

Sen. Burns said he thought the review needed to be done in a public process and that was done. He agreed with Rep. Sanderson on the hiring process. He thought if it had not been for the process that was used he doubted the Committee would be talking about this particular subject and he hoped folks kept that in mind. He said Committee members were not allowed to get very deep into the hiring process at the last meeting and that a vast majority of OPEGA's Report deals with the process of how the hiring took place. He said he has great respect for Speaker Eves and the work he has done, for the Governor and the work he has done and for GWH's two Boards who went through the hiring process. From all that he has heard, seen and read, it was very clear to him that the process was changed in the middle of the game. The process was set up with a set of mandatory criteria and then desired criteria for this candidate. After going through nineteen candidates they decided to change the criteria and, as Mr. Moore told the GOC, they changed to looking for a candidate with an outward focus with the bottom line being an ability to raise money for the School. That is fine if that is what the School wanted to do, he does not have a problem with that because they are a body that can make those decisions, but that is not the process they started out with and that is not the one that people had been led to believe took place. He said it was clear, if you review the criteria, that the final candidate that was chosen probably didn't meet close to fifty percent of those criteria. He has strong attributes for some of the other criterion and met those, but if the process had been followed the GOC would not be talking about this matter.

Sen. Burns said GWH had the right to make their own decision and he did not take exception with that, but they also came into existence because of the efforts of a couple of different entities, one of whom was the Chief Executive and the other being the Alford Foundation. He said he has heard discussion about dirty politics, the process being corrupt and the heavy-handedness of government, but said there is something called executive privilege that the rest of them, as legislators, don't enjoy and the general public does not enjoy, but is given to leaders and certainly to the Chief Executive. He did not know whether this matter would fall into executive privilege and expects any Chief Executive to exercise that privilege from time-to-time. He said the GOC is about transparency, but when somebody is transparent and speaks what is on their mind and what their opinion is, we get upset and cry foul. Sen. Burns said maybe this was more than is acceptable to the citizens. He did not think a fair process was followed even though they might have thought they were doing what was best for the School, you still have to follow a set of criteria that is fair for everyone. He thinks there was a methodology for them to change that, but GWH did not follow that. Speaker Eves was told about an opportunity for a good job that he thought he was qualified for and Sen. Burns did not blame him for applying. He said on the other hand he knew that the Chief Executive put his sweat and blood into making the School viable. It is something good for the State and good for many deserving kids. The Governor saw it as going the wrong direction and exercised good judgment, in his opinion, and tried and did avert that change from happening. Sen. Burns said he accepts ninety percent of OPEGA's Report, but did not think it was a fair hiring process.

Rep. Sanderson said the GOC has heard a lot of references to withholding of funding. She said the Chair referred to it in his opening statement as withholding of funds. In the last GOC meeting it was clear from testimony from Ms. Vanderwood and others that what the Governor was saying was "I can't support that". She asked whether that meant withholding of funds. Depending on the conversation it may, or it may not. She said Mr. Powell's testimony said he and the Governor worked together very hard over the last few years to support GWH, ensuring that they got off the ground, ensuring against vigorous opposition that they had the extra funding needed when it became apparent that they were going to need the extra funding in order to be able to house some of the students who needed to stay there. She said what she found very interesting was when Mr. Powell spoke about his conversation with the Chief Executive on the phone and the distress that he portrayed, the Governor's words, about the decision that had been made to hire someone who had been such a vigorous opponent to the School. She said that was more important to her because people can learn things, but given the Speaker was a vigorous opponent to the actual mission of that School to begin with against an Executive who is a proponent of it, she thought it was understandable that maybe the Governor was upset. What stood out for Rep. Sanderson in Mr. Powell's testimony was how it was quite a while after his conversation with the Governor that he wondered whether the Governor's support meant withdrawal of funding. It was not apparent to Mr. Powell at first that the Governor's mention of the withdrawal of support meant funding. When she hears the Governor say I can't support that, she hears I can't support that decision, I can't support giving extra money above and beyond what any other school receives from that miscellaneous account to a School that is going to hire somebody who is in such vigorous opposition. Rep. Sanderson said everybody who testified at the last meeting said, and they admitted, they never heard you will not receive funds if this goes through. The word used was "support" and she thinks that is an important differentiation to make.

Rep. Sanderson agreed with Rep. Campbell regarding for every action you are going to get a reaction and she understood the Executive's reaction to the action taken by the Board. There was full knowledge on part of the Board that this may not be a popular decision, yet they made the choice to go ahead. She agreed with Rep. McClellan that there was not just one person at fault in this and that it is a combination of reactions, poor choices, and poor actions.

Chair Kruger noted that nowhere in the scope of the GWH review was there intention to review the Speaker's qualifications, or the process by which an independent institution makes its hiring decisions. He understands that Rep. Sanderson and the Governor didn't think it was a good choice, but that was not the purpose of the GOC's investigation.

Rep. Sanderson noted that the entire OPEGA Report is full of what happened in the process, how we got to where we are, how we reached what happened. She thinks to not talk about that because it may be unpopular to some folks is being short sighted and that you cannot look at what happened and not look at what led up to that event.

Sen. Johnson said OPEGA's Report is full of information about the process precisely because it is trying to construct a time line of what happened when, who said what and what was communicated regarding funding and how a quarterly payment was withheld. That is within the scope of the investigation. How the Governor felt about GWH, how he felt about the hiring of Speaker Eves are not germane to the question of what actions were taken regarding funding of GWH and what were the consequences. Ms. Vanderwood and others testified that "support" from the Governor was understood to be directly related to funding. In fact, Ms. Vanderwood's role was expressed as one trying to secure that support in the form of funding for the School. When she was contacted by the Governor's Office, what other possible intent would there be. Certainly there was no other intent, or meaning, taken by her. It was very clear to her that funding is what support meant and nothing further that happened after that made her question her assessment of that message. The Governor said "yes I did, why wouldn't I" regarding the funding so regardless of how your feelings fall on this matter, or how the Governor feels about GWH or Speaker Eves, the question before the GOC is what happened to the funding. Sen. Johnson said OPEGA had been very thorough and independent of people's concerns regarding politics raising its head. Politics should not enter into the GOC's work nor should any feelings about how people were driven to their actions. OPEGA's Report says what the facts of the matter are. The Governor threatened GWH's funding, it was an abuse of power because it is not an agency for which he decides who should be hired, or not hired, and the GOC would be neglecting their responsibilities if they did not put these facts forward to be dealt with appropriately.

Rep. Mastraccio commented that her understanding was that the Speaker's opposition to charter schools had nothing to do with the GWH Foundation. She thought if he had been someone who was totally in opposition to the School they would have never considered him and that is not the facts at all. Rep. Mastraccio said Speaker Eves was a huge supporter of the GWH Foundation. His opposition to charter schools and their funding was the main issue used after the fact as a reason for why he should not be President of the School. It is about looking at process after the fact to excuse your actions. She said that was fine and was people's right, but she didn't think you could argue with the accuracy of OEG's Report.

Sen. Burns said what he said, or meant to say, was that the Report claims that the process was fair. He sees otherwise so consequently, he could not, in good conscious, support the entire Report. He did not know whether OPEGA staff still feels that it was, but from the evidence that has been presented, it was not and that is why he does not think that part of the Report is accurate. Sen. Burns said you could go into great detail about the unfairness of the process, but that is not what the Committee was there to discuss. There was a lot of evidence produced to the GOC and also in the Report that it was not a fair process, but the Report still makes that statement and that is the part he disagrees with. He said the Committee's discussion one minute was saying let's talk just about what is in the scope and the next minute they talk about all the other ramifications that the Report talks about. He said OPEGA's Report talks about a lot more than just the primary subject as to whether or not the FY16 and FY17 budgets were going to be impacted by the influence that was exerted. It talks about the process and all the people that were involved and if the GOC had wanted to focus in on only that one question, the only thing they would have inquired from people was what was said to you and by whom. You would not have talked about all the other things and looked into how the process unveiled itself. Sen. Burns said the Report in itself covers that. He said the Report is fine, it is like other reports presented to the GOC, it does go beyond the scope a little bit, but he thought that was necessary. When you review an event that takes place you have to look at what led up to that and that is what OPEGA did and that is what the GOC also did during their efforts. He said that was appropriate, but some members did not think the hiring process was fair and that is what they had objections to.

Sen. Davis said he was disappointed at the Committee's last meeting that members did not have the opportunity to question Mr. Brown further. He said he had questions for him. He said it was his experience in law enforcement that when you investigate something you investigate all aspects of it, not just what is

pleasing to the ears. Sen. Davis did not think the hiring process was fair at all and agreed with his colleagues who say that. He said he believed that Roberts Rule allows a motion to move the question and he did so.

Motion: Pursuant to Roberts Rules that the GOC move the question. (Motion by Sen. Davis, second by Rep. Sanderson, 4-8, motion failed. Voting in favor of the Motion: Rep. Sanderson, Rep. Campbell, Sen. Davis and Rep. McClellan.)

Director Ashcroft addressed the issue in OPEGA's Report about whether the hiring process was fair and said on behalf of the Office and GWH she thought she needed to speak up. She said the GOC heard testimony from Mr. Brown, Mr. Moore and Mr. Abramson about what the selection process was. Aside from that, all the GOC has from OPEGA is the bulleted statement in the Report that it was OPEGA's assessment that it was a thorough, fair and well thought out process. The Committee does not have other details about what the process actually included. Director Ashcroft wanted the Committee to know that having looked at all of what the process included, including all of the documentation that GWH maintained around its hiring process, she said she stood by OPEGA's statement that she saw the process to be fair. To be clear, that assessment did not include taking what was initially laid out as the qualifications that they desired for the position and comparing it to where they ended up in the hiring process. She thought Mr. Moore described that to the GOC as something that evolved over time and said she could see why some may characterize that as being not what they set out to do, but in terms of what a hiring process looks like, the thoughtfulness of the interview questions, the multiple steps in the process, the huge amount of input from everybody on all different levels at the School and, the recusals that were done at particular points, she did see that to be a thorough, fair and well-structured process and thinks that GWH put a lot of thought into it, particularly Mr. Abramson, about how they were going to go about that process. Director Ashcroft said she stands by OPEGA's statement though she certainly understands some Committee members' viewpoints.

Sen. Burns said he was disappointed to hear what Director Ashcroft said. He said he has sat in on a lot of screening processes, and has never allowed himself to sit on one where somebody from the inside influenced the process through coaching, listening, taking part or recusing themselves at their own initiation. He said he has never been involved in that kind of process and he would refuse to do so. He said that was the process testified to at the last GOC meeting, and why he believed the process was skewed.

Rep. Sanderson noted that the initial Report statement that it was a fair process was made before OPEGA had interviewed Mr. Brown and before the GOC had the opportunity to ask Mr. Brown questions where he himself admitted that he offered advice or tips to Speaker Eves that he coached him on what the School was looking for. She said that is by Mr. Brown's own admission and it is not something he did for the other applicants because he said they didn't ask. When you have an individual who had the opportunity to sit in on the other five finalists' interviews, and though he may have recused himself from participating in Speaker Eves' interview, he still had that inside knowledge and admits that he coached the individual, she did not think the statement that the process was fair flies in the face of that comment. Rep. Sanderson said the Board's overall process and the documentation and the questions that they asked may have all been laid out in a very fair and conscious way but that testimony, in itself, leads her to believe very strongly that that comment within the Report should not stand as it is without some sort of counter comment to it.

Chair Kruger said he did not think anyone would find the word coached in Mr. Brown's testimony. He said what he heard, and he believes, is that Mr. Brown offered some tips to his friend on preparing a resume and that is very different from coaching. He said he did not believe that Mr. Brown participated in the interview either. He attended one meeting in Brunswick with other applicants. Chair Kruger felt he needed to get the facts out because people have to look at the record and he did not like the idea that the Committee was spinning this as some story involving Mr. Brown because he does not enter into this at all.

Sen. Burns said Mr. Brown's exact comments were "I told him what the School might be interested in and I told him he might consider highlighting these". He said if that is not coaching, he didn't know what was.

