



SEN. CRAIG V. HICKMAN, SENATE CHAIR
REP. JESSICA FAY, HOUSE CHAIR

MEMBERS:

SEN. LISA KEIM
SEN. MIKE TIPPING
SEN. RICHARD BENNETT
SEN. JILL C. DUSON
SEN. JEFFREY TIMBERLAKE
REP. AMY ARATA
REP. H. SAWIN MILLETT, JR.
REP. MARK BLIER
REP. ANNE MARIE MASTRACCIO
REP. MARGARET M. O'NEIL

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
January 13, 2022

Call to Order

The Chair, Sen. Hickman, called the Government Oversight Committee to order at 9:05 a.m.

ATTENDANCE

Senators: Sen. Hickman, Sen. Keim, Sen. Timberlake, Sen. Duson
Zoom: Sen. Tipping
Absent: Sen. Bennett

Representatives: Rep. Fay, Rep. Mastraccio, Rep. Arata, Rep. Millett, Rep. O'Neil, Rep. Blier

Legislative Officers and Staff: Peter Schleck, Director, OPEGA
Sabrina Carey, Secretary, OPEGA, GOC Clerk

Attorney General Representative: Chief Deputy Attorney General Christopher Taub

Introduction of Committee Members

The members of the Committee introduced themselves.

The Chair, Sen. Hickman, stated that unless there was objection from the Committee Members, the meeting would proceed under the 130th Legislature Committee Rules.

New Business

(To watch this meeting - the recorded Live Stream can be viewed here: <https://legislature.maine.gov/Audio/#220>)

- **Meeting Summary**

The October 19, 2022, Meeting Summary was accepted as written.

- **GOC Executive Session to Discuss Legal Strategy in GOC v. Lambrew**

The Chair, Sen. Hickman, explained that the Committee has received and reviewed the decision of the Superior Court for Kennebec County in the matter of the Government Oversight Committee vs Lambrew, which denied the committee's motion to compel compliance with the 130th GOC Subpoena for certain Child Protective Records. He stated that the same files are under review by OPEGA and there would be an update from the OPEGA Director, Peter Schleck, later in the meeting. The Committee has a need to discuss privately, the legal strategy, with the Committee's counsel, Chief Deputy Attorney General Christopher Taub. He explained that in order to do so, the Committee would need to move to an Executive Session.

Motion: The Committee move into Executive Session, per Title 1, section 405(6)(E) in order for the committee to consult with counsel on the pending court case of GOC vs. Lambrew
(Moved by Sen. Keim, Seconded by Rep. Arata, unanimous of those present)

Executive Session (9:10 AM)

Reconvened Publicly (10:30 AM)

After returning to public session, Sen. Hickman explained they would wait for a few more members to be present to participate in the discussion of GOC vs Lambrew. He moved the discussion to the Orientation presentation from OPEGA Director Schleck.

- **GOC Orientation**

The OPEGA Director, Peter Schleck, introduced himself and started the orientation presentation. Director Schleck explained that there are a series of documents that are housed in the back of the Committee's binders, that are sorted through the alphabetical tabs, and the meeting specific materials will be in the front of the book, tabbed numerically. Director Schleck then gave the Committee Members a moment to review how their names were written in the slides, and to let OPEGA staff know if there is a different way they would prefer to be referred. The Director explained that the GOC is a joint legislative Committee established to oversee program evaluation and government accountability matters. The members of the committee are established by joint rule of the legislature. He explained that OPEGA was created for the purpose of providing program evaluation of agencies and programs of state government. The term program evaluation includes

many types of work styles and disciplines from evaluative to performance auditing. It also encompasses a certain amount of tax review which will be the subject of an orientation at the next GOC meeting.

Director Schleck explained that there are some basic provisions including that the GOC will evaluate the performance of the Director and will be able to recommend reappointment by the Legislative Council. The GOC reviews and approves the OPEGA Work Plan. The Committee directs OPEGA what to look at. There are Public Hearings for the purpose of receiving reports from OPEGA and questioning public officials about OPEGA findings and recommendations. The Committee will get to direct the topic chosen, and then also at the end, there is a vote to decide whether to endorse the report or not.

The Director explained that OPEGA has nine employees. The office is subject to the general policies of the Legislative Council. OPEGA will prepare and present an annual budget and an annual work plan for the GOC to approve. The Director anticipated that discussion would be held in March of 2023.

Director Schleck described the provision that allows the agency under review, to have 15-days to comment on the OPEGA Draft. The comments are included with the report submitted to the GOC. After presented, the committee can vote to endorse, endorse in part, or decline to endorse the report. Legislation may come out of the discussion on the reports. The day the Committee receives a report, is the day it is publicly released.

