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

MEMBERS:

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

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

# MEETING SUMMARY
**October 15, 2015**

## CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:02 a.m. in the Cross Office Building.

## ATTENDANCE

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| 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<br>Etta Connors, Adm. Secretary, OPEGA |

## INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

### Information Brief of State Funding for Good Will-Hinckley

Chair Katz said on July 1, 2015 the GOC charged OPEGA to determine the facts associated with alleged proposed changes to the State's Fiscal Year 2016 and 2017 Department of Education Funding for Good Will-Hinckley (GWH) and the impact of those proposed changes to the School. OPEGA's Information Brief for State Funding for GWH was presented to the GOC on September 8, 2015. The Committee scheduled the Public Comment Period on the Information Brief for today's meeting.

Chair Katz said the GOC often invites people involved in a review to a meeting to answer Committee members' questions. He noted that four invitations were extended to people involved in some significant role in the events. The Committee invited Cynthia Montgomery, Chief Legal Counsel, Governor's Office, who has declined to appear citing as a reason the pending lawsuit brought by Speaker Eves against the Governor. Ms. Montgomery did provide a written response letter which is attached to the Meeting Summary.

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Chair Katz said the GOC invited Aaron Chadbourne, Senior Policy Advisory, Office of the Governor. Mr. Chadbourne also declined to appear citing the same reasons as Ms. Montgomery.

Tom Desjardin, Acting Commissioner of the Department of Education, was invited. Chair Katz said Commissioner Desjardin expressed a willingness to appear, but he is legitimately unable to do so because of a medical issue. He did express a willingness to answer questions in writing which he did not receive in time, but the Commissioner did submit a letter to the Committee. A copy of the letter is attached to the Meeting Summary.

Chair Katz said the GOC invited Jack Moore, Chairman of the Board of GWH. Mr. Moore was at the meeting to answer Committee members' questions.

Chair Katz explained what the GOC's process regarding GWH would be at the meeting. Director Ashcroft will provide the Committee with additional information received since the September 8th meeting. The Committee will invite Mr. Moore to make any statement he wishes and also to answer questions which members of the GOC may have. Following Mr. Moore the meeting will open for public comment.

Chair Katz said after the public comment period the Committee will go into a work session to determine what, if any, further steps the GOC may wish to take based on what has been learned to date.

Chair Katz noted that the GOC is following exactly the same process they follow in every review. The goal of all the members of the Committee is to get all the facts out because they are a fact-finding committee at this point. He reminded everyone that the scope of the GWH review is fairly limited and the public comments period is not about other matters that might involve the Governor and accordingly anyone who wishes to speak is asked to confine their remarks to the scope of the review.

Director Ashcroft said the GOC had several questions at the September 8th meeting and referred them to the document in their notebook. (Attached to the Meeting Summary is the Information Requested by GOC at the September 8, 2015 GOC Meeting.)

Director Ashcroft noted that in addition to the questions, the Committee tasked OPEGA with conducting an interview with Bill Brown because they did not interview him during the review. OPEGA thought it was more valid to learn from the others at GWH what role he had played then necessarily hear it directly from him. OPEGA felt they had gotten a good sense of Mr. Brown's role from other Board members they spoke with, as well as GWH management and staff and could see what his involvement was by reviewing the recruitment and selection documentation that GWH gave OPEGA access to.

Director Ashcroft said OPEGA interviewed Mr. Brown as requested by the GOC and his description of his role in the recruitment and selection process is consistent with what they learned from other people. He did review and prioritize all the nineteen applications that were received to determine who should be interviewed, he did not make any comment on whether Speaker Eves should be interviewed or not and he did participate in the telephone interviews with five of the candidates. Mr. Brown did not participate in the telephone interview with Speaker Eves and also recused himself at any point a decision was to be made, or an interview was to be conducted involving anyone he knew that was an applicant. He was present at the Board meetings with both candidates, but his role was only to open and preside over the meeting and categorized the MeANS Board as guests and the GWH Board did the voting. Mr. Brown did participate in the May 13th informal meeting that Chairman Moore arranged in Brunswick with the top two candidates. The MeANS Board thought it was important to have a representative of their Board at the meeting since it was a departure from the process that had been laid out and because no one else from MeANS was available Mr. Brown went. He said the discussion with each candidate was different, but the purpose of the meetings was to discuss questions they felt had not been completely addressed in the interviews up to that point. Mr. Brown recollected that the primary questions for Speaker Eves were in regard to his future political ambitions.

Director Ashcroft said Mr. Brown said he made Speaker Eves aware of the employment opportunity after the former President of GWH had approached him and asked him specifically to relay to Speaker Eves that the

opening was available. She said Mr. Brown said he did not have any role in determining whether the Speaker's contract should be terminated. That was a vote of the GWH Board. Mr. Brown did not recall having any conversations with any Board members about Mr. Eves as a candidate.

Director Ashcroft noted that Commissioner Desjardin contacted her after he had forwarded his letter to the GOC saying the GOC might have questions about why the two payments for the other schools on the same payment schedule as GWH went forward when GWH's did not. His explanation was he was unaware at the time that the GWH payment was held that the checks for the other two schools were also in progress. The Director of School Finance for DOE did not happen to mention those particular payments. He also wanted to make the point that those two schools are somewhat different than GWH in that they are State owned schools and there is a statutory requirement in place to fund them, but there is no statutory requirement to provide funding for GWH.

Sen. Diamond referred to the Governor's handwritten note and asked for clarification of what the Governor's Office exact response was. Director Ashcroft said the exact response was the Governor's Office does not have any copies of the personal note to Mr. Moore.

Chair Katz referred to Acting Commissioner Desjardin's October 13, 2015 letter that sets out the justification for why the funding to GWH was held up. He said when he reviewed OPEGA's report there was some discussion from OPEGA staff interviews with Commissioner Desjardin in which he talked about that issue. Chair Katz believed the Commissioner's letter added additional reasons which were not disclosed earlier. He asked Director Ashcroft if that was so. Director Ashcroft said many of the points in Commissioner Desjardin's letter were not something OPEGA understood to be part of the Commissioner's thinking process at the time he made the decision. In OPEGA's first interview with him he indicated that he was talking with his Lead Team about the fact that this issue was arising between the Governor and Speaker, he did not mention anything about the GWH funding, but the Director of Finance offered the fact that the payment was in the process and asked if she should hold it. Commissioner Desjardin indicated to OPEGA in that interview that after he made that decision and was later thinking about the decision he made that he started to feel that it was the best decision because the budget was not enacted yet and they still had $1.5 million they had to find. The Commissioner did indicate in interviews with OPEGA that the budget situation was part of this, although it seemed to OPEGA that came as an afterthought about why his decision made sense. Director Ashcroft said there was no written agreement in place governing the use of the funds that OPEGA observed. She said it did not appear to OPEGA that DOE discovered there was no written contract, or the written contract had expired, until after the payment was held and DOE began researching what had been going on with GWH. She said DOE did not know right away that they had a contract issue. The Acting Commissioner stated in his letter to the GOC that GWH had no immediate need for the funds and quotes the Ethics Commission letter of June 11th. That letter came out two days after he made the decision, so while it is context around whether it was a sound decision to withhold the payment, it is not something that was part of the Commissioner's decision-making at the time.

Director Ashcroft referred to "4." in Commissioner Desjardin's letter where he said DOE still needed to make $1.5 million in cuts from the budget categories that included the GWH funds. He states the Legislature made cuts to those categories, but at no time did it communicate to DOE where the reduction should come from. She wanted to point out that, as mentioned in OPEGA's Information Brief, OPEGA does have emails between Commissioner Desjardin and one of the Governor's Senior Policy Advisors occurring in late June that references the fact that the reductions were supposed to come from the technology line item for their 30 year computer system. Director Ashcroft was not certain where the Commissioner got that information, but it seems something must have been conveyed to him that was the Legislature's initial intent.

Chair Katz asked if there was any discussion about cutting the discretionary funding to GWH on the Appropriations and Financial Affairs (AFA) Committee. Director Ashcroft said there was never any discussion that OPEGA was aware of either at the AFA Committee or in the discussions that the Legislative Leadership had regarding the budget.

Sen. Johnson said Director Ashcroft had noted there was correspondence that indicated to DOE that what should be cut was in the technology area. Director Ashcroft said there were emails between the Commissioner of DOE

and Governor's Office where they talked about what changes the Legislature had made to the budget and about the $1.5 million in reductions being associated with the 30 year old computer system.

The Committee recognized Jack Moore, Chairman, GWH Board and GWH's legal counsel, Daniel Nuzzi.

Mr. Moore said he joined the GWH Board about five years ago and did so because GWH changes lives. He said every teacher, the entire staff and the Board is committed to GWH and every action they take is all to benefit the kids they serve. He said that GWH is a crucial part of Maine and the resources offered are unique and are much needed. Mr. Moore said the Board is committed to the staff and students, who have much to offer to society, but need a little bit different path to success.

Mr. Moore said the Board has consistently acted as fiduciaries and worked tirelessly to keep GWH on the path for long-term sustainability. He said their job is to serve the staff, students and people of Maine who all benefit from the institution.

Mr. Moore said GWH does change lives and that is seen every day. He gave several examples of current students enrolled at GWH noting that the School changes lives and is why the staff, teachers and Board are all enthusiastic about its' future.

Committee members' comments and questions included:

Rep. Sanderson said in OPEGA's report there is a unique and extensive set of criteria that GWH was looking for in the role of whoever was hired as President of the School. She said by the end of the report, that criteria had changed significantly and asked why. Mr. Moore said GWH had a thorough hiring process that included a nationwide search. They got a number of applicants and as the process moved forward, they narrowed down the applicants. He said it is a unique position. It is outward facing and the School has a strong leadership and staff that do very well day-to-day. They looked at the applicants they had in how they could best support the existing staff. Mr. Moore said there was some ability for them to be a little tactical and there were some areas that became more apparent for what they needed. Robert Moody, the current Interim President, has done a fabulous job and the Board wanted to work around his skill sets to make sure that they utilized him to the fullest of his abilities and serve the School by finding somebody that would complement him and his senior leadership. The job did evolve a bit, but it became a process of looking at the applicants and deciding what would best complement the staff.

Rep. Sanderson noted GWH had numerous applicants and asked if there were individuals who both fit the outward facing role, as well as fit many of the criteria for which GWH originally advertised the job particularly extensive education background and experience. Mr. Moore said there were no applicants that fit it to a "T" so it became clear, as they went through the applications, that they needed to prioritize what was important for them and look at the strength of each applicant and weigh how that would most benefit GWH. Mr. Moore said there was no applicant that they could checkmark everything and say this is the person. It became clear as they went through the process that they needed to reflect on the qualifications of the applicants and arrive at who they felt would best complement the GWH staff.

Chair Katz said he counted at least seventeen different interactions Mr. Moore had with somebody in State government with respect to the hiring decision. He said the Board unanimously decided to hire Speaker Eves as its next President, that the Governor learned of that decision, the Governor reacted negatively and through himself, and other representatives from his office, essentially said if you hire Speaker Eves your funding from the State is very much in jeopardy. That triggered the Alfond Foundation to question its own continuing commitment if there was no longer going to be State funding and, in light of that, Mr. Moore's Board made the decision, in their fiduciary capacity that it would have to withdraw its offer to Speaker Eves and look elsewhere. Chair Katz asked if that was a fair summary of what happened. Mr. Moore said from a high level some of the parts were not as explicit, but they did react and there were interactions with State government, and other parties, where other portions of their funding became in question. Chair Katz asked if that was the Alfond Foundation in particular. Mr. Moore said that was correct. Chair Katz asked if there was anything he had just said that Mr. Moore would

quarrel with. Mr. Moore said they did vote for Mark Eves, part of the funding did come into question from the State, so from a high level Chair Katz was correct.

Rep. Mastraccio asked if Mr. Moore was the person who received the handwritten communication from the Governor's Office and, if so, could he tell the Committee, in his own words, exactly what it said. Mr. Moore said there has never been a question of him not remembering what it said. He believed the Governor recognized in his note a note Mr. Moore had written to him. Mr. Moore said he sent a note because he was working hard to minimize the effect on Hinckley by both sides and was trying to keep to a diplomatic dialogue. The Governor's response to that was a handwritten note. The note did suggest that the Governor would have trouble supporting Hinckley in light of hiring Mark Eves. The formal letter that was written a few days later indicated that also.

Rep. Mastraccio said she would like to know, for the record and in Mr. Moore's own words, specifically what the note said. Mr. Moore said the one element that he did say is that he would have trouble supporting GWH if we were to hire, Mr. Moore believes there were two words and one was scribbled out, but he did refer to Mark Eves as a hack. He said it was a short letter.

Sen. Diamond said his memory was that the Board in fact did have an indication of the Governor's displeasure with hiring the Speaker before the May 15th unanimous vote. Mr. Moore said that was correct. Sen. Diamond asked Mr. Moore if, he then had a meeting with the Commissioner of Education and offered the Commissioner the job a week later on May 22nd. Mr. Moore said no. The Board had voted that Mark Eves was the guy they had selected. He was not hired until things were negotiated and the contract was signed. Mr. Moore firmly believed that Mark Eves was the guy they would like to hire and he was not hired until they finalized that part of the process. Sen. Diamond said he understands that, but said the vote was taken on May 15th to hire the Speaker. Mr. Moore said that was correct. Sen. Diamond wanted to clarify that then in fact the job was offered to the Commissioner. Mr. Moore said he had a lunch meeting with the Commissioner that was organized well before this, and it did come up because he had concerns that this could be something that could impact Hinckley. He said everything that they have done is about serving Hinckley's best interest as a fiduciary and the Commissioner seemed to be somebody he could be a little candid with and ask how he felt about Mark Eves. He did not get the feeling that it was positive and so he was curious about what direction the Commissioner thought that they should have gone. Mr. Moore said the Commissioner had answers for that and they were very direct. Mr. Moore did not recall, but would not be surprised that perhaps the Commissioner's level of enthusiasm and his level of disapproval over Mark Eves, left him (Mr. Moore) with the notion that this might be something the Commissioner was interested in and that would probably be the only context in which he (Mr. Moore) would have asked that. Mr. Moore said he did not recall asking it, so he could say it was not a meaningful part of the conversation. It was not an agenda, it was not an offer.

Sen. Diamond asked if Mr. Moore could clarify whether the hiring of Speaker Eves was for political reasons. Mr. Moore said the GWH Board was well represented by both sides of the aisle and it was not an opportunity for them to partner with either party. They maintained political independence. Mr. Moore said it is an outward facing job, it needs to be somebody that can be GWH's spokesperson. The Speaker is a good communicator and that was a skill set that attracted them. Their view was that he could probably raise money. It was not that they gave consideration to wanting to have a politician represent GWH. It was that politicians tend to have the skill sets of being good public speakers and that is a key part. GWH has a great staff that can manage the on-campus goings on of GWH, they needed somebody who was outward facing and the Speaker has a good skill set for outward reflecting communications.

Rep. Kruger said he was trying to better understand Mr. Moore's relationship with the Governor and assumed that his relationship with the Governor was through Acting Commissioner Desjardin. Mr. Moore said there would also be an occasional aide that he would converse with. He asked, after Mr. Moore read OPEGA's report, was there any consistency with his perception of the May 22nd lunch versus what was in the report in which the Commissioner felt he was being offered the job. Mr. Moore said that did jump out at him. He said he certainly does not recall saying would you like the job, it was not a job offer, but it would not surprise him if he said is this something you are interested in. It would be along the lines of diplomacy not looking to refill the job. Mr. Moore described his efforts as treading on eggshells and trying to appease everybody involved, noting that Hinckley

surely did not seek the limelight, and he has tried to minimize any anxiety from any parties and is what they have been aiming to do.

Chair Katz said GWH learned that their State funding was very much in jeopardy if they hired Speaker Eves, but the next shoe that dropped was Mr. Moore hearing from the Alfond Foundation that if the State funding was not going to be there that maybe the Alfond funding may not be either. In fact, the money from the Alfond Foundation was much more than the State's appropriation. He asked if Mr. Moore knew how the Alfond Foundation learned that this was going on. There seems to be communications to Mr. Moore from the Alfond Foundation before the matter became public. Mr. Moore said he talks to them on a regular basis. They are an important constituent and a big supporter. Mr. Moore said they did not need the letter from the Alfonds to know they were in trouble with the funding there. The Alfond grant came with very articulated stipulations about maintaining financial integrity and an assessment was done prior to getting the first installment of the Alfond grant. GWH passed, but it was not by a landslide so the Board knew that a change to this degree would likely jeopardize their ability to maintain the metrics that the Alfonds were requiring. Mr. Moore said in respect of that they did try to keep a dialogue with them so he thinks they were aware of developments throughout. He said he talked with Greg Powell at least once, maybe twice, and said they could have learned of it from him. He thinks his role is to embrace key stakeholders and make sure that he can minimize surprises. It is an effort in diplomacy that they don't want to lose people along the way. Mr. Moore thought their Board did a good job throughout the whole process. GWH is on a great trajectory, is on the way to bringing enrollment to 200 students that will take a big dent out of the dropout rate in Maine and have a positive effect. He said they are very proud and that is what motivates the staff, teachers and Board members.

