



SEN. ROGER J. KATZ, CHAIR
REP. DAVID C. BURNS, CHAIR

MEMBERS:

SEN. MARGARET M. CRAVEN
SEN. BILL DIAMOND
SEN. EARLE L. MCCORMICK
SEN. NANCY B. SULLIVAN
SEN. GARRETT P. MASON
REP. DONALD E. PILON
REP. ANDREA M. BOLAND
REP. JOYCE A. FITZPATRICK
REP. LESLIE T. FOSSEL
REP. CHUCK KRUGER

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

Meeting Summary
May 25, 2012
Accepted June 8, 2012 With One Revision

CALL TO ORDER

The Chair, Senator Katz, called the Government Oversight Committee to order at 10:03 a.m. in the Burton Cross Building.

ATTENDANCE

Senators: Sen. Katz, Sen. Craven, Sen. Mason, Sen. McCormick and Sen. Sullivan
Absent: Sen. Diamond

Representatives: Rep. Burns, Rep. Boland, Rep. Fitzpatrick, Rep. Fossel, and Rep. Kruger
Joining the meeting in progress: Rep. Pilon

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

Executive Branch Officers
and Staff Providing
Information to the Committee: Joseph Ponte, Commissioner, Department of Corrections
Patricia Barnhart, Warden, Maine State Prison

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

SUMMARY OF THE APRIL 10, 2012 GOC MEETING

The Meeting Summary of April 10, 2012 was accepted as written.

NEW BUSINESS

• **Presentation of Rapid Response Review of Maine State Housing Authority: Review of Certain Expenditures**

Director Ashcroft presented the final report from OPEGA's Rapid Response Review of Maine State Housing Authority. She thanked staff at MaineHousing for their assistance and for providing OPEGA with the information requested.

In response to Rep. Fitzpatrick's and Sen. Sullivan's questions regarding organizational memberships, sponsorships and donations and the number of employees, Director Ashcroft said:

- The organizational memberships, sponsorships and donations were all a flat fee and memberships MaineHousing paid for individual staff members were paid on a per member basis.
- OPEGA identified 11 sponsorships and donations totaling \$29,250 that appeared to have an indirect or unclear connection to MaineHousing's mission. For the 11 organizations OPEGA questioned, 7 of them had a donation in only 1 of the 5 years OPEGA reviewed and 4 had multiple years of donations.
- MaineHousing has approximately 140 employees.

In response to GOC questions regarding the \$9,625 spent over the five years on business meals for staff that were not in travel status, Director Ashcroft said OPEGA did not find the dollar amounts unreasonable, but brought these expenses to the Committee's attention because State agencies do not typically incur these expenses. The \$9,625 in expenses were mostly related to meals had by upper management, not while traveling. While some meals were business meetings with an outside party, in many cases it appeared it was just a few members of MaineHousing management getting sandwiches for lunch, or going to a local restaurant and having lunch during a work day or immediately after the work day. State agencies typically do not do that, and OPEGA questions whether it is really necessary for MaineHousing to do so. Their policy is if there is an outside party involved then MaineHousing will pay for the meal, but when it is just upper management that is not in travel status, it would seem to be questionable whether that is a necessary expenditure. The expenses questioned the most were the former Director and Deputy Director deciding they wanted to have lunch and talked about MaineHousing business over lunch. Not that that is completely inappropriate, but OPEGA questioned it because most employees pay for their own lunch. There are also IRS rules regarding taxable benefits for employees that include meals of that nature.

The following requests for more information on some of the expenses were made by Chairs Katz and Burns and Rep. Pilon.

- The total amount for conference expenses over the 5 years reviewed. (MaineHousing will provide)
- The total amount spent over the 5 years for the category of items in the OPEGA report under the section State Recognition, Incentives and Professional Development. (MaineHousing will provide)
- MaineHousing's salary scale and salaries because of MaineHousing's statement that they intentionally have kept salary levels below market and in order to be a good place to work, despite the lower salary scales, they have tried to show their recognition of employees in other ways. (OPEGA will provide)
- The rationale for using Hannaford gift cards as an incentive to clients to participate in the Energy Education Program and a description of the clients receiving the incentives. (MaineHousing will provide)
- Number of employees enrolled in the Wellness Programs. (MaineHousing will provide)
- The list of sponsorships and donations, organizational memberships and conferences that OPEGA identified as having indirect or unclear connection to MaineHousing's mission. (OPEGA will provide)