Director Schleck explained that there is a cycle of reviews regarding the Tax Expenditures, and he would explain more at the next meeting. He explained that OPEGA has certain authorities to information, but are subject to the same restrictions and the laws that apply to the agencies apply to OPEGA when handling those records.

Director Schleck reminded the Committee Members of the reference materials in the Binders and stated he was available if there ever is something they want to talk to him about.

- **OPEGA Annual Report 2022**

Sen. Hickman shared that Director Schleck has delivered the OPEGA Annual Report of its activities for 2022 before the statutory deadline of January 15. He asked if there was anything that the Director wanted to share about the report.

Director Schleck highlighted the section of the report that referenced the budget, as the committee has a good number of Members who are also on the Appropriations and Financial Affairs Committee. He explained that on the last page, there are some balances that have accumulated over a number of years. There is a section of the report on the committee's oversight of the Maine Commission on Indigent Legal Services and an explanation of what the 130th Committee had said about it in certain letters to others. He amplified the importance of the committee simply receiving the Annual Report and information in a timely manner as required by statute.

Recess (10:35 AM)

Reconvene (10:45 AM)

Director's Report

- **Update on Status of Rapid Review of Child Protection Case Files**

Sen. Hickman invited Director Schleck to update the Committee on the status of the Child Protection Case File Rapid Review.

Director Schleck shared the history of the 130th Committee's decisions that led OPEGA to do a review of 4 Child Protective Case Files generated by the Office of Child and Family Services in the Department of Health and Human Services. He explained that OPEGA received about 22,000 pages of agency records for the four cases. He thought that was an important point to mention in terms of reasonable questions as to why it would take a

certain amount of time to go through the case files. Director Schleck added that the other piece that goes into this review, is the need to avoid conflict with the ongoing criminal prosecutions of those who have been charged in connection to these children's deaths. OPEGA had to be very clear that they did not do anything that would interfere with the real live criminal cases that were ongoing. He stated that these are milestones that the office wanted to be sure they understood, avoided or awaited because oftentimes those are events that also inform. He explained that there is a provision in Title 22 that provides that if there is OCFS involvement in a case where a parent is then charged criminally in connection with a child fatality, the Commissioner in consultation with the Attorney General can make the determination, after case conclusion at the trial level, that release of certain records are no longer going to risk interfering with the criminal prosecution, which is when they release the DHHS memo regarding the case. That milestone allows OPEGA to have conversations with the Committee and report information in a way that will be more meaningful. The Committee will be able to review the Agency's own account of events. The Director emphasized that OPEGA wants to maximize the ability to disclose as much as possible legally in the reporting, while minimizing the time the Committee waits for results. He explained that the report deliveries will be as soon as possible after each of the cases meet those same milestones. The first report, on the death of Hailey Goding, is planned to be delivered to the Committee on February 10, 2023. There will be an appendix with the agency's timeline of events in the report. He explained that there was a bit more work needed to be done on the second case, concerning Maddox Williams, which is close to completion. The criminal trial regarding the charges related to the death of Jaden Harding, which is expected to be addressed in the third report, is currently scheduled for February 27, 2023.

Rep. Mastraccio asked Director Schleck about the schedule of when they would have a Public Hearing on the report for Hailey Goding's case.

Director Schleck answered that he would defer to the chairs and the discussions of the Committee.

Rep. Mastraccio then asked if the Committee were to have the presentation and Hearing on the same day, if they would be able to come back the next meeting if there were specific people the Committee wanted to have sit in the chair and ask questions.

Director Schleck confirmed that would be within the realm of the committee's general authorities and could be worked through.

Rep. Arata stated that she had read the reports released by the Attorney Generals office, and it struck her that the one thing they have in common is that they did not feel there was enough evidence to compel the parents to cooperate with drug testing and involvement with the agency. She asked Director Schleck if in preparing the reports, if OPEGA is involving the court system at all to ask questions about what impediments there are to requiring parents to comply.

Director Schleck answered that yes, that will be reported in the context of the legal framework set by the legislature as it is interpreted by the courts. There were court records in the records that were reviewed. The office analysts asked any related questions. Each of the cases are going to have the basic understanding of the facts but he anticipates that it will expand to talking about full topics.

Rep. Mastraccio stated that she would prefer to not wait for a second report to have a Public Hearing on the first, as she felt it is an important issue to be able to ask questions in a timely manner after receiving the report.

Sen. Timberlake asked if there was anything in the report that will explain where the system failed or if that was a separate issue. He used the Ombudsman's report that said what the Department did or didn't do as an example and wanted to know if that type of information will be in the OPEGA Report.

Director Schleck did clarify that it is within the scope of the reviews OPEGA is doing. He clarified that OPEGA is completing this review by guarding against outcome bias by not assuming that the fact that a child died is itself the evidence that there was a failure in the system.