Rep. McClellan referred to his earlier comments where he was questioning whether this was an extraordinary situation and Rep. Duchesne said he hoped that it was and was not the norm. Rep. McClellan said that was the saddest take away for him. He thinks this is politics and how things work, that it was bad behavior on many parts but he does not see it as being different than a lot of other things he has seen in the last five years that he has been a legislator.

Sen. Johnson said that was a sad statement for him and he could not agree with that is the way that politics is in Maine, or should be. Have there been other instances in Maine of people abusing their power? Probably there have and there seems to be a pattern of that occurring with the current Administration. He said he was not going to sit there and say that is okay, that its politics as usual and the way they should accept things, because it is not.

Rep. McClellan said he was not happy about it and that he definitely sees a lot of things in Augusta that he does not like. He said there is a part of him that would like to see this go forward because he has been thinking for six months of the instances he has seen in five years at the Legislature and he believes consistency should be applied. If they are going to do this, that's great, but it is not going to be just about the Governor, it is going to be about a lot of people.

Chair Katz asked Director Ashcroft to review what the Committee's options were before they began voting. Director Ashcroft said the GOC has a motion on the floor to endorse the report in full. She suggested the GOC vote on that motion and then if there is another motion for a minority position, so to speak, that that is made and that vote is taken and recorded with what the specific objections to OPEGA's Information Brief were.

Chair Katz said there was a motion on the floor to endorse OPEGA's Information Brief in full and if the Committee members were in favor of endorsing in full they will vote for that motion and if they are not in favor of endorsing in full you will vote no and then the Committee will move to a motion to endorse OPEGA's Brief in part.

Director Ashcroft said the purpose of the votes is to record what the GOC members voted, and why, on OPEGA's Brief. It will be recorded in the section of the GOC's Addendum that says GOC vote on endorsement of OPEGA's report. It will reflect that there was a vote for full endorsement and a vote for partial endorsement giving the reasons for the partial endorsement vote.

Vote on endorsement of the Brief: Motion passed 7-5. Voting against: Rep. Sanderson, Rep. Campbell, Sen. Burns, Sen. Davis and Rep. McClellan.

Motion: That OPEGA's Information Brief on State Funding of Good Will Hinckley be accepted in its entirety except for the section on page 21 having to do with the fairness of the hiring process. (Motion by Sen. Burns, second by Rep. Campbell.)

Sen. Diamond thought the word "accepted" in the motion should be "endorsed". Sen. Burns agreed.

Vote: Five members voted in favor of the motion. Rep. Sanderson, Rep. Campbell, Sen. Burns, Sen. Davis and Rep. McClellan.

Sen. Johnson said the GOC sometimes refers OPEGA's findings in a report to the Attorney General's Office to investigate and asked whether the Committee was going to be doing that with this Brief. Chair Katz said when the Committee did that in the past it was done pursuant to a motion being passed by the Committee. At this point there is no such motion.

Chair Katz thanked Committee members for the way their debate was conducted.

- **Riverview Psychiatric Center Staffing Concerns**

Director Ashcroft said back in August OPEGA raised a concern to the GOC about the level of risk to patient and staff safety that may be existing at the Riverview Psychiatric Center (RPC) given some concerns around staffing levels and the staffing situation that had been coming through to OPEGA as part of the review that they are in process of conducting. OPEGA had been monitoring the staffing concerns as part of its work on Scope question 4. That scope question was about whether there were other areas of concern that might be appropriate for an OPEGA review that were not captured in the scope of the current review. The staffing concern is something that raised itself that she did not want to wait to bring to the Committee's attention until the review was complete. She said following that discussion in August the Committee sent questions to DHHS and RPC regarding the staffing situation. Director Ashcroft said the responses received to those questions from Commissioner Mayhew were in their notebooks. The GOC had invited Superintendent Harper, as well as Judge Wathen, the Court Master, to come and speak to the Committee about this, but between their lack of availability and the GOC's other agenda items, today was the first time there has been an opportunity to get back together with them. Director Ashcroft said unfortunately Commissioner Mayhew was not available to be at the meeting, but Justice Wathen was. She said that, in the time since OPEGA raised this issue in August, Justice Wathen has had Elizabeth Jones come back and do another review at RPC on the Court Master's behalf and has issued her second report. DHHS has also done a formal response to her report. Both of those documents are also in members' notebooks.

Director Ashcroft said Justice Wathen was at the meeting to discuss the staffing situations at RPC.

RECESS

Chair Katz recessed the Government Oversight Committee at 10:45 a.m.

RECONVENED

Chair Katz reconvened the GOC meeting at 10:58 a.m.

- **Justice Daniel Wathen, Court Master**

Justice Wathen said Elizabeth Jones did a site visit at RPC about a year ago to see if they were on the right track and she issued a report with sixteen recommendations. RPC responded to those recommendations in January of 2015, listing what they were going to do for each of them. He brought Ms. Jones back this September to take a look at whether, and how well RPC had done what it said it was going to do. He said out of the sixteen things RPC said they were going to do, six have been accomplished and ten are not satisfactorily accomplished. Justice Wathen said he is going to look into that further. He noted that RPC is in disagreement with Ms. Jones' report about whether they have done some of the things, or not. On Monday, December 7th, he was going to begin a detailed inquiry into some of those questions and then plans on writing a report by the end of December to mid-January that will include recommendations. If there is any disagreement about it, they will go to Court right then to resolve it. He is going to try to move this matter along and be very detailed about the things they can.

Justice Wathen gave an overview and said there were some positive things at RPC. One is that they are currently operating at nearly one hundred percent capacity. For the past year RPC has been operating at eighty percent and having difficulty. He said they are managing to deal with client behavioral problems without the necessity of resorting to law enforcement and have been no incidents of seclusion, or use of measures that none would find objectionable.

Justice Wathen said the negative part is staffing and that will be included in the inquiry he will be making in the next month and will be reporting to the Court on. He noted that he had given Director Ashcroft a copy of some of the questions he was going to ask and told her if she had any suggestions to add he would be happy to

include them. He said if they could cover something that the GOC was interested in, they would be happy to do it.

Justice Wathen said the last time Superintendent Harper was scheduled to be at a GOC meeting, or the Commissioner, they submitted some answers to the GOC's questions and he thought it would be useful to give his own response to those questions as he saw it at this time.

1. What are the vacancies?

The current vacancies are roughly 22 to 25 or so in the nursing staff and about 14 to 15 in mental health workers, so vacancies still exists.

2. What is the current situation with regard to ability to staff all shifts with at least minimum coverage?

Justice Wathen noted that DHHS' response was "We have consistently maintained higher than minimum coverage as outlined by the Consent Decree." He said that is correct, but it is accomplished by mandated overtime and shifts. He also believes it is accomplished by counting one-on-one situations, where someone has to have a mental health worker with them 24/7, as part of meeting the ratio even though that mental health worker is not available to the whole unit so it reduces the coverage you have. He believes RPC also meets the staffing ratios by counting the acuity specialists as the functional equivalent of mental health workers. He will be reviewing this to see if his beliefs are accurate. Justice Wathen said it is correct that RPC meets the staffing ratio, but it is not correct that they staff it in such a way that they can provide all of the treatment that they want, or the activities people should have. Because of staffing shortages, outdoor activities get shortened for the clients and it is not run the way it should be. He noted that the RPC jobs are among the toughest jobs in Maine and it should not be a system that has overtime and mandated shifts and working people to hard. It is a job where employees should put in their eight hours and go home because it is a high stress job.

3. What is the status of efforts to hire staff?

Justice Wathen thought you had to consider that question in two chunks. Is RPC making efforts to hire? He said yes. The most pressing need in long-term is that the psychiatric staff, the psychiatrists, the EAs and nurse practitioners, should be permanent and they are not. He said the Clinical Director is permanent at this point and one of the psychiatrists is permanent, but everybody else is on a contract and they come and go. The core of the medical staff at RPC is in and out and that is not good for anybody. He said RPC could not be faulted totally for that because psychiatrists are in short supply in New England generally, and probably in even shorter supply in Maine, and RPC is not the most attractive location to be working. He said in fact they are having difficulty in filling those positions and he thought there are a couple of the more permanent psychiatrists that have been there who are going to be leaving in the next couple of months so the situation is not improving. He intends to explore that and to see what their recruitment efforts have yielded, if anything.

Justice Wathen said the same thing holds true in the nursing category. He said you have a very poor situation where the top medical leadership and the top nursing leadership of RPC is dependent upon people who are there only for a short time. This complicates their ability to manage the Hospital, and treatment, and it short changes the clients that are there. He said there are vacancies for mental health workers and nursing as well.

Rep. Campbell asked if the reason for staffing shortages were because of the work or compensation. Justice Wathen suspected it was a combination of everything. One of the reasons they resort to staffing contracts is probably because they get paid more than what they would get paid if they were a permanent RPC employee. The contract option is also attractive to physicians who are retired and want to come for six months or so. He said it is not to say these people are not good, they are, but if you are only there for four or six months you have limited utility to everyone. Justice Wathen plans to talk with Superintendent

Harper about staffing and whether there is a recruitment specialist and, if there is, what the results have yielded.

4. Are you monitoring working excessive amount of hours?

Sen. Burns referred to the overtime and said he understands RPC may be a bad environment to over use overtime, but asked if Justice Wathen was suggesting that the Legislature out to be looking at eliminating overtime. He thinks positive changes in overtime at the Prison were made, but it is hard to function without overtime. Justice Wathen said he did not think it was a question of eliminating overtime. He said what RPC would like to move to would be unit based staffing, which they do not currently have so if someone were hired to work Lower Saco that is where they would stay. The acuity-based staffing would be a layer on top of that and how do they implement that. To make those two work together you are always going to have to rely on overtime to some extent if people are willing to do it. It is preferable if it is voluntary overtime and you may occasionally have to bring in people from other units in order to handle the acuity level, but the degree of overtime currently seems excessive. For example, the mental health worker overtime hours in the last year have been about 2000 hours per month. Mandated overtime for a shift of over four hours has run from 100 to 50 a month. The RN overtime hours run six to seven hundred hours a month. In October they ran 45 mandated shifts and they typically run about twenty a month for RNs. Justice Wathen said he would not suggest getting rid of all overtime, but there should be a staffing situation that permits them to get by with far less hours.

Sen. Gerzofsky asked if looking at the staffing levels if Justice Wathen also took into consideration whether employees are fully able to work or if they might be on a work-related injury. Are they considered a full employee where there is quite a few things that they really can't do? Justice Wathen said it was his understanding that if they are there working they are counted as a full person for purposes of meeting the consent decree ratios. He said as Ms. Jones points out in her Report, RPC has two obligations. One is to provide treatment and the other is to provide safety and have minimum ratios. You may have to exceed the minimums in order to provide the treatment, which is essential, and what RPC is not doing at times. He said a few months back there was one shift that was so thin that they counted the psychiatrist as meeting the ratio for that particular night.

Justice Wathen referred to the GOC question of whether overtime was being monitored and said RPC does monitor over time and there is a sheet that shows how much of it there is. The Commissioner's response to the GOC was that they comply with all federal standards. He said he was sure they do, but that it is not the way it should be and that is directly related to the staffing vacancies that exists.

Sen. Diamond said he knew that staffing was so bad at RPC that the Department of Corrections (DOC) was asked to come in to help. He asked what role DOC staff played and how long were they there. Justice Wathen said RPC hired Correctional Officers from either DOC or the Kennebec County Sheriff's Office. They were brought in, not for staffing purposes, but because the Hospital was experiencing some client behavioral problems. They were brought in to handle those problems. He said what he saw was that the Correctional Officers did not do anything but stand there until there was an incident. Justice Wathen said that was totally inappropriate and RPC has acknowledged that was not the right thing to be doing. It was not reported properly and, even if it had been reported, it should not be done. RPC no longer has Correctional Officers in any of the Units. Capitol Police are present in the building, but not on the Units unless there is a crime that the Hospital, or one of the clients, claims and then the Police are called to investigate a crime. He said if there was an active assault going on and the Police were called, they would come. If they believed it was an assault, and there was some basis for believing that the person had the capacity to commit a crime, they could arrest them and take them away. Justice Wathen said that has not occurred in the last year. He said RPC is operating and controlling the behaviors with mental health workers and acuity specialists.