Sen. Johnson referred to the handwritten note and asked if Mr. Moore could say what the deposition of the note is, what happened to it. Mr. Moore said he did have the note for a while, the whole thing had gotten old and the note certainly was not something that made him want to keep it as a memento so it did end up in a pile that was heading for the dumpster.

Rep. Mastraccio was trying to figure out at what point Mr. Moore realized that the Governor was going to influence the process and at what point he realized there was an issue. Was it when he had lunch with the Acting Commissioner? OPEGA's report said it was a fair hiring process, thorough, the candidate rose to the top, etc. so at what point did he realize there was going to be some punishment if the Speaker was hired. Mr. Moore said he thought the OPEGA staff did a pretty thorough job of putting the report together. There were a few revelations for him because he is not on top of every aspect, but felt it was a fairly written report. Mr. Moore said throughout the interview process there were another round of interviews to make sure they were hiring somebody who could be effective on both sides of the aisle and be most effective for GWH. He would phrase the meeting with the Commissioner as a yellow flag, and the red flag came from Rich Ambramson, the Interim President for GWH who received a call, or a direct communication, from the Governor. He said it became less opaque as the Governor's formal letter came out that he did not approve of Mark Eves. Mr. Moore said he would not say that the Board construed it as a punishment, but as he was taking action because he does not approve of the hire. At the time the formal letter came, it became evident that they needed to act and it was not the State funding alone ($530,000), it was the fact that put into jeopardy another source of significant funding and absent that funding, they could be in default of a loan. Mr. Moore said he didn't think people, much less Mark Eves, knew that this series of events could be triggered. Throughout the process they were focused on fulfilling their fiduciary duties and would not have been doing that if they were to go down a road leading to a series of defaults that would put the existence of Hinckley in question.

Rep. Mastraccio said Mr. Moore talked about the effect of one funding source on the other and asked if he believed that that is in fact what would have happened. Mr. Moore said it was definitely a series of events that would transpire. The Board did feel that they did not have to act immediately because July 1st was a date that they had to act by. He said he thinks the Board did a good job of remaining objective, and of not operating on a schedule that would prevent them from consistently acting in the School's best interest. Rep. Mastraccio asked if Mr. Moore showed the Governor's note to anybody else. He said maybe to his wife, he knows that it did not leave the house.

Rep. McLellan commented on what a great job people do at GWH. He asked if Mr. Moore knew who gave the Alfond letter to the press. Mr. Moore said he did not know, but knew that GWH did not.

Rep. McLellan was trying to figure out if something bad happened here in this whole situation, or if it was just politics and that is the way the game is played. He asked Mr. Moore if, in his view, the whole GWH thing was really just the political process and you have to play the game, or did he feel that there was really a threat to his school. Mr. Moore said absent the funding it would have been threatening for the school. He and other Board members have avoided taking political sides. They are truly a-political and if there is one thing that you can see it is that the Board is well represented by both parties and they have gone out of their way to keep their heads down and to not fan the flames in the process.

Rep. Sanderson referred to OPEGA's Report and said in October, 2012 there was discussion of not including funding for GWH in the FY 14/15 budget and that GWH established a two year plan to shore up their financial position to become independent of the State funding. She asked what happened to the twenty-four month plan where they were not able to become independent of the State funds. In the Alfond Foundation letter to GWH it does not specifically say the Foundation is going to be pulling funding, it merely says they want to re-evaluate GWH's books to see that the stability is going to be there going forward. She said Mr. Moore said it would put the School in jeopardy, but in the Ethics Commission's letter to the Speaker there is discussion that should the funding go away, the School would still remain solvent. She also noted that even though GWH had the two year plan, in 2013 they hired a lobbyist to make sure that funding would remain in place and then again in 2014 hired a lobbyist and included the funding from the State as part of GWH's grant application to the Alfond Foundation. Mr. Moore said the plan to be independent of the State funding was the focus of GWH all along. What became clear, as far as sustainability, is that they needed to rebuild the School, they needed to grow enrollment and they were curtailed on enrollment with the current environment that they had. He said when he joined the GWH Board they had close to a one million dollar deficit and the School has made tremendous progress toward financial sustainability. He thinks that remarkable success, particularly around 2012, led them to believe that they could bring enrollment up to 200 students. As they do that they can allocate their fixed costs over a wider population. Mr. Moore said GWH's Director of Finance at the time did indicate to the Ethics Commission that he felt the School could work through the lack of funding and the GOC would have to ask him for his reasoning behind that. It was clear to Board members that although they passed the scrutiny for the grant application, it was not with flying colors, and absent the State funding they assumed they would not be given the grant funds. So, when they got word of the Foundation's plan to do another assessment it would have been imprudent for the Board to not act given the heads up. Mr. Moore said the Board was very proactive and felt, on both fronts, there were reasonable threats and they were concerned about their funding.

Rep. Sanderson said according to the Report there were a lot of questions about potential concerns the Governor would have should Speaker Eves be hired for the position. There was a lot of discussion regarding potential funding loss, yet the Board chose to go forward. Mr. Moore said they chose to go forward in the beginning because they did not have to make a decision at that time and thinks the Board did a very good job remaining objective and taking a step back to recognize what they needed to do by a particular date. He thought their immediate inaction was a thoughtful approach and the Board weighed all of its options, explored all their possibilities and did not jump to a conclusion. While there is going to be room to second guess any decision, particularly as time goes on, he thinks it is a prudent act to avoid mistakes.

Sen. Burns noted that Mr. Moore had said that the Board had made a great effort to find somebody that was out facing who would represent GWH and gain support in the community. He noted Mr. Moore also had said GWH had a well- balanced Board and were equipped to make decisions. He asked, given all the history of angst between the Governor and the Speaker that the GWH Board must have been aware of, was that a concern for the Board that maybe selecting the Speaker might bring about this type of conflict. Did that ever come up in the Board's discussions and screening process? Mr. Moore said the Board never envisioned being before the GOC. They did feel there was a potential risk and that is why they injected a third round of interviews to flush that out. There were a few things, as Board members, they wanted to flush out and wanted to make sure they had somebody that would be fully engaged to do the job. The Board explored and asked, at various times, about the Speaker's relationship with the Governor. He said his perception is that they were entering a perfect storm and, at

the time the Board was going through the process of hiring, it was probably the height of the storm between the Governor and the Speaker and his party and that did not make things easier. Mr. Moore said he is not going to second guess the answers he got from the Speaker. He will say perhaps things had changed from the start of the recruitment process to the ultimate decision.

Rep. Duchesne said the State funds are public money so there is a whole public process that happens before money is ever given to anybody. There are qualifications that are set, the recipient has to be deemed to be qualified, etc. He asked if there was a claim from the Governor's Office, the Governor himself, or the Acting Commissioner that hiring Speaker Eves would trigger a failure to meet the qualifications that GWH had met in order to receive the funds in the first place. Mr. Moore said, summarizing a series of conversations, they felt they would not be responsible in continuing to support us.

Chair Kruger asked for Mr. Moore's personal opinion on whether he thought it was appropriate and proper for a State Chief Executive to insert himself into the internal affairs of an institution. Mr. Nuzzi said Mr. Moore was at the meeting as a volunteer and has been trying to remain above the political fray. Therefore, he would advise Mr. Moore to not answer.

Sen. Johnson asked, given statute, bylaws, etc., where the sole authority for making hiring and firing decision for the President of GWH rested. Mr. Moore said it rested with the Board of GWH. Sen. Johnson wanted to confirm that the Board received feedback from the Governor, among other parties, about the decision they made. Mr. Moore said they did. The process was inclusive and included the MeANS Board, and to some degree, staff and teachers. He said at the end of the day he would say there was probably more input from the Administration on the second round of recruitment for the President's position currently underway in terms of recommendations they had, but on the first round he thought the Governor's disapproval with Mark Eves was the extent from the input, aside from the lunch with the Commissioner. Sen. Johnson asked if, after considering all of the input in the process, the Board, having the sole authority to make that decision, chose to hire Mark Eves as their next president. Mr. Moore said yes.

Rep. Sanderson said in OPEGA's Report there is reference to loss of donations to the School and some negative correspondence as a result of what occurred. She asked if all the negative correspondence was in opposition to the Governor expressing his displeasure. Mr. Moore said it was predominately in lack of approval for GWH to ignore their fiduciary duties and to stand up to the Governor.

Rep. Sanderson noted that some people have pulled their donations to the School and asked what donations those would be. Mr. Moore said GWH did get letters from previous donors saying they will no longer support the School. He said there are a number of factors involved, but they are trending below where they had expected to be in donations. She asked if Mr. Moore could provide the GOC with copies of the letters with identifying criteria redacted, so the Committee could see the tone of the letters. He said he would find out if that can be done and will get back to the Committee.

Sen. Gerzofsky asked if the Board had ever reached out to the Administration in the past as to who was acceptable and who was not acceptable to hire. Mr. Moore said no. The Board and the School had a dialogue with the Governor, but that would not be part of it. Sen. Gerzofsky said often Boards will have conversations with different members of the Administration about upcoming prospects, he knew that had been done in the past and asked if that had been done this time. Mr. Moore said the candidates GWH received had nothing to do with the Governor's Office. He said one thing the Board did, in the most recent recruitments for both the Principal and Executive Director positions, was to look for folks who would have the ideal credentials and encourage them to apply. They did beat the bushes to try to get the applicants that would have more of the things the Board was looking for, somebody that might not normally be looking for a job but would be an excellent hire. Sen. Gerzofsky asked Mr. Moore if the Board at any other time gave the Administration the opportunity to veto any of the names of the people being considered for a position. Mr. Moore said no. The one conversation with the Commissioner early on was only to diplomatically present the notion that Mark Eves was their selection.

Sen. Davis referred to donations to GWH, or schools of that type, and asked if the donations were public information. Mr. Moore did not think so, but will check and get back to the Committee.

Sen. Davis referred back to the lunch Mr. Moore had with Commissioner Desjardin and asked if he might have said do you want the job. Mr. Moore said he could have asked if he was interested. Sen. Davis asked if the Commissioner could have taken that differently. It was Mr. Moore's view that he had not made an offer, but he did leave it open so that perception might have been there. He said he wouldn't have gone back to the Board with that recommendation.

Sen. Davis asked if Mr. Moore had any other direct meetings with the Commissioner. Mr. Moore said he might have met with him one other time or once with the Governor. He said Commissioner Desjardin had a sincere interest in GWH.

Sen. Diamond asked if he feels that the School was threatened to the point it would be closed. Mr. Moore said they felt if they did not have the State funding that could potentially trigger a series of events that would conceivable result in the School closing down, and that is why the Board, as fiduciaries, took the steps that they did.

Rep. Campbell asked if the Board had any dialogue about concerns that Speaker Eves had basically been in opposition of the charter schools over the years. Mr. Moore said the Board did and ultimately it came out that the Speaker is clearly a supporter of GWH. He said GWH is a bit different than many charter schools with the hands on teaching and at risk youth. The Board did ask him several times about his position and his views were consistent with what GWH does. Rep. Campbell said the Board felt that his fund raising experience was broad enough so it did not rely on just his normal contacts. Mr. Moore said the Board was viewing it not as fund raising from the State. He said GWH went from a million dollar deficit to financial sustainability so they do not want to make themselves subject to survival by the political process and is working very hard to continue on that trajectory of financial sustainability. Mr. Moore said GWH will still get support, absent the two year process of weaning themselves off of the $530,000, but the goal is not to be too dependent on any one source. The Board's view of Mr. Eves was he is a good fund raiser, is a personable fellow, and is comfortable with people and speaking. Mr. Moore said his view is more on the development side because their goal is to make sure that GWH's sustainability entails the adequate amount of State funding, but nothing more.

Rep. Sanderson asked if the Board did outreach for the position before the March application deadline. Mr. Moore said no, it had been more over the last two months in the second recruitment round. She asked if GWH was doing outreach prior to that time. Mr. Moore said they probably did minimal outreach.

Rep. Sanderson said in the interview with Mr. Brown, who is a staffer of Speaker Eves, he told the OPEGA staff that it was the Interim President who suggested that he reach out to Speaker Eves, in the last part of March to let him know that the job was available . She asked if that would have been outreach. Mr. Moore said he did not have any information on that to be able to answer.

Rep. Mastraccio asked if, absent the insertion of the Executive Branch into a hiring process that OPEGA characterized as fair and thorough, Mark Eves would be the President of GWH today. Mr. Moore said if GWH had not been in jeopardy of losing the State funding he thinks Mark Eves would be the President.

Members of the GOC thanked Mr. Moore for attending the meeting and answering their questions. Chair Katz reminded everybody that Mr. Moore was at the meeting voluntarily and the Committee had learned a lot from the information he provided.

- **Public Comment Period**

**Testifying but did not provide a written copy of their testimony:**

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

**Testifying and providing a written copy of their 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 received, but not spoken to at public comment period:**

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 the written testimony are attached to the Meeting Summary.

Chair Katz closed the Public Comment Period at 12:24 p.m.

## RECESS

Chair Katz recessed the Government Oversight Committee at 12:25 p.m.

## RECONVENED

Chair Katz reconvened the GOC meeting at 12:40 p.m.

- **Committee Work Session**

Director Ashcroft noted that several things were suggested to the GOC at the meeting as possible actions they might take. The first, and most relevant to the GWH Information Brief, was the suggestion that the GOC issue subpoenas, or invite other people, to a meeting to get to the rest of the facts. That would be one action the Committee could potentially take. The other thing that was suggested was to have someone, the AG's Office or special prosecutor, determine whether there has been any crimes actually committed with regard to the GWH matter. Director Ashcroft said in the past the Committee has sometimes referred matters to the AG's Office, or at least talked about whether there needs to be a discussion with someone with legal expertise, as to whether any of the laws that have been mentioned as applicable are applicable, and if so, what additional information, if any, might be relevant to making that determination. She said beyond that there was a suggestion to increase the scope of the work the GOC is doing to determine whether there are other situations the Governor has been involved in that would further push the case for additional action of accountability toward the Governor. Some individuals who spoke at the meeting already had firm examples in mind of things they felt already met that test. Director Ashcroft said the last action that was suggested to the Committee was moving the matter forward to the House of Representatives for their consideration of possible impeachment proceedings against the Governor and the whole process that would evolve from that.

Director Ashcroft said some folks suggested that the GOC might want to poll the rest of the Legislative body before determining some of the more significant steps.

Sen. Diamond thought the Committee had done a good job in remembering that they are not there to make judgments, but to gather facts and to get as much information as possible. He said when Mr. Moore came

before the GOC today he demonstrated the value of an interaction and is why he thought it was important that Cynthia Montgomery and Aaron Chadbourne be at a meeting to answer questions. Sen. Diamond did not think they will come to a GOC meeting unless they are subpoenaed and therefore, made the following motion:

**Motion:** That the GOC issue subpoenas to Cynthia Montgomery and Aaron Chadbourne. (Motion by Sen. Diamond, second by Rep. Mastraccio.)

**Discussion:**

Rep. Mastraccio asked if it was anticipated that Commissioner Desjardin would be at the next GOC meeting. Chair Katz said he spoke with the Commissioner a few days ago who said he wanted to be at today's meeting, but was just medically unable to be here.

Rep. McClellan asked if there was anything Committee members needed to know if subpoenas are issued. Director Ashcroft said there is another piece of statute that comes into play once the GOC issues subpoenas. That statute is the Legislative Investigating Committee Statute and by virtue of issuing the subpoenas, which the GOC has the authority to do under OPEGA's statute already, it dovetails into that statute. There are procedures laid out and rights of the witnesses, etc. that occur when the process is started. She said the GOC has subpoenaed people in the past.

Chair Katz noted that if the GOC did wish to issue subpoenas that would be all the Committee needed to vote on at today's meeting and then could discuss the subject of being an investigatory committee at the beginning of their next meeting. Director Ashcroft agreed and said the GOC would have to already be using those procedures when the individuals come to the meeting under subpoena. She would work with the Committee to make sure they were clear about what the procedures were.