Sen. Hickman put the committee at ease to allow for a discussion between Sen. Timberlake and the caucus lead about the Executive Session earlier in the meeting.

Recess (10:50 AM)**Reconvene (11:05 AM)**

Sen. Hickman reconvened the meeting and brought the discussion back to the matter of GOC vs Lambrew and the Order of the Superior Court for Kennebec County and the case concerning the subpoena for Child Protective Services records. He asked the Committee Members if any of them had a motion.

Motion: To move forward with the appeal on the Court Decision (regarding GOC vs Lambrew)
(Motion by Sen. Keim, Seconded by Rep. Arata)

Discussion:

Rep. O'Neil stated that the Committee has been discussing this topic for years, and it has been said that any death is a failure of the system and they need to gather more information and do their due diligence, but she did not see utility in moving forward with the appeal. She felt that legally, it would be a worse outcome. She suggested that discussing ways that the GOC can have access to primary source documents would be a worthwhile conversation to have, and as a Legislature, they could ponder ways to tinker with the statute. She emphasized that a failure in Child Protective Services is downstream within the system. She believed the Committee had spent a lot of time discussing those downstream issues, and thought it would be more valuable to the Committee to also move upstream and begin to discuss prevention. She hoped that the Committee could work together to think about recommendations to the Legislature in the prevention realm so they can stop families from getting into these situations in the first place. She suggested they could do both of those things at the same time.

Rep. Mastraccio stated that she would be voting against the motion, as she did not see any point in appealing something that is clear. She stated that she agrees with the ruling that the judge came up with. She relied on her experience of having served on the GOC for 6 years, to explain that she did not think that the GOC had been given the right to see those documents in the current statute. She stated that the Committee has an opportunity anytime they want to put out legislation to try and correct that, should the Committee decide to do that. She suggested instead of waiting another year for the next result in court, they wait for the OPEGA Report in February and then ask any questions of the people who are responsible for carrying out the policies and the laws in Child Protective Services. Her hope would be the Committee moves quickly and not wastes any more time.

Rep. Arata stated that she would like to give it a shot at the appeal because even though the Committee could submit legislation, that may not pass, and she would like to give the appeal a shot hoping it will rule in the Committee's favor. She wanted to show the public how seriously the Committee is taking this and that they have a sense of urgency.

Sen. Timberlake shared that he would be voting in favor of the motion. He thought the Committee should take every avenue available. He stated that he looked forward to February 10th and moving forward with the work, but explained that it was not just about the Committee sitting currently, but also any future GOC's. He stated that it is called the Government Oversight Committee and it is their job to do things normal committees don't. He thought it was important that the Committee do everything they can to give themselves the authority to do their jobs.

Sen. Duson stated that she would be voting no on the motion to move forward with appeal, as she has strong confidence in the role of OPEGA in its service to the Committee, and would prefer to focus on a legislative solution that clarifies what information should be available to OPEGA and to the GOC and how that

information should be handled, affirming a set of legislative rules versus spending more time in the appeals process.

Rep. Millett stated that he sees three routes to follow. The litigation/judicial route, which has an immediate deadline pending for filing the appeal and the likelihood of a fairly long period before it would get legal review, a legislative option, for clarity and specificity and maintaining the Committee's role as broad Oversight committee of all of government, and an urgency in fulfilling the Committee's current statutory responsibilities. He stated he leans on the third route as the primary way to get answers to the problems. He looked forward to February 10th when the Committee will get a more detailed awareness of the issues. He thought that the Committee could follow all three routes simultaneously. He felt that the burden is on the Committee to act to try and prevent these tragic events from happening in the future.

Sen. Keim shared an example looking at the government on the Federal level, where there are elected officials that have access to real records and raw data. The GOC having that ability would be a check on the system. She felt it is important for the Committee to have that. She explained that there was no assurance that a bill would pass and there is an unknown outcome of a law appeal. She disagreed with the ruling in the fact that it contemplates the focus of the work responsibility rather and somehow ignoring that there is contemplation of "a legislative official with responsibility for Child Protective Records". She did not understand how they can look at the laws and say that one was accidental and ignore it. She believed they have a case to make in court, and that the Committee must continue to act in every manner possible, and that people expect the Committee to look at records and to take everything about the job on the Committee a step further than what has been done in the past. She believed that there would be issues with inviting someone in for Committee questioning as they may still be able to say they cannot answer the questions due to the confidentiality. She thought there were a lot of roadblocks and that every avenue should be taken to figure out how to get through.