Sen. Diamond asked whose decision was that to bring in the Correction Officers and did Justice Wathen know about it, or did they consult him prior to doing it? Justice Wathen said he did not know about it. It came at a time when the Hospital, in 2010, had achieved a level where he did not think he needed to go over there and actively supervise so the Court entered an Order saying they were suspending active supervision because there were a lot of other people looking at the Hospital, including CMS, Licensing, etc. He said he was not there at the time. He heard about the Correctional Officers, but he did not hear about the incident of the use of pepper spray and tasers and nobody ever discussed it with him, even though he had talked with them at that time, how they were handling the reporting of those incidents which was probably the most serious failure. What they did at that time, was they apparently assumed that if the Correctional Officers used a taser on a client to put them in their room, that was a Correctional incident and that they only had to report it through the Correctional chain of command, not through Adult Protective Services. He said what that meant was that the Correctional Officer would report to the Sheriff. Those should have been reported to Adult Protective Services, Licensing, etc. and that is when CMS came and did their survey.

Sen. Diamond asked how that decision would have been made and if there was a process RPC had to go through to bring the Correctional Officers in. Justice Wathen said as far as he knew it was the Superintendent at the time who made the decision to bring the Correctional Officers in. He didn't think there was necessarily anything wrong with bringing Correctional Officers in, it is how you manage their use and that you report their activities.

Sen. Gerzofsky said before they had the Correctional Officers come into RPC, response to calls for assistance was provided by the City of Augusta and then that went to the Sheriffs' Office. He asked who was performing those tasks now. Justice Wathen said there has always been security at the hospital, not law enforcement security, but security officers who are there. He said currently Capitol Police are there and they are called whenever there is a need for law enforcement activity. They are not called to handle behavioral problems with a client unless there is a crime occurring. Sen. Gerzofsky asked if the Capitol Police at RPC trained differently than the Capitol Police stationed at the State House complex. Justice Wathen said they are part of the Capitol Police and he believes they are all fully trained officers.

Chair Katz referred to the shortage of personnel, whether it is psychiatrists, nurses or mental health workers. He understood RPC may meet minimum standards under the Consent Decree, but given what is actually going on in the Unit, if somebody is one-on-one then obviously that throws everything off. He noted that Justice Wathen presented that as a real problem and asked if the Administration of RPC recognizes that as a real problem. Chair Katz said with all the vacancies, staffing needed to be brought up to a higher level and asked if he got a sense of urgency from the Administration to try to fix that problem. Justice Wathen believed RPC was trying to recruit staff as best they could and as quickly as they could and he did not think there was any holdback on that. The Court could issue an Order that says unless your staff is up to this level, your population is reduced to this level and that is what they sometimes do. Justice Wathen said he was not recommending that now, but that is what they really need to look at in terms of can you recruit people and, if you cannot, what are they going to do about it. They cannot just continue on with mandated overtime and working everybody to the bone. He said there may have to be some adjustments made and that is what the Court process is designed to do. In regard to the Chair's first question, Justice Wathen said the one-on-one is the perfect example of if there are four or five mental health workers assigned to a unit and somebody is one-on-one then, in fact, there are really only four workers on the unit. He said the question is how often did that interfere with client activities. If there is a shortage of staffing, they cannot just say they are going to limit the activities and treatment of the clients. He said that should not be happening, but has heard that it does happen and he thinks it probably does..

Chair Katz asked if Justice Wathen will be able to make an assessment in his own mind about the vigor of RPC's recruitment efforts. Justice Wathen said he will review recruitment and will report back to the GOC. He noted that the Plaintiffs' counsel, and the Attorney General who represents the Department, are going to also be involved and will be participating fully.

5. What is senior management at RPC doing to address the staff tensions that appear to be associated with the implementation of the Acuity Specialist positions?

Justice Wathen said DHHS' response was that change is difficult and it takes a while for people to settle in. He said this is one of the problems of why he wanted to do a formal inquiry because his understanding was that the Acuity Specialist positions proposed were to be a supplement to the existing staff of mental health workers. They were having behavioral problems that were beyond the capacity of mental health workers to deal with. Correctional Officers were tried, but that did not work so the answer was to bring in Acuity Specialists who would address those problems and supplement the mental health workers. Justice Wathen said it appears that rather than being a supplement they have been a substitution for mental health workers. He said some of the mental health workers are no longer there and the Acuity Specialists fill in. RPC is treating these positions, for purposes of the staffing ratio, as complying with the mental health workers staffing ratio. They are being used the same in some instances, and he believes that at times they are assigned to an entire shift where they work essentially as the mental health worker. Justice Wathen said the problem is the Acuity Specialist has a pay differential of about \$5 an hour and when you use those people interchangeable with mental health workers that is not a very good situation and it creates problems. He believes all of this needs to be fleshed out because as it was presented this was to be a supplement to, not a substitution for, mental health workers. Justice Wathen said he is sure that Superintendent Harper can straighten him out about his confusion of what his plan was, but he has never heard what the plan is for how we put those two positions together and where are we going with them hereafter. In a client forum, he heard for the first time an explanation that RPC was attempting to increase the educational level of mental health workers. Currently those positions require a high school education plus a CNA Certification. He heard RPC wanted to elevate that to an Associates' Degree, and perhaps to a Bachelor's Degree, dropping the CNA and would teach those nursing courses at the Hospital. Justice Wathen thought that was a good theory, but he did not know whether it was actually taking place and that is what he wants to understand. He thought the Acuity Specialists would alleviate the staffing problems.

Sen. Johnson said there seems to be a systemic problem in which multiple factors are contributing to people not wanting to work at RPC, people working there not having time to get training, etc. and no one being up to speed to the extent they should be able to communicate the objectives. He asked whether Justice Wathen will be able to ascertain from staff how they intend to change that, where they are headed, how they are going to get there and what their part is in defining that work environment that meets the needs of clients, and a reasonable work environment so they can attract other people to come join them. Justice Wathen said what he is doing is that he is not holding them to what he thinks they should be doing, or what somebody else thinks they should be doing. He is trying to hold them to what they said in January, 2015 they would do. An example is in January they said they would implement unit based staffing, which would go a long ways towards resolving many of the problems, by the end of 2015. He said it is now December and he would like to know where they are on that because he knows that unit base staffing is not there. Justice Wathen said he was not in a position to manage RPC, but he can hold them to what they said they were going to do, and what the Court approved, as being an appropriate response to that situation.

Justice Wathen said DHHS mapped out and presented a plan to the Court. The Judge said it was a good system, this will work if you do it. So the question is are you doing it and if not, why not, and when will you do it. Justice Wathen said he could make a recommendation, for example, he could say you will institute unit base staffing by January 30th and if they do not accept that then they can challenge it in Court within thirty days, but they have to either do it or challenge it in Court. The Court could uphold his recommendation and then if they didn't do it then they would be in a position of contempt. He said there has to be accountability built into it. Sen. Johnson hoped they would be questioned about what they are doing about all the inhibiting factors in planning their next steps because clearly ignoring them is not working.

Chair Katz reminded people of what Director Ashcroft said earlier and he thinks is unfortunate that Jay Harper was not at the meeting. The GOC wanted to have the opportunity to speak with him so they could have a dialogue about what is going on at RPC and if things are not being met, what the obstacles are. He said what he understood was that Superintendent Harper was not permitted to be at the meeting so the GOC could not have that discussion and it was frustrating.

Rep. Mastraccio agreed and added it would have been helpful to have Commissioner Mayhew at the meeting too. She said there was such a disconnect between Commissioner Mayhew's response to the GOC's questions and the Investigator's Report, and she gets the impression from Justice Wathen that he feels the same way. She asked why those people were not at the meeting. Director Ashcroft said there was a protocol in place for requesting agency participation at legislative committee meetings which requires those requests to go through the Governor's Office for the Governor's approval. A formal request from the Governor's Office was made under that protocol for Mr. Harper to be at the meeting to respond to the questions that had been provided in writing by Commissioner Mayhew and talk about them further. The response received was that it would not be appropriate for Mr. Harper to be giving further response to Commissioner Mayhew's responses and that it would be more appropriate to request she be at the meeting. So a request was sent for the Commissioner to come to the meeting. The response received was her schedule would not allow her to be here today. Rep. Mastraccio asked if she gave a date of when she could attend a meeting because she did not understand how the GOC, or anybody, can do their work if they don't have the people who can give the answers in front of them. Director Ashcroft said the response came from the Governor's Office and she has not followed up yet.

Rep. McClellan said he reviewed the information provided for this matter and was struck by Justice Wathen's answers being so different. Justice Wathen said if you boil down to what he said and compare to their responses, he would say yes there are vacancies here and, rather than saying we consistently met staff ratios, he would say they have met staff ratios by resorting to inordinate amounts of overtime and mandated shifts and by counting people who were intended to be supplements and not substitutes for front line. He said he was not trying to protect them and agrees that it is not a satisfactory situation. Justice Wathen said he spends a lot of time at RPC and understands there are a lot of good people who are working hard to do some great things with people who are sick. He said there is some good work being done, but they just can't seem to clean up the edges to make it work the way it should. He said you have to focus on what you can do and he thinks unit based staffing is something they can and should do and it will solve a lot of their problems. It would probably enhance their recruitment efforts because if you are contemplating working at RPC and are told you could be working on any of the four units that may change a person's mind about working there.

In response to the question of what level of risk do you feel currently exists for serious staff or patient injury due to the staff situation, Justice Wathen thought it was dangerous because there are clients at RPC who are capable, at a moment's notice, of inflicting great injury on people. He said it was not wise to say it couldn't happen because it could. His own assessment was that the level of risk is less than it was a year ago.

Chair Katz asked what the GOC could do to help fix the problem of staff vacancies. He said the Committee had to decide what actions they needed to take to get answers. He said everyone has the same interest, it was not a partisan issue, and it was frustrating.

Sen. Gerzofsky said he thought it was appalling to have those who have been confirmed by the Legislature for their position to not come into a committee that is trying to get understanding of what they are doing. He didn't understand why the GOC would not subpoena Commissioner Mayhew and Superintendent Harper to a GOC meeting because he thinks the issue has gone on long enough without being resolved.

Justice Wathen wanted to add one thing and to end on an optimistic note. He said there is cause for optimism because typically you would be saying you need more money. However, because the Legislature in the last session in the budget included roughly \$6 million of additional funding for RPC per year,

primarily for staff, it is not a money situation at this point. It is a management and an execution situation so it is a question of can they execute. His question was, have you executed, and his conclusion is, not a hundred percent satisfactorily they haven't so what can we do to beef that up while we have the money to do it with.

Rep. Sanderson said it was her understanding throughout the process the Acuity Specialists were going to have a higher degree of training and, therefore, maybe they did not need to have them as well as all of the mental health workers. It was also her understanding that all of the mental health workers were not being replaced, just a portion, but the higher level of training in the Acuity level Specialists would give them the opportunity to recognize a situation, and perhaps defuse a situation prior to having it escalate into an event. That was the value of the Acuity Specialist. She asked if that was correct. Justice Wathen said yes and they do that and is a commendable addition, but not necessarily as substitution.

Rep. Sanderson confirmed that Justice Wathen received quarterly reports on everything that happens at RPC and has received those reports for years. She said when he was talking about the clients being tasered at RPC she got the impression it happened a lot. He said there were forty-seven incidents in a one year period where either a taser, or pepper spray, was used, displayed or threatened and nobody knew it. Rep. Sanderson asked if those incidents were supposed to be reported for the Consent Decree. Justice Wathen said yes and they also should have been reported to Licensing and Adult Protective Services. Rep. Sanderson asked whether the incidents were documented in the medical record. He said when the new Superintendent, who at that time was the Acting Superintendent came on, RPC reconstructed on their own the forty seven incidents and they were forthright in saying these were not reported and that should not have happened. Rep. Sanderson asked if it was documented by the medical staff in order for them to be able to reconstruct what happened in each incident. Justice Wathen said he knew, for example, on one of the incidents that medical record would not have indicated that there was anything wrong. The only thing that showed it up was that films did not match the medical records. They had films that showed incidents did not happen the way it was reflected in the medical record. He said the reporting was not handled correctly and they acknowledge that.