Rep. Sanderson said not being familiar with how the Committee goes through the subpoena process she would not vote to issue a subpoena to anybody before she had a clear understanding of what that process is.

Director Ashcroft said a subpoena is drafted and signed by the Committee Chairs and sent to the individuals who have been asked to appear in the subpoena telling them the date, time, etc. that the GOC has asked them to come. A response is received back from them. So far the GOC has not had anyone that has been subpoenaed not come to a meeting, but there is a question of what would happen if they refused. She said there is a process laid out in the Investigating Committee Statute that allows the GOC to take additional Court action. Director Ashcroft said individuals come to the meeting, the Committee Chair will put them under oath if that is something the Committee decides it wants to do, which will be another decision for the GOC about wanting to do the questioning under oath. The individuals are allowed to have attorneys present while they are being questioned. There are some decisions to be made as to the degree to which it is a public proceeding in terms of being sent out over the air waves. She said the GOC has always proceeded with the full public process, but the witnesses, under the Investigating Committee Statute, do have some rights to weigh in on that. It is a question and answer session and the GOC talks about what they want to do with the information gathered.

Director Ashcroft said, depending on what the GOC feels it wants to pursue for information, there is a group of people beyond Ms. Montgomery and Mr. Chadbourne that would be relevant to a couple of places outlined in its Brief that OPEGA was still unclear on. The GOC has not asked those individuals, other than the Commissioner, to come voluntarily yet, and in the past the GOC has asked "x, y and z" to be at the meeting voluntarily. If they say they are not voluntarily coming, the Committee would take a vote on issuing subpoenas to them so the Committee could get everyone at the same meeting.

Rep. Campbell thought OPEGA did a good job in their work during the Information Brief and wondered how much more information could be gotten out of Ms. Montgomery and Mr. Chadbourne. He noted that having Mr. Moore at the meeting was great for clarity.

Rep. Mastraccio agreed with Director Ashcroft about there may be other individuals the GOC may want to invite to a meeting who might bring clarity, especially in light of the letter that was sent by Ms. Montgomery, and in her view, misinterpreting what the Report actually said. She would be in favor of requesting other people come to the meeting, but does not want the matter to continue another month and then keep going. Rep. Mastraccio was in favor of issuing the two subpoenas and that other subpoenas be issued if individuals invited to the meeting decline to attend.

Rep. Duchesne noted that the public, in their comments at the meeting, wanted the GOC to move forward and did not want the Committee to be stonewalled in finding the facts that they were charged to find. He thinks that is the minimum expectation given by the public. He said the insufficiency of putting questions in writing and having them answered has also has been demonstrated because what the GOC received from Commissioner Desjardin was after the fact justification and did not relate to the time line. The GOC needs to have the ability to have questions and answers in person.

Sen. Johnson said the pending motion was appropriate and the Committee should be identifying other people they would like to have at the next meeting. Those individuals should be invited, but for expediency, it would be wise, if they do not agree to come willingly, that the Committee members' vote includes authorizing the Chairs to subpoena them so they will be at the next meeting.

Sen. Burns was not sure that anything new would be gleaned from Ms. Montgomery or Mr. Chadbourne and he thinks they have a legitimate reason for not coming to a GOC meeting. Just because they are not named as litigants in the civil suit does not mean that they do not have information that could be extracted that may possibly be detrimental to whatever is going on in the pending suit. He did not know what new information would be gleaned from them, and the other individuals the Committee is talking about inviting to the next meeting. Sen. Burns said there was a lot of anxiety about the matter and there are a lot of people who want to culminate what they feel has been several years of mismanagement of the Blaine House and Governor's Office. He understood that and had some of the same anxieties, but he was not elected the Governor and those individual acts have to rise and fall on their own merits. Sen. Burns said if there had been better judgment on the part of all parties involved, the matter could have been avoided. He did not believe that the GWH Board did not realize the dangers, or pitfalls, they were getting into in hiring Speaker Eves. He said what the Administration did was probably not what he would have done, but he has not seen any evidence yet to show it was illegal. Sen. Burns said the Governor and Speaker Eves are two prominent people in the State of Maine. They conduct themselves differently, have different goals, but he has worked with both of them and has seen both accomplish some good things and has seen both do things he would not do. He said everyone on the GWH Board knew some of the situation of what was going on in State Government and the Legislature. He said it was a bad scene for the State of Maine and GWH, but he has not seen where anything has been done that requires the Legislature to act moving forward. Sen. Burns said he does not like a lot of things he is seeing going on in Maine and the federal government, but he did not think the GOC was the proper venue to try to undo the series of mistakes that were made. He was not going to support pursuing something that he thinks is going to cause more grief and bad will for the State and GWH and produce no viable and reasonable results. Sen. Burns said because of that he would not support the subpoenas.

Chair Kruger believed that the GOC was on solid ground per the Constitution and statute and had Representatives at the meeting asking the Committee to do this. He did not believe the Governor's answer of "because I said so" passes Constitutional muster in the question of equal branches of government and he was in support of the pending motion.

Sen. Gerzofsky said he was supporting the pending motion because he has questions. He asked his questions to Mr. Moore, but he wants to understand more about how decisions were made. Sen. Gerzofsky noted that both individuals had an opportunity to come to today's GOC meeting, as Mr. Moore did, but declined so he thinks subpoenaing them is the only recourse he has as a legislator.

Rep. Duchesne said he was focusing on the fact-finding portion of the GOC's mission. He said a decision was made about public money, a lot of people testified at the meeting that it constituted misuse of public money and

abuse of power. He said maybe it does, or doesn't, but he is trying to get to the facts that will lead to that conclusion and there are some gray areas that have not been discussed. Rep. Duchesne said the Governor said I did it, why wouldn't I, but the Acting Commissioner of DOE explained that he was acting on the Administration's concerns, much appeared to be in his own discretion, and it is not clear what the nexus was between what the Governor took credit for doing versus what the Commissioner did on his own. He said that has not been completely fleshed out so there is a set of facts that could help. Rep. Duchesne referred to the Cabinet meeting that individuals have fuzzy memories of and that was disturbing to him.

Sen. Johnson said he had questions about how the decision to pull back a payment that was already in the process occurred and the GOC needs to have people before them that were involved. He said regardless of whether communication from the Governor is handwritten, or not, when the substance of the communication involves exercising a power that exists, not in the person, but in the Office, that it is an official communication. He has multiple questions he would like to have answers to and thinks it is appropriate that the GOC exercises its power that falls uniquely on this body to compel people to come before them and provide answers to the questions raised. He would be supporting the pending motion.

Rep. McClellan agreed with Sen. Burns' comments and said he has not yet seen anything criminal that took place by the Governor.

Rep. McClellan asked if Ms. Montgomery was the Governor's lawyer. Director Ashcroft said Ms. Montgomery is the Chief Counsel for the Governor and the Governor's Office. The Governor has hired an independent attorney to represent him in the civil suit so she is not his attorney in that suit. He asked, given Ms. Montgomery's role of being the Governor's attorney, how much can the subpoena compel her to speak if she chooses not to. Chair Katz said Ms. Montgomery declined to come to the GOC meeting for certain articulated reasons, none of which had anything to do with Rep. McClellan's question. He said secondly should the GOC decide to move ahead, she is entitled to have counsel at a GOC meeting. Rep. McClellan noted that the Governor does not send his staff to meetings during the legislative Interim and that is not particular to just the GOC meeting.

Director Ashcroft noted that in some situations in the past when the GOC has subpoenaed people, it is not necessarily because people did not want to come willingly and answer questions. They requested being subpoenaed so that they knew that they had to answer the questions and thereby had protection from retribution.

Sen. Diamond said that when he made the pending motion he did not do so lightly. He said it was a very serious issue and the GOC is a very unique Committee, noting that this is the third time he has served on the GOC and each time as they faced very delicate, serious and sensitive cases, the Committee had always been stalwart in sticking to wanting to get the information and that was his motivation. The GOC heard from the public and their testimony was 100 percent on one side of the issue. In fairness, there is probably another side, but some people could not be at the meeting. Sen. Diamond noted that Mr. Moore's interaction with the members of the Committee caused greater clarification as to what happened in his particular role. Sen. Diamond is convinced that having both Ms. Montgomery and Mr. Chadbourne at a meeting will add to the Committee's goal and responsibility to the Legislature and public to get to the bottom of the issue.

Rep. Mastraccio said listening to Sen. Burns' comments that GWH should have known better than to hire Mark Eves because they should have known what would happen, points out exactly why the GOC needs to explore the matter further. What kind of culture is that when decisions a foundation is making are because of the fear that somebody is going to do something to you? She thinks there is a lot more to be discovered.

Sen. Burns noted that the GOC saw a good representation at the GOC meeting of one side of the issue. He said there is another side of the issue and referred to the written testimony received from Rep. Timmons that says enough is enough and he thinks there are many others who feel the same way. Sen. Burns did not think he would know any more after Ms. Montgomery and Mr. Chadbourne is subpoenaed than he knows now. The GOC knows what happened, the Governor told them what happened, which matched up with what OPEGA

reported had happened. If there is enough information for the Legislature to take action based on what is known and what the Governor has admitted, go ahead. If there isn't, they should move on to something else.

Sen. Johnson said one of the things the GOC is talking about is not a question of manners, but about the nature of governance and governing through fear, and it is the Committee's responsibility to get to the facts regarding the conduct. Secondly, he thinks there are several things the GOC can learn through further questioning that are unclear, particularly where OPEGA got conflicting testimony and no statements from the Governor about what happened regarding holding back the quarterly payment to GWH.

Rep. Sanderson agreed with Sen. Burns in one respect that the GOC knows what the Governor's actions were, he has admitted what his actions were, and issuing subpoenas to members of his staff are not going to enlighten the Committee further into what his actions were. She said she has a lot of questions that came to mind today and people she would have liked to have heard from, but she didn't know if bringing them in for questioning was going to further the cause and charge of the GOC. She would have liked to hear from VP of Finance about what he said to the Ethics Commission, and from Bill Brown, Glen Cummings, Board members and Speaker Eves, but would that further what the GOC was to do. She did not think so. Rep. Sanderson thinks the Committee has already found the truth and she does not want to be a member of a dirt digging Committee. She thinks the issue is an accumulation of a very sad and unfortunate series of events. She agreed with Rep. McClellan and Sen. Burns in that she did not see where a law had actually been broken. She will not support the motion to subpoena the Governor's staff because she does not think they will have any more information than the GOC already has to further the charge and move the Committee forward.

Chair Katz said he was voting in favor of the pending motion for three reasons. First, he thinks it is important that the GOC separates facts from fiction and in his mind that line is somewhat blurred. He agreed with what Rep. Sanderson said that they do not know whether the testimony of Ms. Montgomery and Mr. Chadbourne will add anything, but the reason they don't know is because they did not agree to be interviewed by the OPEGA staff and they did not accept an invitation to appear at today's GOC meeting. Chair Katz said they were in the middle of the whole incident in communicating with people from GWH and others and the GOC does not know what they are going to say. Their reasons for not appearing at the meeting are not acceptable to him. They are essentially saying there is a lawsuit going on and it would be inappropriate for them to come and testify with a pending lawsuit. Chair Katz said that is the same line of reasoning the GOC heard in the CDC case with the document shredding. The GOC rejected that line of argument then, and were right to do so because those people came. They came under subpoena, the GOC had an opportunity to question them and did learn a lot from them and the lawsuit went on. He said the GOC is supposed to separate facts from fiction and that argues in favor of issuing the subpoenas. The second reason is because the GOC held a public hearing at today's meeting for a reason and that is because the Committee wanted to hear from the public. He noted people are not satisfied where things stand and that certain individuals had refused to attend the meeting to share the knowledge they have of the events. The third reason he said, which is a bit outside of the current matter, is they are being told by a separate branch of government that they are not going to cooperate with the Legislature's legitimate work. The GOC can accept that, or can say no that is not acceptable and stand up for the integrity of the institution. That is what he intends to do with his vote.

**Vote:** The above Motion passed 8-3. Voting against the Motion Rep. Sanderson, Sen. Burns and Rep. McClellan. Sen. Davis was absent for the vote.

Chair Katz said subpoenas will be issued to Ms. Montgomery and Mr. Chadbourne.

Rep. Campbell said he did not think it was time to subpoena other individuals. If the Committee had an interest in others attending a meeting, they should be asked. Director Ashcroft said that was what was talked about earlier. However, in order to not hold up the process the GOC sometimes has invited individuals and they are asked to respond by a particular day of whether or not they are willing to come. If they are not, the Committee has pre-voted to issue subpoenas so the GOC did not have to have another meeting and then have that discussion again.

Chair Kruger would like to invite Commissioner Desjardin to the next meeting, but would like to have it confirmed that he will be there without being subpoenaed. Director Ashcroft said an invitation will be sent to him and if he refuses to attend then the GOC will have to decide whether members want to subpoena him.

Sen. Diamond would like to have Bill Brown, a GWH Board member, come to the next GOC meeting. Chair Katz asked if that was the pleasure of the Committee and they all responded it was.

Chair Kruger noted that Mr. Brown spoke with OPEGA staff and asked Director Ashcroft if there was anything further she would need to know from him. Director Ashcroft thought it important to decide what it is that the Committee was trying to get for additional facts. She said, for example, there are inconsistent stories about the reason the check was withheld and OPEGA said in its Brief that it is unclear whether the Governor gave any directive to do that. Inviting a certain set of people could answer that question. Director Ashcroft could not think of any questions that OPEGA still had regarding Mr. Brown's involvement, but some of the GOC members have the pending question about whether he somehow influenced the process to the point that the Speaker was hired when he should not have been. What OPEGA saw regarding the hiring process was a well-documented and thorough, structured process that had involvement of a lot of people at many different levels at GWH, but if GOC feels they need to know more, they should invite Mr. Brown.

Sen. Diamond said his request to invite Bill Brown to a GOC meeting was because he is part of the Speaker's staff and he thinks it is fair that the Committee gets a chance to ask questions for the same reason they want to ask questions of other people.

**Motion:** That the GOC invite Bill Brown to the next Government Oversight Committee meeting. (Motion by Sen. Diamond, second by Rep. McClellan.)

**Discussion:**

Rep. Duchesne said some people might view the chance to speak to the GOC as a good opportunity for individuals to clear their own names.

Sen. Johnson said the question of the Board arriving at a decision on who to hire is not what the GOC/OPEGA is investigating. The review is in regard to the process by which funding to the GWH was altered and influenced. Although someone might want to come before the GOC to clear their name, he did not think it is relevant to the facts in the review.

Chair Katz said he would be voting against the pending motion because the focus is not on whether the Speaker was, or was not, qualified to be the President and what were his relative merits compared to other candidates for the position.

Rep. Campbell thought it may have something to do with it in terms of the evolution of the original job description.

Rep. Sanderson said the Governor has been a stalwart supporter of GWH since the Legislature voted on it in the 125th Legislature. His actions are what is under question and his obvious distress over the hiring of someone vigorously opposed to the School is the catalyst for the entire event. She thought it was relevant to understand the series of events that led up to the hiring of Speaker Eves. Rep. Sanderson said in that regard it is important to have Mr. Brown come to the GOC meeting so he can clarify the time line of when Mr. Cummings told him about the job.

Chair Katz noted that he would be changing his vote because he realized Sen. Burns, who had to go to another meeting, would be voting to have Mr. Brown come and Sen. Davis, who got called away for a family emergency, feels strongly about having Mr. Brown attend.

**Vote:** The above Motion passed 7-3. Voting against the Motion - Sen. Johnson, Rep. Mastraccio and Chair Kruger. Sen. Burns and Sen. Davis were absent for the vote.

Rep. Sanderson would like to invite the VP for Finance who indicated to the Ethics Commission that GWH's finances would continue to be stable with or without the State's funding, but the Committee heard from Mr. Moore that it was not. Director Ashcroft said Mr. Jurdak was at GWH on an interim basis and is no longer there. It was her understanding that he goes away in the fall so she would want to know what the GOC would want to do if they decide to invite him and he is not physically able to attend. Rep. Sanderson asked if it would be appropriate to send him a letter asking why he told Ethics that GWH would be stable without the State funding, yet clearly that was not the case. Director Ashcroft said the steps that Mr. Jurdak took when he got that inquiry, which he fielded because the Interim President was not available, including talking with the Director of Admissions at MeANS and it seemed like the whole focus was on trying to determine what impact that funding would have on the student population in that span of time of the biennium. He understood from the Director of Admissions there would not be a big impact on the number of students that would still be attending the School. Mr. Jurdak, in his comments to OPEGA, did not indicate that his response to the Ethics Commission includes considering how it would impact the overall plan to advance enrollment to 210 students, which is the area where the Harold Alfond Foundation and Chairman Moore had concerns that it was going to stop the momentum of the School in being able to attract those students. Director Ashcroft said her observation from listening to both points is that they were coming at it from a different perspective. Mr. Jurdak's perspective was that it was not an immediate concern for the School. He felt he had ideas about how they would get by without the $530,000, but the impact on the Alfond grant was not part of what he was considering at that time. Rep. Sanderson withdrew her request.