Director Ashcroft was asked to explain the sampling rational. She said OPEGA's selections of the 1,037 transactions

were judgmental, not a statistically random sample, and any of the dollar amounts in the Report should not be used to extrapolate that as representing all of MaineHousing expenses. Based on the GOC's direction, OPEGA was looking for particular kinds of expenditures. The data file received from MaineHousing included 28,901 payments totaling almost \$109 million. OPEGA analyzed that file to determine the total amount paid to every vendor that showed up for every year. OPEGA's sample included all of the former Director's expense reimbursements and all of the corporate credit card monthly statements, because she thought it would be important to cover all of those expenditures given the nature of the questions and issues raised in the media. OPEGA then looked at all the vendors on the list and pulled out 198 employee reimbursements and 126 payments to a vendor that was an individual's name, but not an employee, to include in the sample. For the most part, the payments pulled were the highest 1, 2, or 3 dollar amounts paid to that vendor regardless of what year they were paid in. Another 94 transactions were selected for 46 vendors that were the top dollar payments to vendors that had been specifically mentioned in the media. Lastly, OPEGA selected 538 payments to vendors based on OPEGA's scan of the vendor name, the nature of the vendor and services the vendor typically provides, whether the payments to the vendor might be the type of expenses that were the focus of this review, or were significant dollar amounts to a vendor that OPEGA could not readily determine what the connection to MaineHousing's mission might be. For all the vendors identified, OPEGA pulled the top 1 or 2 payments to that vendor in the sample.

Sen. Craven thought many of the expenses OPEGA reported on were more a reflection of a management style than any wrongdoing.

Chair Burns said while it is a far cry from intentionally taking money that does not belong to you as seen in the MTA review, he does see several instances in the Report that some issues needed to be brought to light and some procedures need to be changed. It is disingenuous to say you are intentionally holding salaries down below the market and then be careless with the exact same money you are using to pay for expenses in the normal course of your workday.

Reps. Fossel and Kruger noted that many of the issues raised in the Report were included in the legislation regarding quasi-independent agencies passed by the Legislature during the session. Rep. Pilon agreed and said, as noted by Director Ashcroft, there were a few housekeeping issues and MaineHousing should take care of those.

Sen. McCormick noted the information contained in the Report was based on a sample and is only 4% of MaineHousing's expenditure data file.

Chair Katz noted the mission of MaineHousing is assisting Maine people to obtain and maintain decent, safe and affordable housing and services suitable to their unique housing needs. While everyone agrees there was no fraud or criminal activity that is not the standard by which Maine government should be judged. There are some troubling similarities seen with other quasi-independent agencies that have been outside of the lime light of public review for years. He sees a slipping away of continuing to be mindful of exactly what their core mission is and to use public tax payer funds only for purposes of obtaining and maintaining decent, safe and affordable housing in the State of Maine. He noted several sponsorships and donations that he would question as being clearly related to the public mission of MaineHousing.

Rep. Boland hopes everyone does not keep making judgments without having information and thinks the GOC needs to end the Report presentation on a more positive note.

Sen. Mason said, in a review, it is not inappropriate, as the Report points out, to look at certain contributions and ask how they contributed to affordable housing for Maine. Questions, not accusations, have been raised and as in any business, they will be reviewed. In any business review you point out the great things that the business is doing, and you point out the things that could be improved on. That is what has been done here.

Senators Craven and Sullivan both expressed that many of the organizations that received sponsorships or donations listed in the Report, including the Balloon Festival and many of the women's organization, represent many of the people that live in poverty in the communities and need safe and affordable housing. They feel it is very appropriate for MaineHousing to be visible in their lives and organizations. Sen. Sullivan also noted that the Report was a rapid response and there was no fraud found.

Chair Burns believes the Report did reveal some inappropriate behavior. No fraud, nothing criminal, but like so many other agencies, it is an indication that there was too much laxness, especially during a period of austerity for the State. State agencies were being restricted from travel, both in and out of state, and from extensive spending. That was not the case at MaineHousing and things needed to be scrutinized more carefully. The former Director was not under anybody's authority and some of the practices need to be changed because using money carelessly is inappropriate.

Based on the GOC's discussion, Director Ashcroft wanted to make sure everyone remained aware of the following when considering the results of the Report.

- It is a very limited scope review, focused on very specific things that the GOC had concerns with coming out of the MTA Report. The results are on that limited scope and do not encompass all of MaineHousing's expenditures, programs, etc.
- Any statement in the Report that has before it "according to MaineHousing" or "MaineHousing explained" is likely something that OPEGA did not confirm. OPEGA was only relaying MaineHousing's explanation in those cases. If it does not say "according to MaineHousing", OPEGA did do its best to confirm that the statement of fact was correct.
- The expectations for quasi-independent State agencies as clarified in the recently passed legislation were not as clearly defined for MaineHousing, or any quasi-independent agency, during the time period that was the scope of this review.

The GOC members thanked OPEGA for their work on the MaineHousing Rapid Response Report.

The Committee scheduled the public comment period on the MaineHousing Report for June 8, 2012 at 10:00 a.m.

RECESS

The Government Oversight Committee recessed at 12:25 p.m. on the motion of Chair Katz.