Rep. Sanderson said the real fly in the ointment is the higher level of forensic patients that are being brought into the Hospital that was clearly designed for civil patients to begin with. She asked how Justice Wathen saw that in the future. He said he was not sure he would agree that the real problem is the aggressive behaviorally-challenged forensic patients necessarily. He said you can have exactly the same situation on the civil side and there are often people on the civil side who present as much of a risk and produce as many assaults, etc. that there are on the forensic side. Justice Wathen said at times it is more on the forensic side and is more on Lower Saco because that is the entry unit, but it is not a case of let's go to all civil and we won't have those problems. Rep. Sanderson said that was not what she was saying, but certainly on the forensic side, until the clients who need to utilize the Hospital reach the level of stabilization, is there seen a higher escalation of events? Justice Wathen said if you looked at the incidents there would be more occurring on Lower Saco than there is on Lower Kennebec, but not totally different. He said probably one of the people who would be considered, under certain circumstances, the most dangerous person at RPC is on the civil side.

The members of the GOC thanked Justice Wathen for the information he provided and for answering their questions.

Discussion:

Rep. Sanderson asked if there was a refusal on the part of the Commissioner not to be at the meeting or was it that she had a prior commitment. Director Ashcroft said the response was that her schedule would not allow her to be here. Rep. Sanderson suggested the GOC try again to invite the Commissioner to a meeting before they subpoena her.

Sen. Burns said he wanted the same information as other Committee members, but before they go to the extent of subpoenas he would like to know from Chief Deputy Attorney General Pistner whether there is any other way to have the presence of the people the Committee needs to hear from, and if possible, at the next meeting. He hopes the Committee uses that course first rather than going through the extent of subpoenaing staff.

Sen. Johnson noted that the GOC already has a refusal to have Superintendent Harper come before the Committee and there is a process which is interfering with them being able to ask people to appear before the Committee. He thinks there is an obstacle getting people before them. Director Ashcroft said there are some technicalities in the way one is supposed to make that request of the Governor's Office. One is to outline what it is the Committee wants to discuss with the person. In the GOC Chairs' letter requesting that Mr. Harper be at the meeting, we described the questions the GOC previously asked of Mr. Harper as the scope of what was to be discussed. But it was Commissioner Mayhew and not Mr. Harper that responded to the Committee in October so the scope that was laid out in the letter was for him to respond to the Commissioner's responses. Director Ashcroft said technically there was not a refusal for Mr. Harper to be at the meeting. What the Governor's Office said was that he was not the appropriate person to be responding to the Commissioner's information, she is. Director Ashcroft said the GOC may try again and lay it out differently as to why they would like to have Mr. Harper and the Commissioner be at a GOC meeting.

Sen. Diamond said the fact that they cannot get key people to come before the Committee because they are not allowed to has almost become routine and that every member of the Committee should be outraged and offended. He said the Committee is talking about two key people in a situation that they know may be life or death, certainly potentially injurious to people working for the State. He said the Committee should be so offended by that. He noted that he has worked under six Governors and this has never happened and the Legislature cannot let it go on. The GOC has to put their foot down and say this is not frivolous. GOC members will decide who they want to talk to and should say as a Committee we want "x" and "y" to come before our Committee. We will give you time to get your schedule right. He said he was willing to try asking that again, but didn't want them to then come back with the response that they are not going to allow these people to talk with the Committee. Sen. Diamond said he hoped the GOC will say enough is enough. Other committees can't say that, the GOC can. It is time for the Committee to say we know who we need to talk to, it is a very serious issue and we would like to have you be here. If not, we will make you come and we will adjust to your schedule.

Rep. Mastraccio said part of the Commissioner and Superintendent's role, as upper level management, is to provide the Legislature with information. The GOC just discussed mandated overtime for workers who are making a lot less. She didn't know if requesting Commissioner Mayhew to come nicely without a subpoena is going to do it because the Commissioner did not appear at least twice before Health and Human Services very recently and they just concluded an out-of-session committee that could not come up with a report because they could not get the information they needed. She did not think that you should have to outline every single thing you wanted to ask somebody and asked if that was a process that has happened for a long time or is it relatively new? Director Ashcroft said there is a letter from the Governor to the Speaker of the House and the President of the Senate that outlines what the protocol will be for requesting agency participation at a Committee. Part of the request is supposed to say what it is that you want them before a Committee for. Rep. Mastraccio asked if that was new or is it the way it has always been. Director Ashcroft said that the letter went out in October, but thinks the practice has been in place for several interims. Rep. Mastraccio said this is with the new Administration because she doesn't remember hearing this in previous Administrations. Director Ashcroft said she has only been at the Legislature for one other Administration, but said the Committee did not deal with this during the previous Administration.

Rep. Duchesne asked if the GOC should make its own protocol for under what circumstances they are going to subpoena somebody and then send a letter. The GOC has its own procedures and has the means for enforcing those procedures and it may be a good line of communication to state what those will be going forward.

Rep. Sanderson said she agreed with Sen. Diamond regarding the importance of having Departmental input on a lot of issues that come before them, but she did not hear Director Ashcroft say there was a refusal to come. It sounded to her like it was a conflict and the Commissioner just could not make it. She did not hear that the Executive had refused to let them come to the meeting. She would understand an outrage if the Committee sent another invitation and they could not come in another month, but she would hope the GOC could be reasonable and give the Commissioner the benefit of the doubt that she did have a prior commitment.

Chair Katz suggested a middle ground because the calendar continues to go by and the GOC only meets about once a month. He said Rep. Sanderson might be right, but she might also be wrong and he does not want to wait until after Red Sox opening day to be able to deal with this issue. He said one possible solution was to say the GOC will send an invitation, asking for a response within “x” number of days and if a favorable response is not received then, a subpoena will be issued. He thinks that will take into account what Rep. Sanderson was talking about, but will not delay the important work that the Committee is charged with doing.

Sen. Diamond thought he heard Director Ashcroft say that Mr. Harper was not the right person to come to the GOC meeting and he did not want to let anybody decide who they think should appear, the Committee will decide who they think and then give them plenty of time to adjust their schedule. He agreed that a letter be sent and he would fully expect both to be at the next meeting.

Rep. Mastraccio asked when the GOC was expecting to hear back from Justice Wathen. Director Ashcroft said Justice Wathen has always been willing to come when the Committee wanted to hear from him. She understood that he was going to be doing his extra investigation over the next month so she would say at least a month’s time from now before he would have anything further to share with the Committee.

Sen. Davis noted that the GOC meets twice a month during session so two dates could be offered to the Commissioner and Superintendent and he would think that one of them would work.

Sen. Gerzofsky agreed with Senators Diamond and Davis that both individuals be invited again, but if you get the same results, you might want to change the way you are doing it.

Motion: That the Government Oversight Committee invite Commissioner Mayhew and Superintendent Harper to choose between one of the next two GOC meetings, ask them to respond to that request within ten days and if the Committee does not get a favorable response then a subpoena will be issued. (Motion by Sen. Johnson, second by Sen. Gerzofsky.)

Discussion:

Sen. Burns asked if the GOC will include the scope of what it is they want to discuss with them so they will not have to come prepared to talk about nebulous things. He thinks it is important to try to follow the criteria they have set forth for the Legislature.

Sen. Johnson agreed the Committee should give them a scope of what they are looking to discuss with them, but he was also adamant that the GOC should just not be posing a specific set of questions. The Committee’s scope would be regarding the performances reported on by the Court Master and responses from the Department.

Rep. Sanderson clarified that the Motion was that the GOC will send the letter, if the Committee does not hear back from them within ten day then a subpoena will be issued. She asked if that was the Motion. Chair Katz said the Motion was that they would be invited to come to one of the next two meetings of their choosing and ask them to give a response within ten days. If the response was not yes, then a subpoena would be issued. Rep. Sanderson said the subpoena power that the GOC has is an extreme privilege for

them to be able to use. The talk of subpoena has come up because the Commissioner could not be at today's meeting because of a scheduling conflict and she thinks it may be premature to subpoena. Chair Katz said this issue is not occurring in a vacuum. Every Committee that has met since the end of the Session, as he understands it, has had the same problem. He said they have had it on the AFA Committee, the Special Committee he was on to study Difficult to Place Patients, and as recently as last week, the Commissioner's Public Relations person indicated that this same policy about Administration officials appearing before legislative committees was going to continue into the next Session. He said they were willing to give everybody the benefit of the doubt, but it did not sound entirely like a scheduling issue. Chair Katz said the reason he was voting in favor of the Motion is that it is not a back burner problem, there are constituents of his that work at RPC, who are in physical danger and the Committee cannot be sitting on their hands. That would be irresponsible.

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

- **GOC Consideration of New Requests for OPEGA Reviews**

- **Board of Licensure for Professional Land Surveyors**

Director Ashcroft summarized the request for a review of the Board and noted that the legislative sponsor for the request was Rep. Kumiega. She said OPEGA's recommendation on the possible focus, should the Committee want to task them with the review, would be to look into the effectiveness of the Board in addressing complaints that are filed against licensed surveyors. For the GOC's reference, Director Ashcroft noted that this is not the first Board that OPEGA has received such concerns about over the years. It is the first one where the requestors have gotten a legislative sponsor to bring it forward. She said there is often a question about the effectiveness of any of the oversight boards when they are made up of members who are of the profession that they are overseeing. Director Ashcroft said there are no General Fund dollars involved, the Board is self-supporting and has dedicated revenue from the license fees paid by the folks who are licensed and overseen by the Board.

Rep. Mastraccio asked if the Director could say how much time it would take to review the request, or how much work would have to be done by OPEGA to answer the questions posed as the potential areas of focus. Director Ashcroft said OPEGA could look at what complaints have come in, what their process is for the complaints, and what their results usually are. OPEGA would not have much by way of comparison to other boards in terms of their enforcement activities unless the review was expanded to include other boards. Director Ashcroft said the Board is only doing seven to nine complaint cases annually so that is not a huge amount of cases that would need to be looked at.

Rep. Sanderson said in Rep. Kumiega's request it says "should the Board fail to act the land owner has no other options. Decisions of the Licensing Board are final" and asked if that was consistent across most boards. Director Ashcroft did not think that was exactly right. She thought the option was an appeal through the Court system. There is not an appeal process through the Board and not through the Department of Professional and Financial Regulation.

Sen. Burns asked what the statutory breakdown of the Board was. Director Ashcroft said two public members and five licensed professional land surveyors, all of whom are appointed by the Governor.

Sen. Diamond asked how many projects the GOC/OPEGA had in progress currently. Director Ashcroft said they only had Riverview and Good Will-Hinckley. He asked how many on deck. She said the next two up for priority are the Division of Licensing and Regulatory Services for Child Care Providers and the Northern New England Passenger Rail Authority. The State Lottery is currently on the schedule as "In Progress", although OPEGA is not actively working on it, and DHHS Auditing and Public Utilities Commission, are in "Planned" status. He said that under normal circumstances he thinks OPEGA would have time and space to

do the review, but he does not see them getting through the current list of reviews for some time so he was not inclined to take on another project right now.

Rep. Mastraccio asked how much OPEGA staff time would be involved. Chair Katz said there are a number of professions, including this one, that have boards that essentially oversee the profession and are responsible for discipline. He understands from reviewing this request that there is a constituent who is complaining about a case which took place which may, or may not, be indicative of some more system wide problem with this Board. He asked if there was more than one complaint about the Board's operation. Director Ashcroft said OPEGA has heard from more than the one individual. Although the questions that have been asked in the request are based on just one person's problem with the Board's actions on a particular complaint, there are some elements to it that suggest it could be a systemic problem.

Members of the GOC asked if Rep. Kumiega could address the Committee regarding the request for a review of the Board. Rep. Kumiega said he had a couple of constituents at the meeting and they were told there is no option for them to take this to Court. He explained that if he hired a surveyor and had a complaint they would have a contract between them so the person hiring the surveyor could bring an action to Court, but if a neighbor felt he was drawn into a court case because mistakes were made, or there was incompetence on the part of a surveyor, the neighbor does not have an option for taking it to court because he does not have a contractual relationship with that person. Chair Katz said that has nothing to do with a Licensing Board. That would be solved by a statute that permitted a cause of action for a lawsuit. Rep. Kumiega agreed, but said the issue that was brought to him is that the Board is ineffective and there would be no need for further action if the Board was more effective in disciplining people who stepped over the line.