Rep. Mastraccio would like to invite Rich Abramson, Sara Vanderwood and Jay Nutting. She said Jay Nutting, GWH's Board member and lobbyist Sara Vanderwood seemed to be in the middle of a lot stuff and Rich Abramson because that is who Mr. Moore said he heard for the first time that there was no support and she would like to know where that chain was. She noted that Commissioner Desjardin was already on the list.

Chair Katz asked if the three people Rep. Mastraccio referred to were for invitations or invitations with subpoenas to follow. Rep. Mastraccio said they should be invited. She is also concerned about the fact that some people may fear retribution or retaliation so if they feel that they cannot attend and are not coming to the meeting, then they should be subpoenaed.

**Motion:** That the GOC invite and then subpoena in the absence of acceptance, Rich Abramson. (Motion by Rep. Mastraccio, second by Sen. Johnson.)

**Discussion:**

Rep. Sanderson said she would be in favor of any invitations, but is not inclined to vote for any subpoenas at this time. Rep. Mastraccio withdrew her motion to subpoena.

**Motion:** That the GOC invite Rich Abramson to the next Government Oversight Committee meeting. (Motion by Rep. Mastraccio, second by Sen. Johnson, passed 8-1. Chair Katz voting against the motion.)

**Motion:** That the GOC invite Sara Vanderwood to the next Government Oversight Committee meeting. (Motion by Rep. Mastraccio, second by Sen. Diamond, passed 8-1. Chair Katz voting against the motion.)

**Motion:** That the GOC invite Jay Nutting to the next Government Oversight Committee meeting. (Motion by Rep. Mastraccio, second by Sen. Diamond, passed 7-2. Sen. Johnson and Chair Katz voting against the motion.)

**Motion:** That the GOC invite Acting Commissioner Tom Desjardin to the next Government Oversight Committee meeting. (Motion by Sen. Diamond, second by Rep. Mastraccio, passed unanimous vote 9-0.)

Director Ashcroft said if the Committee wanted to inquire about what went on in the Lead Team meeting, the individuals involved are Suzan Beaudoin, Director of School Finance and Operations; Debra Plowman, Director of Policy and Programs; and Sarah Forester, who is with the Attorney General's Office and who represents the Department of Education.

Chair Katz cautioned the Committee that the length of their next proceeding is getting longer. He asked if there was a motion in respect to Ms. Beaudoin. Director Ashcroft reminded the GOC that Ms. Beaudoin was the person who was involved in withholding the payment.

**Motion:** That the GOC invite Suzan Beaudoin to the next Government Oversight Committee meeting. (Motion by Rep. Mastraccio, second by Sen. Diamond.)

**Discussion:** The Committee discussed whether to add that Ms. Beaudoin be subpoenaed if she declined their invitation, Rep. Mastraccio withdrew her motion.

**Motion:** That the GOC invite and then subpoena in the absence of acceptance, Suzan Beaudoin. (Motion by Rep. Mastraccio, second by Sen. Johnson.)

**Discussion:** Sen. Diamond said he liked to believe that the people invited to the GOC meeting will come and, for example, the reason he had invitation only to Commissioner Desjardin is because he assumed he will be well enough to attend. The reason he was not at this meeting was because he had legitimate reasons. He would like to continue that assumption as the Committee moves along.

**Vote:** The above motion failed 2-6. Voting in favor Rep. Mastraccio and Sen. Johnson.

**Motion:** That the GOC invite Suzan Beaudoin to the next Government Oversight Committee meeting. (Motion by Rep. Sanderson, second by Sen. Diamond. Passed 8-1. Chair Katz voted against the motion.).

Chair Katz asked if there was a motion with respect to Sarah Forster, Assistant Attorney General. No motion was made.

Chair Katz asked if there was a motion with respect to Debra Plowman. No motion was made.

Director Ashcroft noted that the other unclear place in OPEGA's Information Brief was whether the Governor personally communicated to anyone at GWH, or the Harold Alfond Foundation, specifically that funding would be cut. The two people who took calls directly from the Governor were Rich Abramson and Greg Powell of the Harold Alfond Foundation.

**Motion:** That the GOC invite Greg Powell to the next Government Oversight Committee meeting. (Motion by Sen. Johnson, second by Rep. Mastraccio. Passed 8-1, Chair Katz voted against the motion.)

Rep. McClellan felt like the GOC was fishing.

**Motion:** That the Government Oversight Committee recess the Work Session on the State Funding for Good Will-Hinckley Information Brief. (Motion by Sen. Diamond, second by Rep. Mastraccio, passed unanimous vote.)

- **Committee Vote**

Not discussed.

## NEW BUSINESS

None

## UNFINISHED BUSINESS

- **Riverview Psychiatric Center Staffing Concerns**

  - Jay Harper, Superintendent
  - Justice Daniel Wathen, Court Master

  Director Ashcroft said Justice Wathen was on call and will come to the meeting if the Committee wishes. She said Mr. Harper was not going to be joining the GOC today, but was going to be providing the answers in writing to the questions forwarded to him.

  The GOC agreed to carry this item over to a future meeting.

- **Review Status of Open Recommendations From OPEGA's 2006 Report on Economic Development Programs in Maine**

  Not discussed.

- **GOC Consideration of Recommendations on Records Retention and Management From Working Group Report**

  - **Monthly Report Back From Secretary of State Dunlap on Records Retention and Management Efforts**

    This item was not discussed, but Secretary of State Matthew Dunlap provided his written Interim Report Regarding Compliance with Public Records Laws. (Secretary Dunlap's Report is attached to the Meeting Summary.)

  - **Response From GOC Letter to Governor's Office**

    Not discussed.

## REPORT FROM DIRECTOR

- **Status of Current Projects in Progress**

  Director Ashcroft had told the GOC that OPEGA was planning on having a report to them on the **Riverview Psychiatric Center** in November, but said they had hit a snag with regard to getting access to records at Riverview even though OPEGA said they would take them de-identified and redacted. Discussions have been going back and forth between DHHS and the Attorney General's Office trying to understand the federal regulations that would apply and whether or not they would allow OPEGA access to the records. She said there are several federal regulations that appear relevant. Director Ashcroft said DHHS is not trying to be difficult, but they feel they are under a microscope with the decertification issue and do not want to make a wrong move in allowing OPEGA access to information where it is not clear if they can. Linda Pistner, Chief Deputy Attorney General, and Phyllis Gardiner, Senior Attorney General, has been working on this. Currently they are discussing whether OPEGA should seek a Court Order to have access to the records that would be a way of clearing all of the federal regulations. The AG's Office is putting that in motion for OPEGA. Director Ashcroft said she does not believe OPEGA will have the Report for the GOC in November as originally planned.

Director Ashcroft noted that if OPEGA is delayed much longer with Riverview the staff will begin the planning work for the **DHHS Licensing and Regulation of Child Care Providers** review and possibly also the **Northern New England Passenger Rail Authority** review.

- **Staffing**

  Director Ashcroft reported that OPEGA was still in the hiring mode for two Tax Expenditure Review Team Analysts.

Director Ashcroft mentioned that the GOC had wanted to have a work session on the New Markets Tax Credit in November. The Committee thought that would now be delayed and will talk about scheduling it at a future meeting.

## SUMMARIES OF THE AUGUST 20 AND SEPTEMBER 8, 2015 GOC MEETINGS

The Summaries of the August 20 and September 8, 2015 GOC meetings were approved. (Motion by Sen. Diamond, second by Rep. McClellan. Passed by unanimous vote.)

## NEXT GOC MEETING DATE

The next Government Oversight Committee meeting is scheduled for **November 12, 2015** at 9:00 a.m.

## ADJOURNMENT

The GOC meeting was adjourned by unanimous vote at 2:25 p.m. on a motion by Sen. Diamond, second by Rep. Campbell.

**OPEGA's Information Brief on State Funding for Good Will-Hinckley**
**Information Requested by GOC at the September 8, 2015 GOC Meeting**

How big a part of GWH is the MeANS school: what % of the budget for both revenues and expenses; what % of all students served by GWH are attending the MeANS school; what % of all staff under the GWH umbrella work for MeANS; and any other metric that GWH might use to describe what portion of its entire organization is attributable to MeANS.

GWH provided the following information:

- GWH's budget for the current year is $5,201,207, with MeANS part of the budget at $1,606,625 or 31% of the total. MeANS is budgeted to bring in $1,372,768 in revenue, leaving a short fall in MeANS expenses of $233,857 that GWH covers.
- GWH currently has 156 students on campus with 124 of them, or 79%, being MeANS students.
- GWH and MeANS share some staff which makes it difficult to determine what percentage of total staff is working for MeANS. A quick estimate is that 40 – 50% of the total GWH staff is allocated to MeANS. GWH is working to provide more specific numbers on this.

Was the $530,000 in funding for GWH part of the Governor's Line Item Veto of the budget?

Based on discussions with the Office of Fiscal and Program Review, it is OPEGA's understanding that the $530,000 for GWH would not have been affected by the Governor's line item vetoes. The Governor did line item veto all of the proposed **increase** in the General Purpose Aid for Local Schools Program which included his own proposed increases as well as the additional $19.5 million the Legislature had added to that Program. While the GWH funding (Center of Excellence funding) is captured under the GPA program, no increases had been proposed for that funding line – the $530,000 per year was the same as the previous years' budgets – and so technically it was not vetoed.

Please provide a copy of the June 18th letter to GWH from the Harold Alfond Foundation.

See attached letter which OPEGA is providing with permission from the HAF Board Chair.

Please provide the handwritten note from the Governor to GWH Board Chairman Jack Moore.

OPEGA requested categories of documents from GWH that would have included the handwritten note. OPEGA also specifically asked the GWH Board Chair to provide the handwritten note. He told OPEGA he no longer has the note.

OPEGA also requested categories of documents from the Governor's Office that would have included any copy of the handwritten note the Governor may have kept. The Governor's Office declined to provide any documents to OPEGA beyond what has been released in response to an

external FOAA request citing the pending lawsuit against the Governor. A copy of the handwritten note was not among the documents the Governor's Office provided. OPEGA is following up with the Governor's Office to see if they can provide confirmation as to whether or not a copy of the note exists.

Is the June 28th WMTW video referenced in the OPEGA Information Brief on page 20 available?

The video can be found on the Internet at http://www.wmtw.com/politics/deadline-looms-for-possible-state-budget-veto/33826418. OPEGA also has the audio clip of the actual interview which includes the reporter's questions to the Governor. A transcript of that audio clip is attached.

Please provide any details available on the donations that have been pulled from GWH and the negative feedback received:

- How many donors have pulled donations and what is the dollar amount associated with that?
- What reasons have the donors given for pulling their donations?
- How much of the negative feedback received by GWH or Chairman Moore has been related to GWH's choice to hire Speaker Eves in the first place versus related to GWH and the Chair not standing up to the Governor but rather terminating the Speaker's contract instead?

GWH has been asked to provide this information and/or for Board Chair Jack Moore to be prepared to answer these questions.

Please provide a copy of the Ethics Commission letter to the Speaker.

See attached letter.

Harold Alfond
FOUNDATION

Board of Trustees
Gregory W. Powell, Chairman
Theodore B. Alfond
William L. Alfond
Peter G. Alfond
Peter H. Lunder
Lawrence R. Pugh
Steven P. Akin
Therese M. Stone
David T. Flanagan

June 18, 2015

Mr. John P. Moore, Chairman of the Board
Good Will-Hinckley
P.O. Box 159
Hinckley, ME 04944

RE: Grant agreement for the Moody School renovation and expansion

Dear Jack:

In response to recent events concerning Good Will-Hinckley and the Maine Academy of Natural Sciences (collectively "GWHMe") and, specifically, the likely loss of $1,060,000 in state funding over the next two years for the residential programming at GWHMe, we are writing for two reasons.

First, we want to express the serious concern of the Harold Alfond®[1] Foundation regarding the future financial viability of GWHMe, given the likely state funding loss—and, by extension, its ability to achieve the goals underpinning the Foundation's September 10, 2014 grant agreement with Good Will to renovate and expand the Moody School. As you know, of the $5,500,000 in possible grant funds from the Foundation, $2,750,000 is contingent on GWHMe achieving measurable performance goals, including reaching enrollment of 210 by the 2019-2020 year.

Second, we want to inform you that, given our concern about the likely state funding loss and the material negative impact it may have on GWHMe going forward, the Foundation has re-engaged Larry Sterrs to revisit the GWHMe budget and financial forecasts.

As you will recall, the Foundation previously engaged Larry in August of 2014. His charge then was to review the GWHMe base-line budget and financial forecast submitted as part of Good Will's grant request. To conduct his analysis, Larry worked closely with GWHMe officials and a Principal at Berry Dunn, an audit, tax and consulting firm. While Larry did recommend some adjustments to the original budget and forecast, his analysis ultimately

[1] Harold Alfond® is a registered trademark of the Harold Alfond Foundation.

confirmed that the GWHMe plan, as submitted to the Foundation, was feasible *provided that certain assumptions underlying the plan proved to be true*. For your reference, the following is a summary of the key elements of the GWHMe plan.

- In the 2015-2016 year, GWHMe would have 110 students and reach financial breakeven in operations, with state funding for residential programming in the amount of $530,000.

- Annual state funding for residential programming would continue through the 2016-2017 fiscal year.

- In the 2019-2020 year, thanks in large part to the increased physical capacity provided by the renovated Moody School, GWHMe would have 210 students and generate net income from operations of nearly $460,000.

Because the GWHMe plan did rely on certain assumptions, such as the continued receipt of state funding for residential programming, Larry's final report was careful to note potential challenges, which included, but were not limited to:

- "The stabilization of state revenues for the delivery of educational and residential services."

- "A need to increase alternative revenue streams, including fund raising, to provide a financial 'Plan B' in the event of the disruption of any of the primary revenue sources."

Given recent events, these potential challenges have become current problems. Accordingly, we have asked Larry to take another look at how the financial plan has been impacted by the likely loss of state funding. We ask that you please extend your full cooperation to Larry in his analysis, as you did in 2014. Please consider Larry's work as part of the annual reporting required by Good Will under our grant agreement and due to the Foundation in July.

In the meantime, we ask that you please share a copy of this letter with your fellow Good Will board members and your colleagues on the MeANS board. We would hope that the boards of both Good Will and MeANS will be giving full consideration to the new challenges presented by the likely state funding loss. Thank you.

Sincerely,

HAROLD ALFOND FOUNDATION

Gregory W. Powell

cc: HAF Board of Trustees, Larry Sterrs, Travis Cummings

**Transcript of Audio Clip**
**of Reporters Paul Merrill and Mal Leary interviewing Governor LePage on June 29, 2015**

PAUL MERRILL: Wondering about your reaction to the talk of impeachment...

GOV. LEPAGE: It is what it is; it's a free country. They can do whatever they want.

PAUL MERRILL: Regarding Speaker Eves... was there any explicit threat about his employment?

GOV. LEPAGE: First of all- I don't understand about a "threat". Here is a person who for five years has been going against charter schools. HE voted against them; he spoke harshly against them. And NOW he's concerned? I dunno what he's talking about. I'm a pro charter school advocate; he's an opponent. Would I stand up against him? And incidentally, about monies you are talking about? The money you're talking about is out of the budget. Unbeknownst to me at the time, the legislature took that money out of the budget. So...

PAUL MERRILL: So you never threatened to withhold money.

GOV. LEPAGE: Yeah, I did! If I could, I would! Absolutely; why wouldn't I? Tell me why I wouldn't take the taxpayer money, to prevent somebody to go into a school and destroy it. Because his heart's not into doing the right thing for Maine people.

PAUL MERRILL: But they would say that- if you said, "If you hire him, then I don't get the money", that's blackmail.

GOV. LEPAGE: No, it's not. Go, go read the definition. Please go read the definition of "blackmail". I don't gain anything out of it and neither does he. So there's nobody gaining anything. So I think you are misusing the word. And that's coming from a Frenchman.

MAL LEARY: The 'New York Times' yesterday portrayed you as "a party of one". How do you feel when you read that you're "a party of one"?

GOV. LEPAGE: Let me tell you something. This is how- my only comment about that is I was elected by 1.3 million people, with the most votes in the history of Maine governors, to come to Maine and to get rid of the status quo and the corruption. And I will continue do that, with every ounce of blood until my last day. Whichever, whichever comes first- the impeachment or my- the term of office.