RECONVENED

Chair Katz reconvened the meeting at 1:10 p.m.

UNFINISHED BUSINESS

Chair Katz asked if there was objection to taking an item out of order. Hearing none moved to **Unfinished Business, Request to Review Contracts and Agreements Related to the Operation and Management of the State-owned Juniper Ridge Landfill.**

- **Request to Review Contracts and Agreements Related to the Operation and Management of the State-owned Juniper Ridge Landfill**

Director Ashcroft noted that the GOC had recently (including at today's meeting) received considerable additional information from various interested parties. She wanted the GOC to be aware that OPEGA was not prepared to assist the GOC with any information contained in the many documents and letters the Committee has recently received regarding JRL because OPEGA has not reviewed and summarized any of that material for the GOC to consider. If the Committee would like OPEGA to do that for them prior to making a decision of whether to add the topic to OPEGA's Work Plan, it would have to be at a future GOC meeting.

Following GOC discussion it was decided that the Juniper Ridge Landfill topic will be put on the Committee's June 29, 2012 agenda for discussion and decision.

- **Report Back From Maine State Prison on Status of Action Items on MSP Strategic Plan, Particularly Those Related to Addressing Issues Raised in OPEGA's Report on Maine State Prison Management Issues**

Director Ashcroft reminded the Committee of the concerns raised in 2009 regarding the culture at the Prison, particularly in regard to whether employees felt they could and should report concerns, issues, and violations without fear of retribution. MDOC conducted a follow up climate survey of employees at the Prison earlier this year. MDOC shared the responses with OPEGA and the Director has prepared a Summary of Results of the Survey. The Director reviewed that Summary with the GOC and summarized those results. (Both documents are attached to this Meeting Summary).

Chair Katz recognized Commissioner Ponte and Warden Barnhart.

Commissioner Ponte said sometimes surveys create more questions than they answer. If he talked about the Prison in general, in the 3 years since OPEGA's Report, Corrections has changed the entire management group. He has difficulty believing they are in the same mode as alleged before with such significant change and thinks some of the issues are a carry over of what some individuals felt in the past. There was a pushback on the survey with some feeling it was ratting on their fellow staff and would not fill the survey out. The Commissioner thinks they need a little time to see if the things they are doing and the changes that have been made, are having an impact. There has been some very positive feedback and thinks he would receive reports if something serious was going on.

MSP is trying to get their entire organization's second level management staff on the same page, so are bringing them together for training. Warden Barnhart did the new session of training with newly promoted mid-level managers yesterday. A leadership program was started about 1 ½ years ago that stopped because of budget reasons, but that program has been reinstated. MSP's new supervisors have now also been through the Managing in State Government and Evaluating Employees Program.

Commissioner Ponte, in regard to the culture, does not believe the Maine State Prison is any worse or better than most high security prisons he has seen across the country. There is a perception of "I can't report" that is still there and is a real factor that hinder some staff to report. He is comfortable that he would know if there was anything serious going on.

Correction facilities are also now holding round table discussions, including the Prison. Commissioner Ponte and Associate Commissioner Grondin held their first round table discussion with staff from the correctional facilities and the dialogue was open, honest and critical. He thought individuals were very comfortable talking about the issues and their supervisors.

In response to Chair Burns question of what a significant violation would be, the Commissioner said it is anything that bordered on criminal. If somebody talked or treated a prisoner inappropriately, overlooked policy, or cut corners, that would also all be reportable and should be reported.

Chair Katz has concerns about the high percentage of negative responses to some survey questions. Commissioner Ponte said about 275 surveys were distributed and 67 were returned. A lot of changes have been made since he has been appointed Commissioner. They are reviewing all of them and talking about what else they could do at this point. When either an inmate or staff complaint is received, MDOC has investigators from other facilities do the investigation so no one can say it is the Prison doing their own investigation. There is no easy answer, but the Commissioner thinks they are moving forward in many ways to make the workplace better and safer.

Sen. McCormick said the numbers to him say 3 out of 4 employees did not have a level of concern enough to hand in the survey and 60% of the 1/4 that did, 15% of the employees, were still having negative responses. While that should be taken seriously, does not know where to put the 75% that did not complete the survey. Sen. Craven agreed.

Rep. Pilon thought the data was good and MDOC was working in the right direction.

Warden Barnhart thinks the more important thing is that the Commissioner has charged administrators with several different objectives. One is an image campaign. You will not read in the paper about the staff wellness program and how staff walk around the prison parameter. People have a bad image of Corrections because they have had a bad image in the past, but they are going to start presenting the valuable things that staff do on a daily basis. The Prison is working hard to

institute a no tolerance level for talking inappropriately with prisoners and staff. They are working hard to develop the accountability piece.