Sen. Davis asked if the Board had someone from the Attorney General's Office to work with them and to bring the matter to completion. Director Ashcroft said the Board is assisted by an Assistant Attorney General.

Rep. Duchesne said either the Board is not properly set up, does not have the right people on it, or not the right powers of oversight, etc. and that speaks to a bill that would go to the LCRED Committee. Alternatively, the Board is properly constituted, but it does not do a good job because it is all insiders who are protecting each other and, therefore, good results are not coming out of it. He said that could be revealed as an investigation, but he was not sure which of the problems required a fix. Director Ashcroft said the majority of the concerns that OPEGA has heard are related to the second.

Director Ashcroft reminded the GOC that putting the review request directly on OPEGA's Work Plan was not the only option that the Committee had. The Committee sometimes determines that there is additional information that they would like to have and OPEGA does the work to get that information prior to the GOC making a determination. The Committee can also vote to put it "On Deck", or can refer the matter to a policy committee and ask if that committee thought it was a problem that is worth OPEGA reviewing.

Sen. Diamond asked if the GOC could ask the LCRED Committee to look at the Board during the session. He said he could not vote to add another review to OPEGA's Work Plan, but did not want to let the request die. Rep. Mastraccio, a member of the LCRED Committee, said it would be easier if, when the review request was forwarded to the LCRED Committee, it have the preliminary information about the results of the last three years of complaints handled by the Board. Then at that point it could be referred to LCRED. She would prefer that process rather than killing the request all together.

Rep. Sanderson agreed with Rep. Mastraccio and would recommend doing the preliminary inquiry only at this time and that would give the GOC the information necessary to decide whether the matter should move forward.

Motion: That the Government Oversight Committee ask the Director and staff to do a preliminary inquiry regarding the Board of Licensing for Professional Land Surveyors. (Motion by Rep. Sanderson, second by Rep. Mastraccio)

Discussion:

Sen. Burns asked what would be set aside in order to work on the review request. Director Ashcroft said she would ask OPEGA staff to fit it in around other work that they are doing. It will not slow down anything that OPEGA is currently working on.

Rep. Campbell noted that he has heard complaints from professional surveyors who are not happy with the Board.

Vote: Motion passed 10-2. Voting against the motion: Senators Davis and Diamond.

- Fund for Healthy Maine

Director Ashcroft summarized the review request.

Chair Katz noted his frustration serving on the AFA Committee with their inability to get the information AFA wanted. He did not think it was a partisan issue about wanting to get into the details about the accountability of how the funds are used. His understanding of the review request is that it has nothing to do with how the money should be spent, but is for understanding how the money is spent. He, as a legislator, does not know how the money is being spent and thinks it is an appropriate subject matter for an OPEGA review.

Sen. Davis asked when OPEGA would get to the review if the GOC moved it in. Director Ashcroft would ask the Committee whether it wants to give the review any particular priority as to where it would stand among the other reviews. She said some of the reviews on OPEGA's Work Plan might be appropriate for OPEGA to hire consultants and that is an option. She said if the current priorities stay as they are, it would probably not be until the second half of 2016.

Chair Katz suggested that the motion be, for whoever wanted to make it, that the review requested be placed on the current Work Plan.

Rep. Mastraccio uncomfortable with the fact that there was just a Legislative Committee that was supposed to study the allocations of Fund for A Healthy Maine and could not get the people to show up to tell them anything about it. She was not inclined to fast track it over other work that the GOC has going on that she thinks is critically important.

Rep. Sanderson, a member of the HHS Committee, said the Committee was looking at the allocations of the State Health Plan money of where it should stay, and should it be changed. HHS was not looking at the specific grantee management, the actual use, or what portion is administration versus actual money going into the end receiver services. She also said HHS did not look at how important the FHM money was to the organizations, is it the only source of revenue in order to be able to continue the work they do. She said after the 2009 Report there was a clear recommendation that, again, this money be put into a separate account. It was not until the 2011 Commission which Chair Katz and she were on, that they actually got that done. She said there are still a lot of things out there that need to be done. One thing that is not clear is to have a requirement on the grantees part to make sure that this money is not put into the big pot so they can have an indication of how money is tracked as well as to make sure that the end services are being utilized appropriately and effectively. They have tried to deal with this on a HHS Committee level and she does not think they have been able to get their point across adequately, or actually had the teeth to get it done. Rep. Sanderson said this review would be a different look at the Fund for A Healthy Maine.

Sen. Diamond noted his concern again about the work on OPEGA's Work Plan and suggested that the review requestors resubmit the request after the coming session is over.

Chair Katz recognized Rep. Timberlake, one of the sponsors for the review request.

Rep. Timberlake agreed with what Chair Katz had noted earlier. Legislators have asked for information from anyone, including the Administration who cannot get the requested information because the providers that they give the money to are not getting the information back to them. He believes that the only way the Legislature is going to find out where \$52 million of the tax payers' money goes is to have the GOC make a request for the information. He asked that the GOC approve the request for the review. He and the other requestor knew that OPEGA will not get to the review right away, but wanted to make sure it was on the GOC list. Rep. Timberlake said it was not a partisan issue, or that any part of the money was spent wrong, but no one knows how it is spent.

Rep. Campbell noted problems with The Fund in Bucksport and made the following motion:

Motion: That the Government Oversight Committee places on OPEGA's Work Plan a review of The Fund for A Healthy Maine. (Motion by Rep. Campbell, second by Rep. Sanderson)

Chair Katz said when the above review request came in it raised a fair amount of red flags because in the requesting letter there was at least a passing reference to Planned Parenthood. It was his understanding that although Planned Parenthood used to get some funding from The Fund for A Healthy Maine it no longer receives any funding. Director Ashcroft said that was her understanding.

Vote: Motion passed 11-1. Voting against the motion: Sen. Diamond.

- **Certain Matters Related to the Acadian World Congress**

Director Ashcroft summarized the review request related to the Acadian World Congress. (A copy of Rep. Cooper's email and the letter from Reps. R. Martin and Saucier is attached to the Meeting Summary.)

The Committee invited Rep. Cooper to speak on the review request related to Acadian World Congress.

Rep. Cooper said the reason she made the request specifically for a review of the Acadian World Congress was because the facts were not known, unlike Good Will-Hinckley situation. With regard to Acadian World Congress there are only newspaper reports and some people back tracking on what they said so, she thought the only way to understand what actually happened was to request the review. Rep. Cooper thinks the review is important because of its similarity to the allegations in the Good Will-Hinckley case.

Motion: That the Government Oversight Committee take no further action on the review request of Certain Matters Related to the Acadian World Congress. (Motion by Rep. Sanderson, second by Sen. Burns).

Sen. Diamond said he was going to vote the same way as on the previous two requests because OPEGA's Work Plan was full.

Vote: Motion passed 8-4. Voting against the motion: Sen. Johnson, Rep. Mastraccio, Chair Kruger and Rep. Duchesne.

• **OPEGA Report on the Office of Information Technology**

- **Committee Work Session – Further Consideration of Possible GOC Action**

Director Ashcroft said the GOC held the public comment period and heard from Mr. Smith briefly about his thoughts on the Report. Mr. Smith had agreed to all the Recommendations in the Review, but she was left with uncertainty as to where DAFS actually landed on whether they intended to implement the Recommendations in the Report.

Director Ashcroft said she has since met with Commissioner Rosen to talk about what DAFS' planned actions might be. She said Commissioner Rosen told her that all the Recommendations that OPEGA made are things that they are interested in pursuing, have been pursuing, and want to continue pursuing so there is no disagreement about whether or not these things should go forward. She said the Commissioner felt some are complicated issues and will take some time to resolve so they do not have a current plan. She thought an appropriate thing for the GOC to do, and the Commissioner agrees, to ask him and Mr. Smith to come back to the Committee in the fall of 2016 to give a status report on the implementation of the Recommendations in the Report that involves agencies other than the Information Technology Office. Also to ask Mr. Smith to come back before the GOC in a couple of months with a more filled out plan in terms of expected dates of completion, or the next milestones for the things they had reported are in progress, or planned actions on their part. Director Ashcroft said they were agreeable to that and she thought that would work. She said the above process is the best suggestion she has for monitoring it at this time.

Rep. Mastraccio said information technology is a big issue and, as legislators, they need to understand that when it is in the budget the next time everybody gets why it is there. Director Ashcroft said Commissioner Rosen and Mr. Smith did share with her that that is part of what they also recognize was important to do this Session. She thinks she understood correctly from the Commissioner that they are going to be looking to get in front of Committees to help them understand the IT issues, and what is going on, because that is crucial to what legislators have to decide with regard to the budget.

- Committee Vote

Motion: That the Government Oversight Committee Fully Endorse the Report on Office of Information Technology. (Motion by Rep. Mastraccio, second by Rep. Sanderson, passed by unanimous vote 12-0.)

REPORT FROM DIRECTOR

• Status of Current Projects in Progress

Director Ashcroft said at this time the only review that OPEGA has in progress and is actively working on is the Riverview Psychiatric Center. She said it has been difficult in getting access to some of the records, not because the Department is not being cooperative, but because of the confidentiality of some of those records as prescribed by federal regulations and making sure that everyone is comfortable with the protocol for OPEGA accessing them.

The Director expects OPEGA to get started on the DLRS and NNEPRA reviews the first of the year.

State Lottery is still listed as "In Progress" though OPEGA is not actively working on it and the GOC did not give it priority. The Committee talked about putting it in suspended status, but they wanted to hold off on that until the recent report that was connected with the Maine Center for Public Interest Reporting came out. She said she was prepared for whenever the Committee wanted to continue that discussion.

• Status of Tax Expenditure Reviews

Director Ashcroft said there are four evaluations that are up for full evaluation by OPEGA for 2016 and they have started on all of those. She has hired a Sr. Analyst who used to be Principal Analyst in OPEGA, Jennifer Henderson, who is currently working in a part-time capacity. Director Ashcroft said the programs are New Markets Tax Credit, Pine Tree Development Zones, Employment Tax Increment Financing and the TIF Program for the Brunswick Naval Air Station.

Director Ashcroft said under the statute that was passed, the GOC, in conjunction with the Taxation Committee, and with input from stakeholders, is supposed to approve OPEGA's evaluation parameters for each of the four evaluations by January 31st. OPEGA will have those documents and parameters for the GOC's consideration,

and she wanted to get it on the radar screen that the discussion will be in the first part of January when the GOC meets. She will be talking with the Chairs about how to get that information from stakeholders and the Taxation Committee in accordance with the Statute.

- **Staffing**

OPEGA is currently recruiting for the second Analyst position that will be on their Tax Expenditure Review Team. There is one other OPEGA Analyst vacancy and once the Tax Analyst position is filled, she will begin recruiting for that position.

SCHEDULE NEXT GOC MEETING DATE

The Government Oversight Committee scheduled meetings for January 8 and January 22, 2016 at 9:00 a.m.

ADJOURN

Motion: The Government Oversight Committee was adjourned at 1:35 p.m. on the motion by Chair Kruger, second by Sen. Davis, unanimous vote 12-0.

DRAFT

Report of Actions of the Government Oversight Committee on the Office of Program Evaluation and Government Accountability's Information Brief State Funding for Good Will-Hinckley December 2015

This report summarizes the actions of the Legislature's Government Oversight Committee (GOC) in response to the Information Brief by the Office of Program Evaluation and Government Accountability (OPEGA) on State Funding for Good Will-Hinckley (GWH). It also includes additional or new information pertinent to the events and content reported in the Information Brief that was gathered during the GOC's public consideration of this report.

OPEGA's Information Brief can be found at www.legislature.maine.gov/opega/opega-reports. The GOC Meeting Summaries documenting, in more detail, the Committee's work and deliberations with regard to this report can be found at www.legislature.maine.gov/opega/archive-of-previous-meeting. Copies of the report or summaries can also be obtained by contacting OPEGA at 207.287.1901 or email to etta.connors@legislature.maine.gov.