PAUL MERRILL: You expect to veto the budget this afternoon?

GOV. LEPAGE: Absolutely.

PAUL MERRILL: Do you know about what time? What's time frame?

GOV. LEPAGE: It will before I leave at 5 o'clock. (giggles)

PAUL MERRILL: Any comments about the veto, the impending veto?

GOV. LEPAGE: Uh, it's gonna be different. Than you've ever seen. (giggles)

PAUL MERRILL: How so?

GOV. LEPAGE: That's all I'm gonna say. (giggles)

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

June 15, 2015

Hon. Mark W. Eves
Speaker of the Maine House of Representatives
2 State House Station
Augusta, Maine 04333

Dear Speaker Eves:

I am writing to respond to your June 11, 2015 letter asking for advice concerning whether voting on L.D. 1019 would constitute a conflict of interest according to the standards established in 1 M.R.S.A. § 1014(1). L.D. 1019 is the biennial budget bill proposed by Governor Paul R. LePage for fiscal years 2016 and 2017, which has been modified in majority and minority reports of the Joint Standing Committee on Appropriations and Financial Affairs. It continues $530,000 in annual funding for an educational program that is administered by Good Will-Hinckley (GWH). GWH is the assumed name of the Good Will Home Association, a non-profit corporation based in Hinckley, Maine.

One of GWH's largest programs is the Maine Academy of Natural Sciences, a charter school specializing in natural sciences. The school is organized as a separate non-profit corporation. The $530,000 in state funding allows a portion of the student population to reside on the GWH campus, in what is referred to as the "Campus Life Program." Among other programs, GWH also administers the Glenn Stratton Learning Center, which is a day school offering educational services to students with social-emotional and behavioral challenges, and a residential "College Step Up" program for young adults to attend Kennebec County Community College.

GWH has offered you, and you have accepted, the position of President and Executive Director, which you intend to begin on July 1, 2015. You are asking whether you may vote on L.D. 1019 even though it continues the funding of the Campus Life Program at GWH. In your letter, you explain that you have not advocated for this funding and have exerted no influence over the

consideration of the funding by the Joint Standing Committee on Appropriations and Financial Affairs (AFA). The budgets in both the majority and minority reports of the AFA committee contain the same funding for this program ($530,000 for fiscal years 2016 and 2017).

Applying the statutory standards, it is the opinion of the Ethics Commission staff that it would not constitute a conflict of interest for you to vote on L.D. 1019 in the 126th Legislature even though the budget bill provides $530,000 in continued funding to GWH. Please bear in mind that this advisory letter is provided on behalf of the staff of the Maine Commission on Governmental Ethics and Election Practices. It is not binding on the members of the Commission, if a complaint alleging a violation were filed.

**Role of Commission in Providing Advice**

The Commission is authorized by law to issue advice to Legislators on ethical issues, such as whether it would be a conflict of interest to vote on or influence legislation. (1 M.R.S.A. § 1013(1)(A)) The Commission bases its advice on the definition of a "conflict of interest" set forth in 1 M.R.S.A. § 1014(1). It is a violation of legislative ethics for a Legislator to attempt to influence a bill or other legislative matter if the member has a conflict of interest in connection with that matter. (1 M.R.S.A. § 1014(1))

Advice from the Commission and its staff is based, in large part, on factual information provided by the Legislator requesting the guidance. If the Legislator provides incomplete or inaccurate information, the Commission's assessment of the question and its advice may change if the Commission receives additional, contrary information.

**Factual Information Provided**

*History of state funding.* In 2009, the Legislature enacted L.D. 1443 which established a residential and nonresidential program for educating at-risk students, in 20-A M.R.S.A. §§ 6951-6954. P.L. 2009, c. 296. Section 2 of the Public Law directed the Maine Department of

Education to arrange with GWH to implement the program. It charged the Commissioner of Education and the Chief Executive Officer of GWH to develop a plan for funding the program with the goal of providing services by September 1, 2010.

In the past four fiscal years, the State has provided the following funding for the program:

| | |
|---|---|
| FY 2012 | $330,000 |
| FY 2013 | $530,000 |
| FY 2014 | $530,000 |
| FY 2015 | $530,000 |

L.D. 1019 proposes to continue the funding at $530,000 for both fiscal years 2016 and 2017.

*Campus Life Program at Maine Academy of Natural Sciences.* For purposes of this opinion, I interviewed James Jurdak, the Vice President of Finance and Administrative Services for GWH. The purpose of the funding is to facilitate the attendance of students at the Maine Academy of Natural Sciences by residing at the GWH campus. He said that in the current school year, the total population of the school is 77 students, and that 14-24 students have lived on campus. The total population of the school is intended to increase to 122 for the next school year beginning in the fall of 2015.

The Maine Academy of Natural Sciences and GWH both operate on a fiscal year that begins July 1. The projected budgets for the coming year (beginning July 1, 2015) are:

| | |
|---|---|
| Maine Academy of Natural Sciences | $1.37 million |
| Good Will-Hinckley | $3.43 million |
| Total | $4.80 million |

The annual funding of $530,000 is paid quarterly by the State of Maine directly to GWH. GWH spends the revenue to pay for salary, wages, and benefits, and other operational expenses such as

food, transportation and utilities. The money does not flow through the Maine Academy of Natural Sciences, although it does support the Campus Life Program of the school. In the coming fiscal year, the $530,000 in revenue represents roughly 11% of the total combined revenue of the Maine Academy of Natural Sciences and GWH.

If the State's funding of the Campus Life Program were eliminated, it is expected that most of the students who currently reside on campus would continue to attend the school by commuting. Mr. Jurdak said that, based on his discussions with the school's Director of Admissions, he would foresee no significant impact on the number of students attending the school. There might be a small reduction, on the order of a handful of students. If the State's funding were eliminated, Mr. Jurdak would not expect a change in the salary of any manager or the laying off of any faculty or administrative staff. When asked, he noted that your compensation is established by a written contract for a term of two years, beginning July 1, 2015, and that the amount of your salary is not dependent on the amount of any revenue stream.

**Applicable Conflict of Interest Standards**

Maine law sets the standards for when a member of the Legislature must recuse himself or herself due to a conflict of interest. The Legislative Ethics Law defines the term "conflict of interest" in 1 M.R.S.A. § 1014(1) to cover a number of situations which are set forth in paragraphs (1)(A) through (1)(F). If a member has a conflict of interest in connection with a bill or other legislative matter, it is a violation of legislative ethics for the Legislator to attempt to influence that bill or matter. (1 M.R.S.A. § 1014(1))

*Recusal on bills affecting a Legislator's business, client, or employer*

Paragraph 1(A) relates to situations in which the Legislator has a "close economic association" with an entity that is affected by proposed legislation. This could cover the Legislator's employer as well as other organizations with which the Legislator is affiliated (*e.g.*, if a

Legislator serves as a member of a non-profit organization's board of directors, or passively owns more than 10% of a family business).

> A. When a Legislator or a member of the Legislator's immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise that would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation;

The Commission has taken the view that voting on legislation results in a conflict of interest under § 1014(1)(A) only if the Legislator or immediate family member *personally benefits* from the legislation. In a March 12, 2010 advisory opinion to Rep. Jon Hinck, the Commission endorsed the reasoning of a June 10, 1983 advisory opinion of Maine Attorney General James E. Tierney. In the latter opinion, a Legislator had inquired whether she was prevented from voting on a bill because her husband had rendered legal advice to a client concerning the bill. After reviewing the legislative history of 1 M.R.S.A. § 1014(1)(A), the Attorney General observed that

> [I]t is clear that the Legislature never intended that a member of either House must be disqualified from voting on a proposal merely because she or a member of her immediate family is compensated for work performed for an employer or a client who might be affected by the legislation. The "direct substantial personal financial benefit" referred to in 1 M.R.S.A. §1014(1)(A) must involve a financial reward separate and distinct from the remuneration one receives as an employee or agent for services rendered.

The Attorney General concluded that

> In short, §1014(1)(A) does not prevent a Legislator from voting on a measure unless she or a member of her immediate family will receive a financial benefit

> either directly or through a third party, by virtue of the proposed legislation. To suggest otherwise, leads to the conclusion, clearly not contemplated by the Legislature, that any Legislator employed in the private sector must abstain from voting on legislative matters which affect the profession or business in which the Legislator is employed.

For purposes of this advice letter, the Commission staff is relying on the reasoning of Attorney General Tierney in his June 10, 1983 advisory opinion and the Ethics Commission's endorsement of that reasoning in its March 12, 2010 advisory opinion to Rep. Jon Hinck. Both of those opinions interpret § 1014(1)(A) to mean that a Legislator does not have a conflict of interest merely because his or her employer is financially benefited by legislation. Under this reasoning, a conflict results only if the Legislator *personally* receives a benefit from the legislation.

*Recusal on bills relating to a Legislator's employment, profession or trade*

Two of the paragraphs apply to legislation that relates to a Legislator's employment:

> E. When a Legislator or a member of the Legislator's immediate family accepts or engages in employment that could impair the Legislator's judgment, or when the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded the Legislator or a member of the Legislator's immediate family with intent to influence the performance of the Legislator's official duties, or when the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community; and
>
> F. When a Legislator or a member of the Legislator's immediate family has an interest in legislation relating to a profession, trade, business or employment in

> which the Legislator or a member of the Legislator's immediate family is engaged, and the benefit derived by the Legislator or a member of the Legislator's immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.

These two paragraphs contain a number of tests for determining whether a Legislator has a conflict of interest. In summary, a Legislator has a conflict of interest in influencing legislation related to his employment, profession or trade, if (1) the legislation would result in a financial benefit to the Legislator, and (2) that benefit is unique or distinct from other individuals in the same trade or profession or employment as the Legislator. Additionally, a conflict may exist under § 1014(1)(E) when a "Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded the Legislator ... with intent to influence the performance of the Legislator's official duties."

**Advice from the Commission Staff**

Based on the standards set forth in 1 M.R.S.A. § 1014(1) and the facts you have provided, the Commission staff advises that it would not be a conflict of interest for you to vote on the majority or minority version of L.D. 1019 even though both include the proposed funding of $530,000 for the Campus Life Program operated by GWH. In your June 11, 2015 letter, you stated that "My family and I will receive no direct personal benefit from the funding." The information that I received from the Vice President for finance at GWH confirms this. He advised that your compensation is set by a two-year written contract and has no relationship to any revenue received by GWH. If the Maine Legislature were to cut back or eliminate the funding, the Maine Academy of Life Sciences would continue to operate without the Campus Life Program in the short term. He said that the number of students would not change significantly and he would expect no change in the compensation of any manager at GWH. The other programs of GWH, such as the Glenn Stratton Learning Center and the College Step-Up program, would continue as well.

Given the lack of evidence that you would receive any personal benefit from the enactment of L.D. 1019, it is not a conflict of interest for you to vote on the budget bill under 1 M.R.S.A. § 1014(1)(A) (as interpreted by the Commission and the Maine Attorney General), the final clause of § 1014(E), or § 1014(F). In addition, given the timing of the Governor's inclusion of the proposed funding in L.D. 1019 and your subsequent application and acceptance of the position, there does not seem to be any basis to infer that GWH offered you the position with the intent to influence you with respect to the budget bill or any other legislative action.

We note that several factual circumstances would diminish any public perception that you have a conflict of interest in voting on L.D. 1019. The legislative decision to fund a program for at-risk youth and to direct its administration by GWH was made in 2009. At that time, you were in your first year in the Maine Legislature and, presumably, no future employment by GWH could be anticipated. The proposed funding for fiscal years 2016 and 2017 is the same as in the three prior fiscal years. There is no evidence presented that you have used your position to advocate for the Governor's (or the AFA Committee's) inclusion of the continued funding in the budget. Finally, Legislators have an important duty to their constituents to vote on comprehensive budget legislation that will determine the funding of Maine state government, including all state programs and services, for the next two years. The funding for GWH is a very small component of the overall state budget.

With regard to other legislation that could arise in the remainder of your current term of service, we recommend considering whether you may need to recuse yourself from voting on particular matters that would affect GWH, in order to avoid the appearance of any conflict of interest.

Thank you for your consideration of this advisory letter from the staff of the Maine Ethics Commission.

Sincerely,

Jonathan Wayne
Executive Director

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

*Hand Delivery*

October 5, 2015

Beth Ashcroft, Director
Office of Program Evaluation and
Government Accountability
82 State House Station
Augusta, Maine 04333-0082

Dear Beth:

The Governor's Office received the Government Oversight Committee's (GOC's) invitation for Aaron Chadbourne and me to appear before the GOC on October 15, 2015. As you know, the situation about which the GOC members wish to question us is the subject matter of a federal lawsuit against the Governor. Consequently, we must respectfully decline the GOC's invitation.

I have reviewed the OPEGA report several times, however, and it seems clear from the information you've gathered, that Good-Will Hinckley (GWH) ultimately decided to terminate the Speaker's employment because of the concerns expressed by the Harold Alfond Foundation (HAF) Board Chair, not because of the Governor's objections. According to your report, the Governor learned on June 5, 2015 that GWH was "leaning towards selecting" the Speaker as its president.[1] The report also indicates the Governor called the GWH Interim President and expressed his displeasure with the choice.[2] According to the report, while the GWH President indicated there was no threat regarding state funding for GWH, the GWH lobbyist thought there was.[3] In either case, your report indicates GWH hired the Speaker anyway.[4]

The report further says that the Governor sent his June 8th letter to GWH expressing his objections to the Speaker as President of GWH.[5] The next day, after GWH had received the Governor's letter, it announced publically that it had hired the Speaker.[6] The report also indicates that GWH's decision to hire the Speaker despite the Governor's objections is consistent with the GWH Director of Finance's opinion that, should there be a loss of the discretionary state funding, it would have no significant impact on GWH.[7]

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[1] page 12, ¶1
[2] page 12, last bullet
[3] page 12, last bullet
[4] page 13, 4th bullet
[5] page 15, ¶2
[6] page 15, 2nd and 3rd bullets
[7] page 17, 2nd bullet

Finally, the report shows that it was not until June 18 when the HAF Board Chair expressed concern in a letter to GWH over the loss of the discretionary funding that GWH began to seriously reconsider its choice.[8] The report further makes clear that no one in the Governor's office, including the Governor himself, had anything to do with HAF's decision-making in this regard.[9]

I highlight these facts to show that Mr. Chadbourne's and my absence from the October 15th GOC meeting will likely have a minimal impact on the GOC's ability to wrap up its inquiry. In the spirit of cooperation, however, if the GOC has specific questions it will present to us in writing, as is a common practice of this Administration, we are willing with the assistance of counsel to attempt to answer them.

Thank you for your time and attention.

Sincerely,

Cynthia L. Montgomery
Chief Legal Counsel

cc: Aaron Chadbourne
Patrick Strawbridge, Esq.

[8] pages 17-19
[9] page 13, last bullet; page 15, ¶4, and pages 17-19

STATE OF MAINE
DEPARTMENT OF EDUCATION
23 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0023

PAUL R. LEPAGE
GOVERNOR

THOMAS A. DESJARDIN
ACTING COMMISSIONER

October 13, 2015

Sen. Roger Katz, Chair
Government Oversight Committee
Maine State Legislature
Via electronic mail

Dear Senator Katz:

In its report to the committee, OPEGA provided the summary below of my answers to their questions regarding my decision on June 9 to hold a payment to GWH. I made this decision in response to a statement from DOE's Director of School Finance and Operations that she had already requested a check be sent to GWH and her question to me "Should I have it pulled?"

> "The Acting DOE Commissioner explained the rationale for his decision as being rooted in not knowing what would occur between GWH and the Governor, or even what would occur with the FY2016 and 2017 budget as a whole. He believed it would be easier to issue payment a week later (if funded) rather than making the payment in error and trying to get the funds back from GWH. The Acting Commissioner also cited fundamental problems with issuing payments before the budget is finalized and said this practice has now ceased." (OPEGA, p. 16)

For clarity, I wish to provide more detail to the committee as I did to the OPEGA investigators. Specifically, I think some general context surrounding the potential issuance of a check to GWH on June 9 may be helpful.

1. **The state budget had not yet been enacted.**

   DOE had *no legal authority* to issue the check in question at that time. The $132,500 quarterly payment to GWH was based on the FY 16-17 budget which the legislature had not yet enacted. Even if a budget had been in place at that time, the start of the new fiscal year was still more than three weeks away. Issuing checks from the state treasury for a budget that had not been enacted and a fiscal year that had not begun would have been highly irresponsible. Between June 9 and July 1 any number of things may have occurred that would have changed the scenario surrounding these funds.