Rep. Fay stated that she appreciated where each committee member is coming from. She explained that she voted to pursue the original motion in the 130th Legislature because she thought it was important for the Committee to get some clarification. She thought there is a path forward in terms of creating laws, and clarifying them. She had some concerns about the impacts of continuing to pursue this through the courts, and did not want to distract from the work the Committee is doing to make sure that the system that is in place is taking care of the kids the way it should be. She stated she wanted the Committee to focus on clarifying the statute and using the power that they have and make sure they keep kids at the center.

Sen. Hickman stated that he was inclined to support the motion to appeal because the ruling suggests that the matter is one of interpretation. He was inclined to support because there are parts of the ruling that he disagreed with. He thought it seemed odd that the legislature would have set up the office, and the Committee, and in the course of the Committee performing oversight over the office it would block itself from seeing what informs the work product. The Executive Sessions are there so that the Committee can seek confidential information, it can do so in an Executive Session. He stated that lawyers don't always agree on everything and the issue needs to have a solution moving forward. He agreed with Rep. Millett that the Committee can do more than one thing at the same time to find out how they are going to get the results needed.

Vote: To move forward with the appeal on the Court Decision (regarding GOC vs Lambrew)

(Motion by Sen. Keim, Seconded by Rep. Arata, motion passed, 8 yes, 4 no)

(Sen. Bennett and Sen. Tipping voted on the motion in the allowed time frame in accordance with the GOC's rules)

Continued Discussion:

Rep. Fay mentioned that when the Committee originally determined to pursue the lawsuit, there were some designations that had to happen. She asked if this needed to happen again, concerning a smaller group of members who could prompt direction to counsel.

CDAG Chris Taub clarified that Rep. Fay was referring to the suggestion that in the first round of litigation there would be designated Committee Members to communicate with him instead of having the entire Committee sign off. For the first round of court, the chairs and leads were the client and he would send all drafts of motions to them to approve before filing. His recommendation was to have a similar procedure again.

Motion: To allow the Chairs and Leads (Sen. Hickman, Rep. Fay, Sen. Keim, Rep. Arata) to be the liaison to Mr. Taub for the appeal process
(Motioned by Rep. Arata, Seconded by Sen. Timberlake, unanimous 12-0)
(Sen. Bennett and Sen. Tipping voted on the motion in the allowed time frame in accordance with the GOC's rules)

Unfinished Business

None.

Next GOC meeting date and planning

Director Schleck discussed the general Government Oversight Committee schedule which holds meetings on the second and fourth Friday's of each month during session. The next meeting would be in two weeks on January 27, 2023. The Committee will be discussing proposed 131st Committee Rules and there will be a Tax Orientation. The next meeting after that, on February 10, 2023, would be the delivery of the first of the OPEGA CPS reports (Hailey Goding).

Sen. Keim asked if the Committee would be able to have Director Landry (OCFS) himself in to question. Director Schleck answered that in the 15-day draft of the first report that has been sent to the Department, he did mention that the Committee may want a representative there for that meeting on February 10.

Rep. Mastraccio asked if the Chairs had scheduled a time for Christine Alberi (the Ombudsman) to come and speak to the Committee about her annual report. She would have liked to hear from her before the OPEGA Report on February 10.

Sen. Hickman answered that the Agenda schedule had not been finalized but he would take her advice into consideration.

Director Schleck pointed out that the second meeting in February, the fourth Friday, is a week that the Legislature is not in session. It would be the chairs' prerogative to hold a meeting that week or not.

Sen. Hickman asked if the Committee would need to get Presiding Officer approval to meet more than once on a Friday in the same month.

Director Schleck answered that since there are authorized meeting days that come from the Presiding Officers, he would need a bit of consultation and to get back to the Committee.

Rep. Mastraccio stated that she heard that there would be no legislative session, but had not heard anything about no committee meetings.

Sen. Hickman believed the Committee was authorized to meet, but there may not be a quorum due to lack of attendance.

Sen. Hickman suggested a meeting start time change from 9:00 AM to 9:30 AM. He asked if the members had issue with this change.

Sen. Duson stated that she did not have opposition, but that she had concern about lining up with the AFA Committee Meetings.

Sen. Hickman confirmed that there are 5 Committee Members also on AFA.

Rep. Fay stated that she would be coordinating with the Chairs of AFA and Director Schleck to make sure there are the least amount of conflicts.

Rep. Mastraccio stated that she didn't have a real objection to a 9:30 AM start time, but worried about how long the days would become by starting later than usual. She would prefer 9:00.

Sen. Hickman stated that he wanted to accommodate for people who have children. He wanted to make sure they have an opportunity to be there and 9:30 would accommodate all of the Members.

Adjourn

The Chair, Sen. Hickman, adjourned the Government Oversight Committee meeting at 11:40 AM on a motion by Rep. Fay, Second by Sen. Timberlake.