Key GOC Dates (See GOC Meeting Summaries on these dates for detailed record.)

Report Presentation: September 8, 2015

Public Comment Period: October 15, 2015

Special Inquiry of Officials and Other Representatives: November 12, 2015

Work Sessions: October 15, 2015 and December 3, 2015

Vote on Endorsing OPEGA Report: December 3, 2015

Summary of Public Comment Period

Following the presentation of OPEGA's Information Brief on September 8, 2015, the GOC decided to request that certain individuals attend the Public Comment Period to answer GOC questions. The GOC subsequently sent letters requesting attendance to:

- Cynthia Montgomery, Chief Legal Counsel, Governor's Office
- Aaron Chadbourne, Senior Policy Advisor, Governor's Office
- Thomas Desjardin, Acting Commissioner, Department of Education
- James Moore, Chairman, Good Will-Hinckley Board of Directors

Of these four, only Mr. Moore attended the Public Comment Period and answered GOC questions. The GOC's discussion with Mr. Moore is captured in the GOC Meeting Summary for October 15, 2015. Ms. Montgomery and Mr. Chadbourne declined to attend citing the current civil lawsuit on the related matter pending against the Governor. Acting Commissioner Desjardin was unable to attend for health reasons but did send written testimony. The Acting Commissioner's written testimony and the letter from Ms. Montgomery explaining why she and Mr. Chadbourne declined the request are attached to this GOC report.

During the Public Comment Period on October 15, 2015, the GOC also heard and/or received written testimony from:

Oral Testimony Only: Rep. Helen Rankin, Chris Myers Asch, Davey Crockett, David Travers, Deb Fahy, Barbara Moore, Harold Booth, Mike Wiley, Suzanne Hedrick, Will Neils, Meredith Ares

Oral and Written Testimony: Rep. Jeff McCabe on behalf of Howard Trotzky, Rep. Jeffrey Evangelos, Rep. Benjamin Chipman, Rep. Janice Cooper, Brian Hodges, Cushing Samp, Jeanie Coltart, Alan Tibbetts, Becky Halbrook, James St.Pierre, Jim Ramsey, Hendrik Gideonse, and William J. Brown

Written testimony only: Susan Bloomfield, Andrew Cadot, Mary Chouinard, Walter Eno, Judith Farley, Lianne Mitchell, Elisabeth Ramsey, Charles Sims, Ed Spencer and Edward and Diane Potter.

Copies of all written testimony are attached to this report.

Through their oral and written testimony, multiple commenters urged the GOC to take one or more of the following actions:

- Get the rest of the facts related to the Good Will-Hinckley matter by issuing subpoenas and inviting others to a meeting, as necessary, to answer the GOC's questions.
- Engage the Attorney General's Office or a Special Prosecutor to determine whether there has been any crimes actually committed with regard to the Good Will-Hinckley matter. One commenter specifically referenced the following statutes:
 - Title 17A §355: Extortion
 - Title 17A §603: Improper Influence
 - Title 17A §903: Misuse of Entrusted Property
- Increase the scope of the GOC's inquiry to find the facts associated with other situations the Governor has been involved in, or allegedly been involved in, to establish whether actions taken in the Good Will-Hinckley matter are representative of a pattern of behavior/actions.
- Forward OPEGA's report and additional facts found on the Good Will-Hinckley matter to the House of Representatives for its consideration in possible impeachment proceedings against the Governor.

Summary of Special Inquiry

During its Work Session on October 15, 2015, the GOC discussed its role in gathering facts and getting as much information as possible relevant to OPEGA's report on State Funding for Good Will-Hinckley. Accordingly, the GOC voted to issue subpoenas for Cynthia Montgomery and Aaron Chadbourne of the Governor's Office to appear at the GOC's next meeting to answer the Committee's questions as they had declined to appear at the Public Comment Period as requested. The GOC also voted to send letters to seven other individuals involved in the reported events requesting they too appear at the GOC's next meeting. Those individuals were:

- Thomas Desjardin – Deputy Commissioner, Department of Education (former Acting DOE Commissioner)
- Suzan Beaudoin – Director of School Finance and Operations, Department of Education
- Rich Abramson – former Good Will-Hinckley Interim President
- Sara Vanderwood – lobbyist for/representing Good Will-Hinckley

- Jay Nutting –lobbyist and former Good Will-Hinckley Board member
- William Brown – Chairman, Maine Academy of Natural Sciences Board of Directors
- Gregory Powell – Chairman, Harold Alfond Foundation Board of Trustees

A summary of the GOC’s discussion and a record of the votes taken can be found in the Meeting Summary for the GOC’s October 15, 2015 meeting.

The GOC Chairs also subsequently sent letters to each of the nine individuals subpoenaed or requested to appear requesting that they also produce any relevant records that had not already been provided to OPEGA during the course of the review.

All nine of the individuals appeared at the GOC’s meeting on November 12, 2015 and answered questions from the Committee under oath. With the exception of Mr. Nutting, all also provided additional records, some of which OPEGA already had and some of which were new. Mr. Nutting testified that he did not have any records meeting the description of what the GOC Chairs had requested.

The GOC’s protocols and procedures for this Special Inquiry were governed by several statutes, with interpretation as necessary from the GOC’s counsel, Chief Deputy Attorney General Linda Pistner and OPEGA Director Beth Ashcroft. Those statutes are:

- Title 3 Chapter 21 – Legislative Investigating Committees
- Title 3 Chapter 37 – Legislative Oversight of Government Agencies and Programs
- Title 1 Chapter 13 – Public Records and Proceedings

The Meeting Summary for the GOC’s November 12, 2015 includes a summary of the GOC’s discussions and record of votes on the procedural matters.

The Meeting Summary also includes a summary of information gathered through the witnesses’ testimonies. A full audio recording of the entire meeting and testimonies can be found on the Government Oversight Committee’s website at www.legislature.maine.gov/opega/archive-of-previous-meeting.

Additional Information Gathered (This Section Not Complete)

Following presentation of the Information Brief on September 8th, the GOC made requests for additional information. The Committee also directed OPEGA to conduct an interview with William Brown, the Chair of the MeANS Board and a staffer for Speaker Eves, whom OPEGA had not interviewed during the review. OPEGA provided the GOC with the requested information, as well as a summary of OPEGA’s interview with Mr. Brown, at the Committee’s October 15th meeting. That information is attached to this report.

Testimony and records obtained through the GOC’s Public Comment Period and Special Inquiry produced the following additional information and details pertinent to events reported in OPEGA’s Information Brief on State Funding for Good Will-Hinckley (Info Brief).

- The last paragraph on page 6 of the Info Brief, describes a plan GWH submitted to the Administration in December 2012 that the GWH President at the time indicated was intended to have GWH independent of State Center of Excellence funds in 24 months. In response to GOC questions on October 15th, GWH Board Chair Jack Moore said that this plan to be independent of this State funding has been the focus of GWH all along. However, it became clear that in order to achieve sustainability, GWH need to rebuild the School and grow enrollment. As they grow enrollment, they can allocate fixed costs over a wider population, but they were curtailed on enrollment with the current environment they

had. Hence, the effort to renovate and expand the Moody school building that is expected to be paid for with the remaining balance of the Alford Foundation grant.

- The last bullet on page 9 of the Info Brief describes a March 3rd meeting of GWH Board Chair Jack Moore and GWH Interim President Rich Abramson, with the Governor and Senior Policy Advisor Aaron Chadbourne. Mr. Abramson had previously described to OPEGA that in this meeting he also briefly talked with the Governor about GWH's plans to get off the \$530,000 in State funding. In his testimony, Mr. Abramson also described conversing with the Governor about the funding in a meeting he was in with the Governor, Mr. Moore, Mr. Abramson and Ms. Vanderwood in April. Mr. Abramson testified that at that meeting he let the Governor know that he was aware that the funding being provided through DOE was time limited and that part of his (Mr. Abramson's) responsibility was to develop a plan on how GWH would continue with providing the residential component without State funds. Mr. Abramson said he was reporting to the Governor that he had begun building that plan. In his testimony, Mr. Chadbourne also referenced attending a meeting with GWH in April where others were present and where he said he first heard of GWH's search for a President. (Note: OPEGA reported the date of this meeting as March 3rd based on documentary evidence obtained during the review. OPEGA is unaware of any meeting of the Governor's Office with the school other than that meeting. Though both Mr. Chadbourne and Mr. Abramson say in their testimonies that this meeting took place in April, given the attendees they described as being present it is likely the March 3rd meeting they were referencing.)
- Page 11 of the Info Brief describes a May 22nd lunch meeting between the GWH Board Chair, Jack Moore, and the Acting DOE Commissioner, Thomas Desjardin. Mr. Desjardin told OPEGA that during the meeting Mr. Moore appeared to be asking him if he was interested in the position even though, as OPEGA reported, by that date the GWH Board had already voted to offer the position to Speaker Mark Eves. Mr. Moore told OPEGA he did portray at the meeting that Speaker Eves' hiring was not a done deal as a final contract had not been signed, and he did think he asked a couple of times who Mr. Desjardin thought would be great for the position. In responding to GOC questions on October 15th, Mr. Moore maintained that he did not offer the job to the Acting Commissioner. He said he might possibly have asked if the Acting Commissioner was interested in the job given the Acting Commissioner's level of his enthusiasm and his level of disapproval over Speaker Eves. However, he did not recall asking this so he could say it was not a meaningful part of their conversation. Mr. Moore described his efforts in meeting with the Acting Commissioner as diplomacy in presenting the notion that Speaker Eves was their selection and trying to determine if that would negatively impact GWH.
- The second paragraph on page 12 of the Info Brief describes a June 5th meeting between the Acting DOE Commissioner and the Governor regarding the logger training initiative, the meeting where the Acting Commissioner told the Governor that Speaker Eves had been hired. In his testimony to the GOC, Aaron Chadbourne (the Governor's Senior Policy Advisor) said that he was also present at that meeting. He testified that this was the first time he had heard the news and that he believes it to be the first time the Governor heard the news. Mr. Chadbourne said the Governor was very surprised and that his instant reaction was question what Speaker Eves knew about running a school for adverse kids. He described the Governor as puzzled over what qualifications the Speaker might have had that led to such a decision. Mr. Chadbourne also testified that in this meeting the Governor asked him whether or not it was permissible under law for a member of the Legislature to be employed by a charter school that receives its funding directly from the State. Mr. Chadbourne said he researched that question after the meeting by taking it to Assistant Attorney General Sarah Forester. Mr. Chadbourne said this was the only thing the Governor asked him to do coming out of that meeting.