For example, the legislature could have reduced or eliminated these funds from the budget prior to enactment. Had they done so, and the check had already been issued to GWH, DOE would have no legal recourse to retrieve this money, thus incurring an unrecoverable loss to the taxpayers.

2. **There was no written agreement in place governing use of the funds.**

When the funding for GWH's residential program was first appropriated to the school, DOE drafted a written agreement to govern the use of these funds. This agreement covered only the first biennium of funding, fiscal years 2012-2013. On June 9, 2015, no such agreement existed between GWH and DOE. Had DOE sent a check to GWH in mid-June, it would have done so without this important safeguard.

3. **Good Will-Hinckley stated that it had no immediate need for the funds.**

None of the information that was available to DOE on June 9 indicated that GWH was in need of the funding before the passage of the budget and the start of the new fiscal year. In fact, just a few days after the meeting at which the funding was held up, Jonathan Wayne, executive Director of the Maine Commission on Governmental Ethics and Election Practices, interviewed James Jurdak, Treasurer of GWH, about the impact that the loss of this funding might have on GWH. Wayne reported in a letter to Speaker Eves on June 15 that, according to Jurdak, the loss of these funds would have virtually no impact on GWH.

"The GWH Director of Finance (who had consulted with the School's Director of Admissions) believed that the loss of the funding would have no significant impact on the number of students attending the School and would not expect a change in the salary of any manager or the laying off of any faculty or administrative staff." (OPEGA p. 17)

The next sentence of this letter states that "The other programs of GWH, such as the Glenn Stratton Learning Center and the College Step-Up program, would continue as well." (Wayne to Eves, 6/15/15)

4. **DOE still needed to make $1.5 million in cuts from the source of the GWH funds.**

The funds from which this GWH payment is drawn do not appear specifically in the enacted state budget. Instead, they fall under a line item in the budget known as "Miscellaneous Costs" that totals $67 million. During its deliberations, the legislature reduced the amount allocated in this line item by $1.5 million. At no time did it communicate to DOE where this reduction should come from. As such, the GWH funding was just as likely as many others to be reduced or eliminated to address this reduction.

Until the final budget was enacted into law, DOE leadership could not meet to decide what programs these cuts would come from. As such, sending a payment to GWH in June was

effectively making the commitment as to how much funding it would receive well before the appropriate time to make that decision.

As it turns out, DOE had no legal authority to send the check on June 9 due to the absence of an enacted budget and there were still more than three weeks left before the first day of the new fiscal year. I anticipated on June 9 that during the following three weeks any number of factors related to this funding could change. I was fully aware, for example, that DOE had to find more than $1.5 million in unspecified cuts to the line item from which the GWH funds would be paid. Knowing that DOE still had these three weeks before it must issue this payment, I told staff to hold (not cut, eliminate, or withdraw) the payment until we had all of the information that might become available during these three weeks.

After these three weeks had passed, the budget had been enacted and the new fiscal year had begun, I drafted and sent a new written agreement to the interim president at GWH to govern use of these funds. Just after the new fiscal year began, DOE leadership met and made the $1.5 million in cuts to various programs, deciding to leave the total GWH funding intact. During this interim, I also learned that the GWH Treasurer's statements to the Ethics Commission were grossly inaccurate and that GWH was in jeopardy of closing if they did not receive these funds. Once DOE received the signed agreement back from GWH, I asked staff to issue the quarterly payment which it did.

Had the payment been sent on June 9, it would have been too late to implement this written agreement. For this and other reasons, my decision to postpone the payment to GWH while we awaited further information was a sound one.

I have since directed DOE staff that the department will no longer issue checks prior to the enactment of the appropriate budget and the start of the new fiscal year.

I hope this helps provide some clarity to the committee.

Sincerely,

Tom Desjardin
Acting Commissioner

RECEIVED OCT 15 2015

PO Box 608
West Kennebunk, ME 04094
October 13, 2015

Government Oversight Committee
82 State House Station
Room 107, First Floor, Cross Office Building
Augusta, ME 04333-0082

I would like this to be entered into the record for Thursday's meeting regarding Governor LePage's actions against House Speaker Mark Eves and Mr. Eves' pursuit of a position at the Goodwill-Hinckley School.

Indeed, I feel that the Governor illegally threatened and intimidated the school for the sole purpose of punishing Mr. Eves.

I do hope Governor LePage is found guilty of this shocking abuse of power and subsequently removed from office.

I am so embarrassed to live in this state because of Mr. LePage's distain for and manipulation of our state government.

Sincerely,

Susan A Bloomfield

*To the Maine State Legislature and to the Committee hearing Public Testimony today, 101515, at 82 State House Station, Room 107, Cross Office Building, Augusta, Maine:*

Governor Paul LePage has, I believe, broken the law in regards to his actions in the Mark Eves/ Good Will-Hinckley episode. He has bullied his way to have his agenda supersede the mechanisms for the school to hire the person they felt was best qualified for the position.
He has committed blackmail to get his way. This is wrong, I believe, both morally and legally. This behavior alone warrants the Legislature's mechanisms to be initiated and see if criminal or civil charges may be considered or if impeachment proceedings are warranted.

He has also bullied, blackmailed, lied and broken promises he made in regards to the LMF debacle. This is voter approved bond money to be used for a specific purpose. He refuses to sign off, this, a second time unless the Legislature gives in to his wishes. Again; he is a bully, and more importantly, he uses blackmail as his ultimate tool in hopes of achieving his agenda. Further, he has hogtied the LMF to keep it from functioning. This is also wrong and warrants your serious attention.

A third revelation about Gov. LePage is the recent disclosure of his request to investigate the Maine Human Rights Commission after they refused his requests in regard to the Moody's Diner case.
Firstly, it's not his business - just as Good Will-Hinckley and the LMF case are not his business. Secondly, the public notification date was grossly ignored, which is illegal. This is not an "Oh, sorry, I forgot" situation. Again, it is incumbent on you to respond with an inquiry.

A fourth concern is his present policy to have his Chief of Staff deal with the Legislature, because he "can't do anything in Augusta" This is no way to govern. He is thwarting anything and everything he can to get his way. He is costing the taxpayers of Maine a huge amount of money in his blind adventure. He will continue to hold this state hostage until his term expires if nothing is done, and frankly, we cannot afford that. We did not elect him for that function.
We elected him to govern, not command or rule as would a dictator.

This pattern has been evident in other situations, though with so many examples of his poor leadership and poor techniques in governance, as well as his general lack of rapport with the citizenry of the state, it is best to stick to just these four high profile situations at hand.

I would ask the Maine State Legislature: Please reconvene and deal with this sad and costly saga; not in January, but now.
Maine needs a governor that is able function for the people of Maine.

William J. Brown

*- William J. Brown,*
*16 Frohock Dr., Lincolnville, Maine 04849*

RECEIVED SEP 2 2 2015

Andrew A. Cadot
45 Eastern Promenade 9.E
Portland, ME 04101

September19, 2015

Government Oversight Committee
82 State House Station
Room 107, First Floor, Cross Office Building
Augusta, ME 04333-0082

Re: Government Oversight Committee's inquiry into Governor LePage's interference with Good Will-Hinckley's choice for President

Dear Senator Katz and Rep. Kruger:

Thank you for the opportunity to submit comments on Governor LePage's interference with Good Will-Hinckley's choice for President in connection with a public hearing on October 15, 2015.

As set forth in the Summary of the Information Brief captioned, *Financial Risks Associated with Potential Loss Of State Funding Led GWH Board to Change Course on Its Decision for New President*:

"Good Will-Hinckley (GWH) is a non-profit organization located in Fairfield, Maine that offers educational programs for at-risk youths, one of them being a charter school. In 2009, GWH was in dire financial straits and had to discontinue many of its programs including its high school. In 2011, the Governor and the Harold Alfond Foundation (HAF) were pivotal in funding a plan to revitalize GWH, in part by re- opening a high school that earned charter school status as the Maine Academy of Natural Sciences (MeANS) in July 2012. The Governor's support of this effort effectively took the form of a State grant from the Department of Education (DOE) through a statutorily established program called the Center of Excellence for At-risk Youth (COE). The Governor proposed funding for COE in his Fiscal Year 2012 and 2013 biennial budget and the Legislature ultimately provided $330,000 and $530,000 for those years respectively. An Agreement between DOE and GWH required that GWH use those funds for its residential program. Although the funding was intended to be temporary to support MeANS until it got established as a charter school, GWH has continued to need the State's support. GWH has lobbied to retain the funding, the Governor has continued to include $530,000 per year for COE in each biennial budget, and the Legislature has approved continued support for this program.

In early June 2015, the Governor learned that GWH had hired the current Speaker of the House of Representatives as its next President. Both the Governor and the current Acting DOE Commissioner objected strongly.... The Governor, the Acting Commissioner and one of the Governor's Senior Policy Advisors immediately began

communicating to various GWH representatives and stakeholders that the Governor would have trouble supporting, or could not support, GWH with the Speaker there as President. Those on the receiving end of these communications clearly understood the Governor's "support" to mean the $530,000 in COE funding for the upcoming biennium. GWH began assessing how it might manage without the funding, as well as reaching out to other funders to try to replace the State dollars.

Events described in this Information Brief strongly suggest that the threat of GWH losing State COE funding, and the subsequent holding of a payment already in process for GWH's first quarter of FY2016, are directly linked to the Governor learning that GWH had decided to hire the Speaker as President."

To me, these facts constitute sufficient grounds to impeach Governor LePage for improper conduct and for misdemeanor in office. Finally the Governor's pettiness in opposing those with whom he disagrees has slid over the edge and become truly offensive and a breach of public trust. Please use your leadership of the GOC to begin the impeachment process.

Thank you for all you do for Maine.

Sincerely,

Andrew A. Cadot
45 Eastern Promenade 9E
Portland, ME 04101

HOUSE OF REPRESENTATIVES
2 STATE HOUSE STATION
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## Government Oversight Committee Public Hearing
## October 15, 2015
## Testimony from Rep. Ben Chipman

The people of Maine deserve to have confidence in the integrity of our political system. The actions of Governor LePage raise serious questions about the misuse of public office and public funds.

I'm one of four lawmakers – Republican, Democratic and independent – who requested an investigation into the governor's threats to withhold state funds from Good Will-Hinckley, an organization that helps at-risk youths.

The independent Office of Program Evaluation and Government Accountability – OPEGA – confirmed the allegations: the governor threatened Good Will-Hinckley because it hired Speaker Mark Eves as its president, a state payment which was in process was withheld and restored only after the organization fired Speaker Eves to avert financial crisis.

If the governor is able to abuse his power to take revenge on a political rival, can any elected official – or any independent organization or any everyday Mainer – be safe?

Every elected official in Maine must be free to vote his or her conscience. Every independent organization should be free to make decisions in its own best interests. All Maine citizens should be free from the fear that their livelihoods depend on the whims of the governor – or any elected official.

While the report was very thorough, some matters need further attention. For one, there's a key meeting of top LePage staffers and Department of Education officials. It led to the Department of Education's extraordinary actions of pulling back more than half a million dollars that was already being processed for Good Will-Hinckley. There were differing accounts of what happened at this highly unusual meeting. This is why the Government Oversight Committee asked some individuals to appear at this public hearing.



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Two top LePage staff members are refusing to appear and answer questions. I encourage you to issue subpoenas to these staff members so we can get to the bottom of what happened. These staff members are not parties in the lawsuit filed by the Speaker of the House so there is no reason why they should not appear before this committee and answer questions. I hope you will issues subpoenas right away.

OPEGA's task is a fact-finding one. As you know OPEGA does not determine whether laws were broken or not so it should not be a surprise to anyone that the report that was issued on September 8th does not say either way whether laws were broken. OPEGA gathers information and presents facts.

The OPEGA report is the beginning of a process that should not be considered finished. What we need to do now is determine, based on the information in the report, what specific laws, if any, were broken by the governor. My second request today is that you refer the 25 page OPEGA report and all other information associated with this investigation to a prosecutor or the Attorney General's office to make this important determination.

We need to get to the bottom of what happened and, if any laws were broken, hold the Governor and/or any staff members accountable. The people of Maine deserve and should expect nothing less.

RECEIVED OCT 13 2015

Government Oversight Committee at:
82 State House Station
Room 107, First Floor, Cross Office Living Building Challenge
Augusta, ME 04333-0082

Friday, October 9, 2015

Maine State Government Oversight Committee:

The purpose of this letter is to call to fore, during your investigation of Governor Paul LePage's recent, targeted actions against Representative Eves and other respected lawmakers, several other actions of our current governor throughout his reign that I find troubling, suspect are illegal, and compromise the integrity of the state of Maine. It is written in support of the public outcry to investigate impeachment of the governor, and put an end to this embarrassing and destructive assault on the reputation, procedural conduct and progress of Maine.

In addition to Governor LePage's blatant disregard of Maine law and his disdain for the thoughtful, humanistic past practices and environmentally sound decision-making from which the elected officials of this state have built their reputation, I, as a public school teacher for the past fourteen years, strongly object to the manner in which Mr. LePage governs himself and his administration on a day to day basis. Paul LePage's official conduct has often exhibited insulting, crude, bullying behavior, which exposes a horribly disfigured role-model for the young people of Maine, and taints our heretofore well deserved and hard earned reputation as a people who may disagree with each other, but do so in a way that inspires growth, embraces diversity, and promotes further understanding. Paul LePage's many embarrassing, irresponsible, disrespectful, demeaning, ridiculous and false statements (slander) about our citizens and elected officials make a mockery of Maine's governmental traditions.

While typical political rhetoric inevitably involves partisanship and party preference, LePage's behavior takes this language and attitude to an unprecedented level. His statements and actions make it clear that he favors the polarization of Maine people and views them as either "us" - anyone who agrees with him - or "them" - anyone who disagrees with him. Maine's Governor consistently applies this simplistic attitude to an absurd, irresponsible degree-referring to Southern Maine as the home of crooks and welfare cheats. It would seem that Mr. LePage isn't concerned with being the governor of all the people but of only the 38% who elected him. Most notably is his arrogant dismissal of Maine's democratic process in citizen initiatives by withholding funding of citizen-approved bond issues. In my view, this action alone warrants the dismissal of Paul LePage as our governor.

Another particular concern to me is one of our governor's first initiatives. Soon after taking office he began pushing for incentives that encourage natural gas pipeline expansion resulting in an infrastructure that used techniques that have since proven many of the pipelines dangerous, polluting and undependable. Undoubtedly catering to (and likely funded by) the ubiquitous, reckless and polluting natural gas industry, LePage claimed that natural gas would reduce the energy costs to businesses and homeowners dramatically. Meanwhile, he consistently acted to defund initiatives that encourage the development of renewable energy sources for both business and homeowners, most recently proposing a bill that, according an article by Tux Turkel

published May, 2015 in The Portland Press Herald, "would end Maine's four-to-eight million-dollar initiative that saves the largest manufacturing and industrial energy users and all ratepayers money on their bills through energy efficiency contracts."

Additionally, "[a] longstanding law that requires electricity suppliers to make up a percentage of their output from renewable generation is being targeted for destruction by a proposed bill called An Act to Focus Energy Laws on Energy Cost, a bill designed to repeal Maine's renewable portfolio standard." The fact that this bill would (a) do away with compensation to homeowners for their power generation and shift the focus of long-term contracts at the Public Utilities Commission away from wind and other renewable sources, (b) cut money available for energy conservation programs, and (c) have utilities provide a credit for agreements between natural gas shippers and large businesses seeking pipeline capacity, further illustrates our governor's commitment to an industry that favors the exploitation of a non-renewable, explosive, dangerous and air/water/ground polluting energy source *at the expense of* the development of renewable, safe, cost-effective and sustainable sources.

There are too many other violations by Governor LePage to cover in detail in one letter - unilateral assault on The Affordable Care Act, unfulfilled jobs promises, disrespect and disdain for Maine's educators and institutions of learning, attacks on Maine's unions, to name a few. Rather than exhaust all these issues here, I simply ask that in light of the practices of illegal actions, displays of disrespect, and abuses of power aimed to attack the environment and principles that have been stalwart mainstays of the people of this state (regardless of their political affiliation), I implore you to fully investigate these behaviors and seriously consider the dismissal of Paul LePage from the office of governor. To allow an elected official to conduct illegal actions, carry out a hidden anti-environment agenda, and erode the appropriate, respectful language, manner and attitude that we have come to expect of each other, is to be complicit in the degradation of all that Maine stands for. If to rid the office of this poison and deliver punitive measures to right the wrongs against the people of our state is what is warranted, then you must have the wisdom and find the courage to carry out this duty as our representatives. If public service is to remain effective, it must be conducted in a way that is acceptable *to* the public, of which I am a member. Please do not allow Paul LePage to wreck havoc on Maine in the way and for the same reasons that Scott Walker has done so in Wisconsin.