The Warden said they are not dispelling the survey results as being invaluable, but she is not as discouraged with the trust levels as she might have been, understanding the very good changes have been implemented.

Rep. Kruger, who lives in Thomaston, said he has heard that positive changes are being made at MSP.

The GOC thanked Commissioner Ponte and Warden Barnhart for their updated report and answering the Committee's questions.

Following Committee discussion members agreed that the GOC did not require any further report backs from MDOC if the Commissioner continued to report back to the Criminal Justice and Public Safety Committee at appropriate intervals.

Director Ashcroft will draft a letter to the CJPS Committee informing them of the GOC's decision.

- **Status of the Department of Correction's Contract to Provide Medical Services in the Correctional Facilities RFP**

Director Ashcroft said a new vendor has been selected to provide medical services in the correctional facilities. The new contract starts July 1, 2012. Commissioner Ponte said the contract has yet to be signed, and they are still negotiating the terms of the contract. The vendor is Correctional Care Solutions and all medical services, mental health and drug treatment are under the umbrella of the new contract. All the State positions that had still been providing some services have been eliminated. Correctional Care Solutions is a new company to the State.

Rep. Boland asked how much of a commitment there was to wellness, holistic and preventative programs. Commissioner Ponte believes there is more focus on preventive care with the new vendor than with the prior one. DOC is still negotiating the terms of the contract so some things may move a bit depending on the money available. Rep. Boland hopes DOC encourages the programs because many times work better.

- **Discussion of Potential Changes to Clarify Language in Title 17 § 3104 Regarding State Employees being an Interested Party in State Contracts**

Director Ashcroft reminded the Committee that when the Sale of State Property review was done the Department of Administrative and Financial Service (DAFS) brought a piece of statute to the Committee's attention as needing updating. As DAFS was attempting to draft a policy for sales of property they noted that the language in the very old statute appears to prohibit, or it is the opinion received from the Attorney General that it prohibits the sale of any State property to a State employee, or at least employees at certain levels. DAFS suggested the statute should be reviewed. From their perspective, they are interested in whether the GOC could draft some language that clearly laid out an exception in the statute that would allow State employees to buy State property if it had been through all the proper bidding and marketing process. When Director Ashcroft met with the AG's Office to review the statute, it was evident the statute was confusing. It was unclear what the statute specifically intends, and terms used in it are no longer valid for State agencies.

Following a brief Committee discussion, members agreed that Director Ashcroft should prepare a memo to the State and Local Government Committee informing them what has taken place with this matter to date and suggesting that they review the statute.

At the request of Rep. Pilon, Director Ashcroft will find out the current status of the property in Thomaston next to the Prison that had previously been sold to the Warden.

- **Judiciary Committee's Response Regarding the Guardian *ad Litem* Review**

Director Ashcroft said Chief Justice Saufley, in her letter to the Judiciary Committee, noted what the Courts will be doing, including drafting a different type of complaint process that is available to those having concerns about the Guardian *ad litem* working on their cases. She will report back to the Judiciary Committee by October 15, 2012. The Judiciary

Committee sent a memo to the members of the GOC thanking them for recognizing the Judiciary Committee's strong interest in taking and maintaining responsibility for the legislative role in this process and their commitment for strong follow up.

GOC members agreed that was progress.

- **Status of LD 1843 – Quasi-independent State Entities**

Director Ashcroft referred the Committee to Public Law, Chapter 616, An Act To Implement the Recommendations of the Office of Program Evaluation and Government Accountability and the Government Oversight Committee Regarding Quasi-independent State Entities passed during the session. It is the final and enacted version of the legislation the GOC introduced earlier this year.

REPORT FROM OPEGA DIRECTOR

- **Project Status Report**

Maine State Housing Authority: Review of Certain Expenditures was presented to the GOC at today's meeting.

Child Development Services – OPEGA is drafting the report and it will be presented to the GOC at their June 29, 2012 meeting.

Cost Per Prisoner in the Department of Corrections – OPEGA is drafting and editing the information brief on the Cost Per Prisoner Review which will be presented at the June 8th GOC meeting.

Office of Information Technology – OPEGA has just begun preliminary work on this review.

Communications Regarding MaineCare Computer System Weakness – has been started.

Special Project: Technical Assistance for Education Committee Contracted Study of Education Funding - Although OPEGA has done some preparation work for this special project, and as soon as the final disposition of the bill is known, is ready to move forward with its assigned role

SCHEDULE NEXT COMMITTEE MEETING

The next Government Oversight Committee meeting is scheduled for Friday, June 8, 2012 at 10:00 a.m.

The GOC, at a previous meeting, scheduled meetings for June 29th and July 13th. These will be reconfirmed or changed at the June 8th meeting.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 2:28 p.m. (Motion by Rep. Fossel, second by Sen. Sullivan, unanimous).