- The second bullet on page 12 of the Info Brief describes Senior Policy Advisor Aaron Chadbourne's interactions with GWH's lobbyist Sara Vanderwood on June 5th. In his testimony, Mr. Chadbourne confirmed that he had called Ms. Vanderwood and asked her to stop by his office, that he asked her to confirm whether Speaker Eves had been hired and that she said she did not know. He said this contact with Ms. Vanderwood was on his own initiative, no one told him to contact her. He testified that Ms. Vanderwood came back to see him that afternoon with the information and he thought she was also surprised to learn of it. Mr. Chadbourne said he let her know of the Governor's concerns about Speaker Eves' qualifications and whether this decision had been made in the best interest of GWH. Mr. Chadbourne testified that Ms. Vanderwood asked whether the Governor would still speak at GWH commencement. He said GWH funding was not discussed, he was not familiar with the details of GWH's funding at that time, and whatever Ms. Vanderwood inferred about the funding being in jeopardy was not a direct result of things that he said. Mr. Chadbourne testified that no one ever directed or asked him to convey a message about the funding being in jeopardy to Ms. Vanderwood or anyone else.
- In her testimony about these conversations with Mr. Chadbourne, Ms. Vanderwood said that Mr. Chadbourne told her the Governor was very upset if it was Speaker Eves that had been selected. That the Speaker was not qualified to hold the position either educationally or from the perspective that he was a vocal opponent of charter schools. Ms. Vanderwood said she also believes Mr. Chadbourne stated that the Governor knew the at-risk student population very well and that Speaker Eves would be incapable of handling a group of at-risk students. Mr. Chadbourne said the Governor had been very supportive of GWH in the past and he did not think that support would continue if GWH hired Speaker Eves as their President. Ms. Vanderwood testified that to her the issue of the Governor's support was directly related to funding and that it seemed very clear to her without funding being mentioned that funding is what support meant and she did relay that to Mr. Abramson. She said there was nothing further that happened after that to ever make her question her assessment of that message. She noted in her testimony that, although she worked on some other minor issues for GWH, her primary role was to ensure the funding for GWH stayed in the budget, that she had had conversations with Mr. Chadbourne leading up to this whole situation and that she thinks he understood what her role was. Ms. Vanderwood maintained throughout her testimony that she was given the impression the funding was in jeopardy.
- The last bullet on page 12 of the Info Brief, describes the GWH Interim President Rich Abramson receiving a call from the Governor on June 5th. In his testimony, Mr. Abramson further described his conversation with the Governor. He said the Governor informed him that he was extremely upset that he had learned Speaker Eves had been hired as the next President of GWH. Mr. Abramson said the Governor expressed his concerns about the Speaker, particularly around his voting record on charter schools. Mr. Abramson testified it was obvious that the Governor was upset with GWH, the Board and with him for having led the process. Mr. Abramson said the Governor used a few profanity words in describing the Speaker and the Speaker's work, but that the Governor was not yelling or screaming. Mr. Abramson said he tried as hard as could to explain to the Governor the process GWH had followed but that didn't mean much to the Governor and he was still pretty upset after the explanation. It was clear the Governor wanted to make a point. Mr. Abramson testified that the Governor did share as part of that conversation that he had been a big proponent of MeANS and that if GWH was making this type of decision, GWH would lose his support. There was no mention of money, it was merely stated that GWH had lost his support if it moved forward with this decision. Mr. Abramson asked the Governor what he wanted him to do as he worked for the Board and the Board had followed a straightforward process. The Governor shared a couple of people he thought GWH should have considered but who didn't apply. Mr. Abramson said he knew the people the Governor mentioned and said they would be excellent candidates but they did not apply for the position. Mr. Abramson said he asked once more if

there was anything more the Governor would like him to do and the Governor replied “No” and the conversation ended. Mr. Abramson said the conversation lasted about 15 minutes.

- The fifth paragraph on page 14 of the Info Brief describes the contents and status of a handwritten note the GWH Board Chair Jack Moore received from the Governor. In response to GOC questions on October 15th, Mr. Moore confirmed that he no longer had the note saying he may have showed it to his wife but he knows that it never left his house and that it ended up in a pile that was heading for the dumpster. He described it as a short note and said he did remember what it said. Mr. Moore said in the note the Governor recognized the note Mr. Moore had just sent to him. Mr. Moore also said there was an element in the note where the Governor said that he would have trouble supporting GWH if they were to hire, and Mr. Moore believes there were two words and one was scribbled out, but he did refer to Speaker Eves as a hack.
- The last paragraph on page 14 describes the GWH Board Chair’s recollections of two conversations he had with Senior Policy Advisor Aaron Chadbourne, although he could not recall the dates of those conversations. In his testimony, Mr. Chadbourne said the date of his first conversation with Jack Moore, GWH Board Chair, was on June 8th and that he called Mr. Moore on his own initiative. Mr. Chadbourne said he had spoken to Sara Vanderwood prior to the weekend. She had indicated that Mr. Moore might like to meet with the Governor and he had indicated to her that the Governor might be willing to meet. Mr. Chadbourne’s purpose in calling Mr. Moore on June 8th was to let him know that the Governor had instead decided to send him a letter outlining his concerns with their selection of the Speaker and that the Governor hoped they would continue the selection process. Mr. Chadbourne testified that during this conversation he laid out the same objections that were in the Governor’s letter. He also described Mr. Moore asking him about whether the Governor was objecting because Speaker Eves was a Democrat to which the answer was no, it was about the Speaker’s qualifications. A June 7th email that OPEGA obtained during the review suggests that someone had already told Mr. Moore prior to June 8th that the Governor did not want to meet. In the email, which is described in the second bullet on the top of page 14 of the Info Brief, Mr. Moore also states he understands if the Governor is not interested in meeting.
- Mr. Chadbourne maintained throughout his testimony that the only message he intended to convey to Mr. Moore during the June 8th call was that the Governor disagreed with their selection and did not have confidence in the selection process, that the Governor did not believe Speaker Eves was qualified. The Governor could not support their decision and encouraged them to continue their search process. Mr. Chadbourne also maintained that he did not tell Mr. Moore the funding was in jeopardy nor did he ever bring up the funding situation. Mr. Chadbourne said he did not remember his exact words and could not say for certain that he did not say “we would have trouble supporting GWH if you hire the speaker” but he maintained it was not his intent to communicate anything about the funding. He said he was not even aware at that time of the extra \$530,000 in funding that GWH was receiving from the State as it was not part of the budget he had worked on before it was submitted. Mr. Chadbourne said he did not know what he said that would have led Mr. Moore to conclude that the funding was in jeopardy. Mr. Chadbourne also testified that he did not have any direct knowledge of the Governor instructing anyone else to convey concerns about the funding to GWH.
- Mr. Chadbourne testified that it was also in this June 8th conversation that Mr. Moore indicated the Speaker had signed a contract with GWH over the weekend. That fact was not known to either Mr. Chadbourne or the Governor when they were putting together the Governor’s June 8th letter to the GWH and MeANS Board Chairs. Mr. Chadbourne testified that when Mr. Moore told him this he told Mr. Moore that it seemed the Board had made its decision then and there was nothing to talk about.

- When asked why the Governor did not have confidence in the selection process, Mr. Chadbourne said that it was because the Governor had learned that the Chair of the MeANS Board was one of Speaker Eves' staffers. Mr. Chadbourne acknowledged that he personally did not know much about the selection process other than a couple of details that Mr. Moore may have mentioned in the June 8th conversation. Mr. Chadbourne also testified that he did not believe the Governor had any additional knowledge, beyond what was described in the OPEGA report, of GWH's selection process or how the MeANS Board Chair was involved in it.
- The last sentence on page 14 of the Info Brief describes that the GWH Board Chair was informed at some point by Senior Policy Advisor C, Aaron Chadbourne, that their lawyer would like to speak to him. Mr. Chadbourne testified that he did not recall the specific date of this call but thought it was just before July 4th. He called Mr. Moore to let him know that he was giving Mr. Moore's contact information to Cynthia Montgomery, Governor's Chief Legal Counsel, and that she might be contacting him given that there was pending litigation. Emails provided show that Ms. Montgomery first contacted GWH Board Chair Jack Moore on July 20, 2015 and a meeting was set for July 23, 2015. Ms. Montgomery had to cancel that meeting on July 22, 2015 and intended to reschedule. She said her purpose in arranging a meeting with Mr. Moore was that by that time she had been contacted by Speaker Eves' attorney and it was clear that litigation was going to be filed and that is what she wanted to talk with Mr. Moore about. Ms. Montgomery testified, however, that the meeting was never held as she became consumed by issues emerging at that time regarding the legal status of a large number of bills on the Governor's desk. In addition, during the period she was dealing with that, an outside attorney had been obtained for the Governor.
- On page 16 of the Info Brief, OPEGA reports that the Acting DOE Commissioner described a meeting he had with the Governor in which the Governor told him that he did not want to send any funds to GWH that were not required by law. The Acting Commissioner could not recall when this conversation had taken place, though he did not think it was prior to his DOE Lead Team meeting on June 9th. In his testimony, the Governor's Senior Policy Advisor, Aaron Chadbourne, confirmed that he was present with the Acting Commissioner and the Governor during that conversation. Mr. Chadbourne testified that he did not specifically recall when the conversation took place but, after looking at his calendar recently, his best guess is that it took place following the June 9th Cabinet meeting. The Governor had a previously scheduled meeting with the Acting Commissioner immediately after the Cabinet meeting to talk about a teacher certification issue and he believes this is where the conversation took place. The meeting was in the Governor's Office and GWH was not at all the focal point of the conversation. Mr. Chadbourne described it as an incidental comment made as he and the Acting Commissioner were leaving. Mr. Chadbourne testified that he thought the Acting Commissioner made some comment about the Governor's past advocacy for more funding for GWH and at that point the Governor said very clearly to the Acting Commissioner that he wanted him to read the budget very carefully after it was passed and "we'll give them exactly what we are required by law and nothing more."
- The fifth bullet point on page 17 describes that the HAF Board Chair, Gregory Powell, met with the GWH Board Chair, Jack Moore, on June 15th, possibly over dinner. An email from Mr. Moore to Mr. Powell dated June 21st briefly references a dinner meeting the two had the previous week and indicates that GWH was a topic of discussion at that meeting. Mr. Powell testified that at that meeting the concerns about losing State funding and what that meant to GWH's financial stability. Mr. Powell said Mr. Moore already knew about these concerns because he had asked Mr. Moore to help out at GWH. He said Mr. Moore is a very intelligent guy from a finance standpoint and Mr. Powell had wanted him to work with the Board to bring financial stability and sustainability to the operation. Mr. Powell testified that he thought Mr. Moore already knew that the loss of funding was a serious issue and that the more

people were thinking about it the more concerned they became because \$500,000 a year was at least 15% of GWH's total operating budget.

- The last bullet on page 17 discusses the June 18th letter that Mr. Powell sent to Mr. Moore advising him of the HAF's concerns with the likely loss of State funding and the HAF's plan to re-engage a consultant to revisit the GWH and MeANS budget and financial forecasts. An email shows that this letter was sent to Mr. Moore via email at 5:21 pm on June 18th with a copy to the consultant. Another email shows that the consultant contacted Mr. Moore via email at 6:39 am on June 19th to let Mr. Moore know he will call him on Monday, June 22nd to discuss the process and schedule for this assessment. June 19th is also the date the GWH Board held its regularly scheduled Board meeting and discussed the financial risks associated with the loss of State funding as described on page 18 of the Info Brief. Minutes of the GWH June 19th Board Meeting show this meeting began at 8:10 am.
- The last paragraph on page 18 of the Info Brief discusses communications occurring between the GWH Board Chair, Jack Moore, and Speaker Eves on Sunday, June 21st. An email from Mr. Moore to HAF Board Chair, Gregory Powell, at 10:31 am on June 21st includes a post script note letting Mr. Powell know that he (Mr. Moore) has been back and forth with Speaker Eves already that day and Mr. Moore hopes to have some developments later.
- Page 19 of the Info Brief discusses events occurring on June 24th, particularly the 4:30 pm GWH Board meeting. An email shows that it was also on this day, at 4:19 pm, that the HAF Board Chair, Gregory Powell, informed the HAF Board of the situation with the threat of loss to State funding and his letter to GWH Board Chair Jack Moore. The subject of the email is "Foundation Update" and the GWH situation is one of two items Mr. Powell is updating the Board on. Mr. Powell attached to this email the Governor's June 8th letter to the GWH and MeANS Board Chairs and his own June 18th letter to Mr. Moore.
- The last paragraph on page 19 of the Info Brief notes the June 25th posting of a Maine Center for Public Interest Reporting article about the Governor taking action to withhold a payment that was in process for GWH. Preceding the posting of that article are emails from the reporter to both the Governor's Office and DOE seeking confirmation of information she had obtained that the Governor or someone in his office had called an impromptu meeting with Suzan Beaudoin, DOE Director of School Finance and Operations, on June 9th and she was told to stop the payment to GWH. The Governor's Press Secretary forwarded that email to Senior Policy Advisor C, Aaron Chadbourne, and others in the Governor's Office. Mr. Chadbourne replied by email at 1:36 pm on June 25th that he had not met with Ms. Beaudoin on this issue and did not believe anyone else in the Governor's Office had either. The DOE Director of Communications deferred all comment to the Governor's Office. According to the article, the Governor's Press Secretary replied to the reporter that "This is not accurate and due to pending litigation, we are unable to comment."
- Page 20 of the Info Brief has a paragraph describing the Acting DOE Commissioner, Thomas Desjardin, working with GWH's new Interim President during the period July 1st – July 11th to establish a new written agreement for the FY16-17 funding. OPEGA reported that on July 6th, Acting Commissioner Desjardin sent GWH a letter committing to sending the first quarterly check as soon as the agreement was signed. The agreement was signed and returned on July 8th which committed DOE to \$530,000 in funding for FY16 and FY17 if conditions were met. The Acting Commissioner had also previously told OPEGA that it was on July 9th that the DOE Lead Team met to determine how to address the \$1.5 million in cuts to the budget for the Miscellaneous Costs category of which the GWH funding was a part. Included in the records obtained through the Special Inquiry is a July 4th email from the Governor's Senior Policy Advisor, Aaron Chadbourne, to Acting Commissioner Desjardin regarding

the new draft agreement and the letter to GWH that is to accompany it. In this email, Mr. Chadbourne asks whether DOE has determined yet how much money would be available for GWH given the reductions to Miscellaneous Costs and suggests that the Acting Commissioner should let GWH know in the letter what they can expect for funding or where DOE is in its process of determining that.