Respectfully,

Mary Chouinard

Mary Chouinard
Mercer, ME

October 15, 2015

TO: Chairs and Members of the Government Oversight Committee

RE: **OPEGA Hearing on LePage v. Goodwill Hinckley**

Hello Senator Katz, Representative Kruger and Members of this committee,

My name is Jeanie Coltart. I am testifying in support of removal of Governor Paul LePage from office through his forced resignation, or if he doesn't agree to resign, then by impeachment. My reasons for advocating for Governor LePage's removal from office are as follows.

Governor Lepage has consistently abused his powers ever since his first term as governor. He consistenly uses bullying and blackmail tactics to intimidate people who don't agree with him into submission and silence. He has interfered in situations in which he has no right to do so. **Some of many---known---examples of LePage's bullying and blackmail tactics** are:

Threatening and interfering with the Maine Human Rights Commission (over the Moody's Diner case);

Threatening to withhold state funding for two University of Maine college campuses unless the presidents of those two campuses resigned, which they did in order to protect their campuses;

Interfering with Maine's hearing process for unemployment insurance by pressuring hearing officers to rule in favor of employers and against unemployed workers (as per a letter released by the U. S. Department of Labor, which investigated this issue);

Blatantly insulting the NAACP, an organization that had kindly invited him to attend their annual function, instead of just graciously declining to attend;

Blatantly insulting several times by words and actions the U. S. President, including refusing to represent Maine at White House functions for state governors;

Meeting not once, but several times, in his office with members of a known Maine terrorist organization;

Withholding approved bonds and grants, such as the approved funds for Land for Maine's Future, in order to blackmail officials into submission;

Blatantly ignoring legal advice from Maine's Attorney General on several legal issues, resulting in taxpayer dollars being wasted in court proceedings---all in which the courts ruled against LePage, as the Attorney General warned would happen;

Intentionally out of spite against the Maine Legislature, he withheld legislative bills that had been sent to him for approval or rejection, missing the deadline for veto over the legislative session break, which resulted in his forcing the Maine Legislature to overtime, which cost Maine

taxpayers over $100,000 in overtime pay, while at the same time he continues trying to cut funding for welfare programs and victimizing the most vulnerable people in Maine---unemployed workers, food stamp recipients, and so on;

And most recently---threatening to withhold state funds from Goodwill-Hinkley unless their board fired Mark Eves, whom the Goodwill – Hinkley Board has hired to be president of their school.

It is very unfortunate that Governor LePage never learned how to work with people effectively, but instead resorts to bullying and blackmailing tactics in order to get his way. **Bullying and blackmailing people is NOT OKAY!** Effective leadership requires the ability to communicate well with people, to know when to push and when to stop pushing, to know how to use the art of compromise in working with people who don't happen to agree with you. Governor LePage has proven to lack these all-important leadership abilities.

The members of the Maine Legislature, both Democrats AND Republicans AND Independents, need to band together to do the right thing for Maine, however unpleasant it may be, and force Paul LePage out of the governorship. He does not serve in the best interests of the state of Maine and its citizens.

**If the members of the Maine Legislature do not force Paul LePage out of the governorship, then they are part of the problem by being "enablers," by allowing LePage to continue his ravings and rants, and his blackmailing tactics. This would NOT be "okay!" It would instead, reflect very badly on members of the Legislature, who would be letting Maine citizens down by not forcing LePage out and replacing him with an effective person to be Governor who knows how to work well with people, which would be the current the Senate President.**

Governor Paul LePage needs to either resign as governor or be impeached. Enough is enough!

Thank you for listening to my testimony.

Jean S. Coltart
127 Academy Road
Monmouth, ME 04259
Sunflower18@roadrunner.com
(207) 933-3293

# Testimony of Rep. Janice Cooper
# Before the Government Oversight Committee
# October 15, 2015

Good morning Chairmen Katz, Chairman Kruger and other distinguished members of the Government Oversight Committee. I am Janice Cooper, representative for House District #47, comprising Yarmouth, Chebeague Island and Long Island.

I appreciate this opportunity to present my statement to this committee as it oversees the OPEGA investigation of the withdrawal of the position as president of Good-Will Hinckley to Speaker Mark Eves by that school, allegedly because of threats of state defunding made by Governor Paul LePage.

On July 24, 2015, I wrote the Director of OPEGA, Beth Ashcroft, requesting that the Committee broaden its investigation to include other episodes that also may suggest similar improper uses of governmental power by the Chief Executive.

My requests urge the Committee to also instruct OPEGA to investigate the alleged threat by Governor Paul LePage to withhold public monies already committed to the World Acadian Congress unless that entity terminated its president, Jason Parent. According to newspaper accounts, the governor was displeased with Mr. Parent because of his association with the governor's campaign opponent, Mike Michaud. The coup de grace, according to the *Portland Press Herald*, was the fact Mr. Parent presented Mr. Michaud with some commemorative token before he had given one to the governor. Mr. Parent has resigned and I believe the state funding was subsequently provided. The newspaper accounts indicate that its sources are second hand, and that the parties directly privy to the alleged threat either denied the connection or were unwilling to confirm that Mr. Parent's resignation was a result of the governor's purported threat. There can be, of course, a world of difference between what a party will tell a newspaper and what evidence it must tell a legislative committee with the authority to compel testimony under oath through a subpoena. What is clear, in any event, is that if true, the reported allegations are disturbingly similar to the one at issue in the Goodwill-Hinckley matter.

When this Committee completes its work, its findings can be used in many different ways, at its sole discretion. One possibility, although certainly not foreordained, is that it will used by other members of the legislature or the Committee as the basis for the Maine House of Representatives to determine whether the governor has committed an impeachable offense. While this step is not at all certain to be taken, and I take no position on this, the Committee, **in determining the scope of its present investigation,** should bear in mind the relevant history and precedent regarding impeachment, an unprecedented step in Maine history.

What constitutes an impeachable offense is both a factual and legal determination. As counsel to the U.S. House Judiciary Committee in the late 1980s, I was part of a

legal team that represented the House in impeachment proceedings concerning a federal judge accused of conspiracy to commit bribery and other misdeeds. The factual investigation, the legal analysis, the proceedings before the Judiciary Subcommittee and full Committee, and presentation to the House, and the subsequent trial in the U.S. Senate consumed over three years. Accordingly, I became well acquainted with the concept of "impeachable offenses" as well as the process and procedures most commonly used and accepted in impeachment cases both at the federal and state level. "Impeachable offense" is a concept that goes back to English common law's understanding of the relevant terms in the 18th century, the time of the writing of the Constitution. So, for example, the federal standard of "high crimes and misdemeanors" does not mean "misdemeanors" in the modern sense of the word. Rather, the founders intended to reach only offenses that go to the heart of the civil officer's misuse of **official powers**. Purely private malfeasance was not the point of impeachment. I think it is fair to say that the absence of this element of official duty was the key reason for the acquittal of President Bill Clinton in his impeachment trial.

Second, the gravity of the offense—whether it is serious enough to warrant impeachment—relates to its impact. If the offense sets a chilling precedent for other government officials or members of the public, this is a factor the House may and, I believe, should consider. Indeed, the courts, including the U.S. Supreme Court, have made it clear that the legislature, not the courts, has the final say over impeachments, including what constitutes an impeachable offense. Likewise, process and procedures are up to the House and Senate to construct for each stage of the proceeding, although the public expects fundamental notions of due process and fairness to be followed.

Third and most important in this context, if there is a **pattern** of arguably impeachable offenses, this should weigh heavily in the determination of whether the misdeeds warrant an impeachment proceeding. This, too, however, initially is up to the House and then, if appropriate, the Senate, but I believe that the Committee should investigate whether there has been such a pattern.

My experience in Congress also taught me that it is appropriate to consider other charges against the official under investigation that may demonstrate a different type of malfeasance. In the case I prosecuted, the House charged the judge not only with several counts relating to his alleged conspiracy to commit bribery (upon which the Senate convicted him) but also violations of the federal wiretap laws for allegedly alerting the subject of an undercover investigation that his telephone calls were being monitored. Although the Senate acquitted the judge on these counts, no Senator questioned the propriety of combining the charges in the same proceeding.

This precedent is relevant in Maine because other examples of alleged misuse of official power have been raised, even substantiated. In particular, there is the federal report of February 2014 that concluded that the governor tried to pressure and intimidate administrative law judges to issue decisions more sympathetic to

employers. Senator Troy Jackson called for impeachment proceedings based on this report, but I do not believe any further action was taken by the legislature at that time. This conduct, if true, however, arguably goes to the heart of the separation of powers between executive and judicial functions, and seems to be an unethical if not illegal interference in the independence of administrative judges. Whether successful or not, such intimidation is surely chilling. In light of the above other claims of improper conduct, I urge this Committee to review this episode as well, to determine whether this is also an example of improper exercise of the governor's powers.

In addition, as we all know, at the end of the last session, Gov. LePage vowed to veto all bills sent to him. Initially, he applied this only to bills sponsored by Democrats; later, as tensions with his own party increased, he promised and did veto all bills that landed on his desk, regardless of merit (except for those bills he failed to veto within the allotted time). His explanation for the across-the-board veto policy was that all legislation should receive a 2/3 vote of approval by the legislature. This is not what the Maine Constitution requires. Vetoes are intended to be selective, based on reasoned legal or factual grounds. The governor has effectively de facto rewritten the Constitution. If this Committee finds that the additional requirement was motivated by political retribution for matters unrelated to the merits of the bills at hand, this, too, should be part of your inquiry.

Finally, I would add that recent statements by the governor to refrain from appointing new members to executive branch agencies or to allow his appointees to participate in agency votes and deliberations, if implemented, have the potential to bring many official acts of government to a halt. This, too, could be viewed as an abdication of the governor's official responsibility to govern as the chief executive.

Thank you for your attention to these complex issues. I hope that this Committee will, at some point, determine that an investigation of some or all of these additional points is of value to the legislature and the people of Maine.

**EXHIBIT A**

**E-Mail of August 13, 2015**

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.)

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Filling In Some Blanks

Governor LePage's political enemies eagerly attribute the meanest of motives to him for rescinding Speaker Eves' appointment to head the Good Will-Hinckley school at the same time they attribute the purest of motives to the speaker's overnight conversion from a charter school critic to a wannabe charter school champion. The speaker's allies also want to gloss over Eves' paper-thin qualifications and the likelihood that a "sweetheart deal" was the deciding factor in his nimble move into a cushy, high-salaried job that is so unburdensome he could retain his job as speaker, virtually assuring Good Will-Hinckley that there would be no interruption in state funding.

In light of the speaker's previous opposition to the establishment of charter schools in Maine -- an achievement for which LePage is largely responsible -- the governor's preemptive action is eminently reasonable and justified. In an 8 June letter to the Board of Directors the governor laid out the reasons for opposing Eves' appointment -- that he was unfit for the job by virtue of his anti-charter school record plus his lack of credentials and experience.

LePage did not stand idly by and acquiesce in the appointment of a person to lead a school who might compromise its mission or, conceivably, close it because the speaker had recently stated that he "still had reservations" about charter schools. Would it make sense to appoint an atheist to be pastor of a church.

The combined enrollment of the two schools is a modest 112 students, staffed by sixteen or so - dedicated teachers and administrators, including a school principal. Hiring a moonlighting $120,000 a year novice to head the school would have imposed an additional cost of more that $1,000 for each of the 112 at-risk students -- an exorbitant charge of dubious worth.

Raise the principal's salary and hire a couple more teachers.

Walter J. Eno
Scarborough
207 730 5588

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Testimony before the Government Oversight Committee in reference to the Good-Will Hinckley OPEGA Brief. Presented by Representative Jeffrey Evangelos, House District 91, October 15, 2015.

Good morning Senator Katz, Representative Kruger, and other members of the Government Oversight Committee. I am Representative Jeffrey Evangelos from Friendship and I represent House District 91.

From the accounts I've read in the press I understand that Governor LePage's lawyer and Senior Policy Advisor, Cynthia Montgomery and Aaron Chadbourne, have declined to testify before your Committee today. This time they asserted the civil lawsuit pending between the Speaker of the House and the Governor as their grounds, despite the fact that neither of them are named as parties to the lawsuit. However, on June 30, 2015, counsel Montgomery had already informed the committee in a letter to Director Ashcroft of the Governor's intentions to assert separation of powers between the Executive and Legislative branch. Citing Article 3 of the Constitution without any specifics, counsel Montgomery contested the authority of OPEGA and the Government Oversight Committee to investigate Governor LePage, telling Legislators to look to the Constitution for the authority to investigate. Subsequent to these developments, Governor LePage has attacked the Committee's work and made comments unbecoming of a Chief Executive regarding members.

Concerning jurisdiction, it is important to note that the letter requesting an investigation submitted to the Government Oversight Committee on June 29, 2015, signed by Rep. Chipman, Warren, and Evangelos, included a clause citing the authority of Legislators to investigate the Governor under the Maine Constitution, Article 4, Part 1, Section 8, just as Ms. Montgomery has requested. Article 4, part 1 section 8 authorizes the Maine Legislature to investigate the Governor and that is what we asked the Government Oversight Committee to do on June 29th pertaining to the serious allegations discussed in the Good-Will Hinckley Brief.

As it is clear that Governor LePage and his administration are stonewalling the Committee and its investigation, I am requesting today that the Government Oversight Committee fully enhance its investigation with the full use of subpoena powers to depose witnesses under oath, including members of the Executive branch. You are vested with the full power and authority to do so. Historic legal precedents in the United States have always found that members of the Executive branch are required to testify, with Courts ruling consistently that the public's right to know outweighs any other considerations. I have the citations should you need them.



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In addition, given the seriousness of the allegations against the Governor and the damaging findings reported in the OPEGA Brief, and the Governor's own public admission on WMTW June 29th that he engaged in threats involving state assets, I am asking the Committee to request the appointment of a Special Prosecutor to investigate Governor LePage for the following possible criminal violations:

Title 17A section 355: Extortion
Title 17A section 603: Improper Influence
Title 17A section 903: Misuse of Entrusted Property
Copies of each law are attached as exhibits.

Our system of government relies on checks and balances and co-equal branches of government. The abuse of power by any Chief Executive must be held accountable to the rule of law. Just this week, in another sign that the rule of law within the LePage Administration is violated, we all learned that Governor LePage convened a Commission in secret to investigate the Maine Human Rights Commission, in clear contravention of the public right to know laws.

In closing, I'd like to discuss the meaning of the word discretion. There is a clear difference between discretion and abuse of power. Discretion is defined from various dictionaries as: the quality of having or showing discernment, good judgment, discreet, cautious reserve in speech so that people will not be harmed, the trait of judging wisely and objectively. Discreet means to be "wise or judicious in avoiding mistakes or faults; prudent; circumspect; cautious; not rash." In other words, discretion is exercising judgment tempered with these attributes in order to arrive at a final decision or outcome. These are not the attributes of Governor Paul LePage.

Abuse of power is defined as: The act of using one's position of power in an abusive way, manipulating someone with the ability to punish them if they don't comply, improper use of authority by someone who has that authority because he or she holds a public office. Abuse of Discretion is defined as: Any action by a government official by which that official renders decisions for a clearly improper purpose. These are the attributes that describe Governor Paul LePage.

Legislators can no longer remain silent. Many of us knew something was terribly amiss when on March 24th, 2015, "Gov. Paul LePage fired Brig. Gen. James D. Campbell, adjutant general of the Maine National Guard, just moments before Campbell was to deliver his annual "State of the Guard" speech to a joint session of the Legislature on Tuesday morning." (PP Herald) The manner in which this firing was conducted, moments before Brig. General Campbell was to address the joint session, with his wife, family and friends assembled in the audience along with members of the military, revealed a vicious, vindictive and ruthless approach to governance never before witnessed in our great state.

It's time we exercised our power as Legislators to hold Governor Paul LePage accountable to the rule of law.

Thank you for your consideration. That concludes my statement.

# Maine Revised Statutes

§354-A Title 17-A: §356

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## MAINE CRIMINAL CODE
## Part 2: SUBSTANTIVE OFFENSES
## Chapter 15: THEFT

### §355. Theft by extortion

**1.** A person is guilty of theft if the person obtains or exercises control over the property of another as a result of extortion and with intent to deprive the other person of the property.

[ 2001, c. 383, §37 (AMD); 2001, c. 383, §156 (AFF) .]