- On page 21 and 22 of the Info Brief, OPEGA provides details about GWH's selection process. In response to GOC questions on October 15th, GWH Board Chair Jack Moore discussed further how the process led them to select Speaker Eves. Mr. Moore said that none of the applicants fit to a "T" the criteria GWH had listed when it advertised the position. Consequently, as they went through the process they needed to prioritize what was important to the school, look at the strength of each applicant, weigh how those strengths would most benefit GWH, and which applicants would best complement the existing GWH staff. Mr. Moore described the position as unique and outward facing noting that the school already had strong senior leadership and staff that did very well day to day. Mr. Moore said they felt the Speaker had a good skill set for that outward facing role. He was a good communicator and it was their view that he could probably raise money as well as be a good spokesperson for the school. Mr. Moore said the Speaker was not hired because he was a politician but politicians tend to have the type of skill sets they were looking for in this position. Mr. Moore said the GWH Board has not reached out in the past to the Administration about who was acceptable to hire or not hire at GWH and GWH has not at any other time given the Administration the opportunity to veto any of the names of applicants being considered for a position. Mr. Moore said that if GWH had not been in jeopardy of losing the State funding he thinks Speaker Eves would have been the President of GWH today.

Other relevant information of interest obtained from records or testimony:

- OPEGA's first interview with Acting DOE Commissioner Desjardin was on July 23, 2015. In an email from the Acting Commissioner to the Governor's Chief Counsel, Cynthia Montgomery, dated July 24th, the Acting Commissioner said "Two things I would like to "add to the record" with OPEGA after yesterday's interview but wanted to check with you first." He included, for her review, a draft of the email he proposed to send to OPEGA. He wanted to let OPEGA know what Jack Moore told him during the May 22nd lunch meeting regarding Speaker Eves' responses to questions about his relationship with the Governor and whether his role as Speaker would interfere with his work at GWH. The Acting Commissioner also told Ms. Montgomery in the email about a question OPEGA asked him and another example he could provide OPEGA to show how the Governor separates personal issues from professional if she thought it would be useful for him to do so. Ms. Montgomery's response to his email is "Let's talk." She also forwarded the email chain to Mr. Chadbourne.
- In her testimony on Nov. 12th, Ms. Montgomery acknowledged this email from the Commissioner and said she didn't really advise him. She said she let him know that her opinion the arguments she raised with respect to OPEGA examining the Governor's exercising executive authority did not apply to the agencies and, therefore, he would need to respond to OPEGA and I wasn't advising him on that one way or another. She also remembers specifically telling him and others in DOE that if they were asked to testify they should tell the truth. In his testimony, Deputy Commissioner Desjardin explained that at one time he had asked Ms. Montgomery for some general advice when it became clear that the Governor's Office was not going to be participating in any interviews with OPEGA. He said there was one communication where he was asking Ms. Montgomery how he should approach this and her response was that it was for him to decide. Mr. Desjardin said it became clear that we would not be coordinating on those kind of communications and he had to make decisions on his own. During his testimony, Aaron Chadbourne said he thought there were several times that the Acting Commissioner reached out to the Governor's Office to let them know what he was sharing with OPEGA but that Mr. Chadbourne at no time had given any direction about what Acting Commissioner Desjardin should do

about sharing information, it was the Acting Commissioner's decision to make. Mr. Chadbourne testified that the only direction he provided the Acting Commissioner, and DOE, was that they should cooperate fully with OPEGA and be truthful and provide exactly what they were asked for (in terms of documents).

- Aaron Chadbourne testified that following the June 5th meeting with the Governor, where they both learned from the Acting DOE Commissioner about Speaker Eves being hired, there were only two other instances where he spoke with the Governor about the situation. One of those was when he was assisting the Governor with drafting the letter that was sent to GWH on June 8th. The other instance was on June 10th. Mr. Chadbourne said the Governor was traveling out of state that day and called him as he had heard something on the radio about education funding more broadly and had questions about that. Mr. Chadbourne said that during their conversations about this the Governor mentioned that he wanted Mr. Chadbourne to start working on charter school laws because he wanted to make sure that if Speaker Eves was going to be President of GWH that we have the toughest and best charter school laws in the country. Mr. Chadbourne testified that he relayed that comment to the Acting Commissioner who responded that because Maine's laws were so new they are some of the best. Mr. Chadbourne said he then relayed this to the Governor who responded that Arizona was ranked number one and Maine was only ranked number three and there is more we can do particularly if the Speaker is now interested in charter schools.

GOC Actions

To be completed after December 3rd meeting.

GOC Vote on Endorsement of OPEGA Report

A provision in OPEGA's enabling statute, Title 3 §997.2, provides that the Committee may, at its discretion, vote to endorse, to endorse in part or to decline to endorse the report submitted by the OPEGA Director. The Committee's written process and procedure for receiving OPEGA reports states that endorsement indicates the Committee's public approval of, and support for, OPEGA's reported results and recommendations. Generally, the Committee will fully endorse the report if it finds that:

- a. the reported results are credible, objectively derived and sufficiently relevant and complete with regard to the assigned scope for the review; and
- b. the reported recommendations are reasonable and appropriate for addressing the issue(s) identified.

Record of Committee vote to be included once it is taken. Also will include any specific comments a Committee member or members wants to have on the record with regard to their vote.

From: Janice Cooper [<mailto:janicecooperforhouse@gmail.com>]
Sent: Thursday, August 13, 2015 11:42 AM
To: Ashcroft, Beth
Subject: Request to the Government Oversight and Accountability Committee

To the member of the Government Oversight and Accountability Committee:

In an email dated July 24 to OPEGA Director Beth Ashcroft, I requested this Committee to broaden its review of the facts pertaining to Governor Paul LePage's alleged activities regarding his threat to withhold public funding to the Good-Will Hinckley School to also include similar activities. As I wrote to Ms. Ashcroft, I request this Committee to also investigate "the reported involvement of Gov. LePage in threatening the loss of public funds to the World Acadian Congress unless its president, Jason Parent, were dismissed from office. President Parent did in fact leave that position, and according to news reports, his departure was the result of the governor's alleged threats. See <http://bangordailynews.com/2015/07/24/news/state/lepage-denies-forcing-ouster-of-acadian-congress-president/>

"If accurate, this scenario closely resembles the one previously reported and now under investigation by your office, involving the governor's threat to withhold state funds unless the Good-Will Hinckley school rescinded its job offer to Speaker Mark Eves. The two episodes also mirror the sequence of events reported with respect to the firing of President John Fitzsimmons from the Maine Community College System. If true, these three events demonstrate a highly disturbing pattern of abuse of power by the governor, more than the previously reported albeit egregious episode.

"In addition, I ask that the committee use your offices to investigate the incident wherein the governor purportedly called workers compensation administrative judges to his office and berated them for issuing decisions he deemed pro-labor or pro-worker. If true, this, too, is an instance of improper use of the governor's authority, this time to influence the judicial process in administrative proceedings, also a clear violation of his duty to faithfully execute the powers of his office."

I understand that the Committee has already investigated and reached its conclusions on the incident regarding undue influence on administrative judges. However, if it appears that this is part of a pattern of misuse of government authority it may be appropriate to revisit this episode and consider whether it falls into such a pattern that together, form a serious violation of the governor's duty to faithfully execute the powers of his office.

Finally, I also advised Ms. Ashcroft and now this Committee that I believe the Committee should consider retaining independent counsel to advise it and the House, should that step become necessary. As I wrote, "Prior to moving to Maine, I worked for three years for the US House Judiciary Committee as counsel on the impeachment of US District Court Judge Alcee Hastings. In that capacity, I was part of a team that conducted the investigation, presented evidence to the House Judiciary Committee, the House of Representatives, and subsequently, in the trial before the US Senate. Accordingly, I am very familiar with the law regarding impeachment, including the meaning of impeachable offense, preferred procedures, standards, rules of evidence, etc. If I can be of any assistance to the committee or your office, please do not hesitate to contact me. One issue that has arisen that I think requires a closer look is the reliance on the Maine Attorney General Office for your legal advice. In the congressional impeachment cases, we took the position, which is shared by the federal courts, that impeachment is wholly a legislative function, and the executive and judicial branches have little if any role to play. Accordingly, I urge the Committee to retain outside counsel, responsible only to the House, so that this line is not crossed. I can anticipate situations where the advice of the AG's office may differ from those of the committee or other legal experts."

With best wishes,

Rep. Janice Cooper (Yarmouth, Chebeague Is., Long Is.)



State of Maine
House of Representatives
2 State House Station
Augusta, Maine 04333-0002

July 28, 2015

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

Chairman Katz and Chairman Kruger,

A new and additional allegation of the Governor and his staff overstepping his executive authority by forcing the resignation of Jason Parent as President of the 2014 World Acadian Congress has recently been made public through various media sources. It has been alleged by Parent himself and members of the governing board of the World Acadian Congress that the Governor and others acting on his behalf pushed for the ouster of Parent under threat of withholding \$500,000 that the State Legislature had appropriated to support this celebration of Acadian culture in Maine and beyond.

Further, it is alleged that the reason for Governor LePage's desire to remove Parent, an extremely well-known and beloved mainstay of the Aroostook County community, is that then-Congressman Mike Michaud received a commemorative license plate before the Governor received his. The allegation is that Governor LePage and/or his staff were upset because it was widely known that Congressman Michaud might run against the Governor in the upcoming gubernatorial election. This makes the allegation all the more troubling because executive authority and taxpayer money were being used to punish and/or threaten an organization based entirely on electoral concerns. The potential impact on our electoral system and the public's trust in their government is chilling.

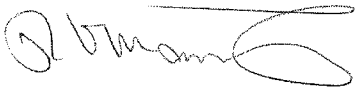
Parent did step down as President of the World Acadian Congress before the international event commenced. Clearly, some members of the governing board have either changed their story after having spoken to Bangor Daily News columnist Mike Tipping, or feel they were somehow misquoted. Parent and board member Ann Roy have remained consistent in their statements that Parent was pressured to resign in the face of this threat from the Governor and/or individuals working on his behalf.

Our request to OPEGA is as follows:

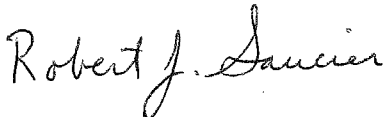
- 1) Outline an appropriate scope of investigation to reasonably determine whether allegations of political use of state resources are justified
- 2) The scope of this investigation is to include but not limited to:
 - a. Determining if the organizations involved with the 2014 World Acadian Congress were pressured in any way by the Governor, his staff or proxies to remove Jason Parent from his position by threatening to withhold state funds or through any other means.
 - b. Outline a full and accurate accounting of state funds and resources dedicated to the World Acadian Congress and a timeline on the release of those funds and resources as well as any changes to that timeline.
 - c. A review of any relevant communications between the Governor's Office, state agencies or other representatives of the Administration and the organizers of the World Acadian Congress regarding funding, resources or staffing of the organizations putting on the World of Acadian Congress.
 - d. 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 and members of State Legislature what occurred and ensuring that taxpayer dollars are not being used to improperly influence or punish members of the public or institutions in order to influence elections. Thank you for your consideration. I look forward to your response.

Sincerely,



Rep. Roland Danny Martin
House Chair, State and Local Government Committee



Rep. Robert J. Saucier
District 147