**2.** As used in this section, extortion occurs when a person threatens to:

A. Cause physical harm in the future to the person threatened or to any other person or to property at any time; or [1975, c. 499, §1 (NEW).]

B. Do any other act that would not in itself substantially benefit the person but that would harm substantially any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation or personal relationships. [2001, c. 383, §38 (AMD); 2001, c. 383, §156 (AFF).]

[ 2001, c. 383, §38 (AMD); 2001, c. 383, §156 (AFF) .]

**3.** Violation of this section is a Class C crime.

[ 2001, c. 383, §39 (NEW); 2001, c. 383, §156 (AFF) .]

SECTION HISTORY
1975, c. 499, §1 (NEW). 2001, c. 383, §§37-39 (AMD). 2001, c. 383, §156 (AFF).

*Data for this page extracted on 01/05/2015 12:01:47.*

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Office of the Revisor of Statutes
**7 State House Station**
**State House Room 108**
**Augusta, Maine 04333-0007**

# Maine Revised Statutes

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§602

## Title 17-A: MAINE CRIMINAL CODE

## Part 2: SUBSTANTIVE OFFENSES

## Chapter 25: BRIBERY AND CORRUPT PRACTICES

§604

### §603. Improper influence

1. A person is guilty of improper influence if he:

A. Threatens any harm to a public servant, party official or voter with the purpose of influencing his action, decision, opinion, recommendation, nomination, vote or other exercise of discretion; [1975, c. 499, §1 (NEW).]

B. Privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, argument or other communication with the intention of influencing that discretion on the basis of considerations other than those authorized by law; or [1975, c. 499, §1 (NEW).]

C. Being a public servant or party official, fails to report to a law enforcement officer conduct designed to influence him in violation of paragraphs A or B. [1975, c. 499, §1 (NEW).]

[ 1975, c. 499, §1 (NEW) .]

2. "Harm" means any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other person or entity in whose welfare the public servant, party official or voter is interested.

[ 1975, c. 499, §1 (NEW) .]

3. Improper influence is a Class D crime.

[ 1975, c. 499, §1 (NEW) .]

SECTION HISTORY
1975, c. 499, §1 (NEW).

*Data for this page extracted on 01/05/2015 12:01:47.*

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# Maine Revised Statutes

§902 Title 17-A: §904

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## MAINE CRIMINAL CODE
## Part 2: SUBSTANTIVE OFFENSES
## Chapter 37: FRAUD

### §903. Misuse of entrusted property

**1.** A person is guilty of misuse of entrusted property if that person deals with property that has been entrusted to that person as a fiduciary, or property of the government or of a financial institution, in a manner that that person knows is a violation of that person's duty and that involves a substantial risk of loss to the owner or to a person for whose benefit the property was entrusted.

[ 2013, c. 414, §5 (AMD) .]

**2.** As used in this section "fiduciary" includes any person carrying on fiduciary functions on behalf of an organization that is a fiduciary.

[ 2013, c. 414, §5 (AMD) .]

**3.** Except as provided in subsection 4, misuse of entrusted property is a Class D crime.

[ 2013, c. 414, §5 (AMD) .]

**4.** If a misuse of entrusted property results in the loss of a vulnerable person's property or the loss of property entrusted to a person for the benefit of a vulnerable person and, at the time of the offense, the owner or the beneficiary of the property is a vulnerable person:

A. If the value of the property is more than $1,000 but not more than $10,000, the misuse of entrusted property is a Class C crime; and [2013, c. 414, §5 (NEW).]

B. If the value of the property is more than $10,000, the misuse of entrusted property is a Class B crime. [2013, c. 414, §5 (NEW).]

As used in this subsection, "vulnerable person" means an incapacitated adult as defined in Title 22, section 3472, subsection 10 or a dependent adult as defined in Title 22, section 3472, subsection 6.

[ 2013, c. 414, §5 (NEW) .]

SECTION HISTORY
1975, c. 499, §1 (NEW). 2013, c. 414, §5 (AMD).

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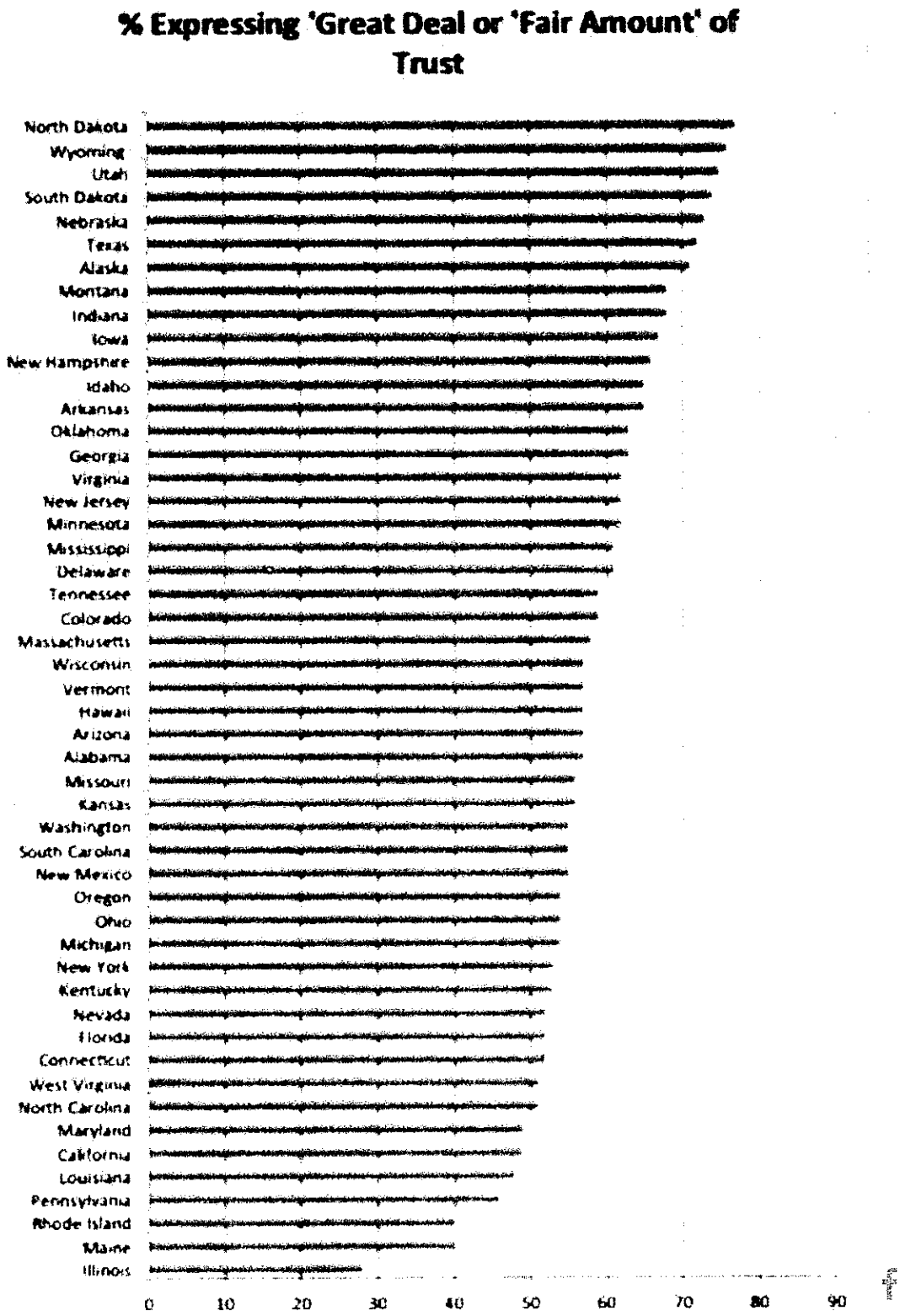


These data come from a poll released recently by Gallup. In the second half of 2013, Gallup interviewed a random sample of at least 600 residents in

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48 Hyler St.,
Thomaston ME 04861

Government Oversight Committee
82 State House Station
Room 107, First Floor, Cross Office Building
Augusta, ME 04333-0082

Sirs:

I am writing to express my distress at the actions of Paul LePage, Governor of the State of Maine. He has been rude, insulting, and boorish throughout his time in office, but the intimidation of those receiving State funding, the threatening of those in public office, and the negativity he expresses toward citizens/residents of the State are, in my mind, grounds for impeachment.

I am sure I do not need to enumerate the instances of intimidation and bullying for you as they have been widely discussed over the last five years. Nor do I need to tell you the our state is now the laughing stock of the world, as that has become more and more evident in newscasts, on comedy shows, and other media.

Thank you for your attention.

Judith Farley

October 15, 2015

Chairman Katz, Representative Kruger, distinguished members of the Committee on Government Oversight. I am Hendrik Gideonse from Brooklin.

I have read carefully the OPEGA report. Given the many real constraints associated with its development, it is a remarkably strong piece of reportage and analysis. Still, as a deceased architect friend used to say to me, it is just a point on a much, much larger curve. It is a sad day for Maine.

Governor LePage's negative effects on the processes of government present a highly unusual situation. Only the legislature can protect the State from further damage. One route entails passing several different forms of super-majority legislation to "bell the cat."[1] The other is to find LePage's performance malfeasance in office and remove him. That route would require a lot of work from your committee, and I'm going to suggest even a bit more.

Maine has a fundamental problem. We have in office a Governor who uses his power and authority vindictively and counter to the votes of the people, who withholds his department heads from legislative testimony, who has arguably broken and/or failed to comply with laws, who misuses and abuses his veto authority, who has failed to meet his responsibility to fill boards and commissions with members, and who spends public money without adequate safeguards to assure quality product. On their face, I would submit to you, and especially taken all together, these failures in office rise to the level of misdeeds, a reasonable common sense interpretation of the word "misdemeanor" in the Maine Constitution.[2]

I offer you four lines of counsel.

The first is to consider the nature of the judgment required of you. It is not a *political, partisan* matter; the Governor's actions have indiscriminately affected members of all parties. While it may ultimately include *criminal* matters, such proceedings are not the venue of the legislature. No, you are being called upon to perform *the most important kind of civil review of executive performance you will ever be called upon to make.*

The second line of counsel is to ask yourselves *what cumulative level of evidence must ground your recommendations to the legislative body*, i.e., as American jurisprudence refers to it, '*some* credible evidence', '*substantial* evidence', '*preponderance* of the evidence', '*clear and convincing* evidence'? ('Beyond a reasonable doubt.' the very highest evidentiary standard required for criminal conviction, does not apply to impeachment proceedings.)

The third is for you to keep clearly and constantly in mind *the consequences for the governance*

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[1] See Portland Press Herald October 11, 2015

[2] The concept of impeachment may be found on pages 3(Art.I, Sec.7), 9(Art.IV,Part First, Sec.8), 11(Art.IV, Part Second,Sec.7), 24 (Art.V,Part First, Sec. 11), 28(Art.VI,Sec.4), and 32(Art.IX,Sec.5) of the Maine Constitution and the word misdemeanor on page 32(Art.IX,Sec.5).

*of Maine if we continue for three more years what we have lived through the last five*. Should you and we have to accept that? I submit not.

Which takes me to a fourth line of counsel. Before you begin your particular deliberations, I would urge you to *afford yourselves a clear rendering of the pulse of the legislative body for which you are working*. Divide the other 174 members into twelve lists of 14 or 15, each list cutting across both houses and across political affiliations. Each of you would in the next two to three weeks complete one-on-one, twenty-minute, not-for-attribution scripted (see suggestions below) and confidential interviews with the legislators on your list. Each committee member would try to develop a sense of where your peers are on the nature of the issues, what's at stake, how they think it should be approached, how serious they think it is, whether it should be allowed to continue. The interview script should make it plain, however, that the interviews are *not* a "pre-poll" of legislative members' views on matters that you and they have yet to consider. Such a question would be premature and therefore inappropriate.

Were I in your shoes I would want to have that five-hour commitment from each of us under our belts before we proceeded – in public as you must – to address the issues and judgments LePage's shortcomings have obliged you to consider.

Thank you for your attention.

Possible Elements for an Interview Script

[It would be premature and inappropriate for this interview to address any interviewer or interviewee conclusions respecting the executive performance of the Governor.]

In any review of a governor's performance what might constitute unacceptable performance? Have you formulated criteria on this or do you "know it when you see it"? Is there any difference between unacceptable and impeachable? How would you distinguish between either of those compared with actions you simply disagree with?

Are their levels, or degrees, or can there be a cumulative effect of misdeeds in coming to an assessment of executive performance?

Have you yourself reviewed the constitutional language on impeachment? How do you understand the meaning of the Constitutional term "misdemeanor"? Did you know that the dictionary that would have been available to the writers of the Maine constitution at the time (Johnson's 1797) defined 'misdemeanor' as "offence; ill behaviour; something less than an atrocious crime."

What if the kinds of actions we've all been seeing continue for three more years?

Are you concerned about the consequences of an impeachment proceeding brought that does not end in replacement?

Short of impeachment what legislative measures might be brought to limit executive excesses that may have occurred?

October 15, 2015

Re: Testimony provided at the Public Hearing of the Government Oversight Committee on October 15, 2015

To the Twelve Members of the Government Oversight Committee,

My name is Becky Halbrook and I live in Phippsburg. As a Maine resident, I speak as a retired person, a mother, a grandmother, an aunt, great-aunt and the friend and neighbor of many residents of Sagadahoc County.

In addition, I represent the 700+ Mainers who have recently signed an online petition at the website DearLePage.com -- the website was launched in August in response to Gov. LePage's statement that if the people of Maine asked him to resign, he would do so. We are directly asking him via the online petition and by mailing postcards, sending emails and other messages – we ask him to resign immediately. We intend to continue this effort during the next few months and ultimately we hope that Gov. LePage will resign from his office.

Our message to the Committee today is as follows:

1. Regarding the Good Will-Hinckley investigation: We commend the Committee for pursuing the bipartisan investigation of Gov. LePage's involvement in the Good Will-Hinckley matter. We trust that the Committee will demonstrate its further determination and fortitude by continuing to pursue this investigation in order to produce a full and complete report of the Good Will-Hinckley matter. While the OPEGA informational brief is a good beginning, there are many unanswered questions remaining and those questions must be addressed and the answers must be documented. The people of Maine will not be satisfied until the investigation is completed and the full set of facts are available for all to assess. If there are witnesses and documents that can only be obtained by issuing subpoenas, those subpoenas should be issued by the Committee. Testimony should be taken under oath and the witnesses should be subject to cross-examination to ensure that the complete truth is told. The truth in this important matter is at stake and there is no alternative way to determine the truth and complete the investigation.

2. Regarding allegations of additional abuses of power: We encourage and support the Committee in pursuing the investigation of alleged abuses of power, other than the Good Will-Hinckley matter. We believe that the expansion of the investigation to include other allegations would be entirely appropriate. Such an expanded investigation should not be discredited or denigrated by anyone claiming "political motivations." Nor should the Committee or its members be "shamed" by any politician for conducting the work of this Committee. The people of Maine depend on the Committee to

pursue each and every credible allegation, find the facts and lay them before the Maine people for their assessment. The people of Maine depend on the Committee to do its professional work without regard or concern for attempts to sideswipe or discount its efforts by politicians or other persons.

3. Regarding the appointment of an Independent Prosecutor: We encourage and support the Committee as it seeks legal resources to assist on the details of the investigation(s) and to advise regarding possible violations of Maine law.

4. Another legal question that has been posed recently concerns the use of the attorneys' fees provision in the state's liability insurance policy for payment of the Governor's private attorney fees in the Eves civil lawsuit. An Independent Prosecutor could research the terms of the insurance policy and determine whether the insurance policy is available for payment of the Governor's attorneys' fees in his defense in the Eves lawsuit.

In conclusion, we commend to you the writing of Rep. Charlotte Warren whose words were published by the Kennebec Journal recently under the title "Governor's acts of intimidation threaten the fabric of our democracy" --

"I urge Mainers to make their voices heard at the public hearing on Thursday. It starts at 9 a.m. and will be held in Room 220 of the Cross Office Building. It's an opportunity to speak your minds about the report and your expectations for your government.

This fact-finding report will serve as the basis of any further action, including a determination that laws were broken, referral to a special prosecutor, or the initiation of impeachment proceedings.

The questions we must answer are very serious. Questions about intimidation by the state's highest elected official, the misuse of public funds to punish a lawmaker for his voting record and a political grudge turned personal vendetta that harmed a man's livelihood.

This is not simply about LePage and Eves.

It's about each and every Mainer in this state and whether they have to live their lives looking over their shoulders for fear that they might offend the wrong person in power. If they do or say the wrong thing, will they be punished? Do we want our elected representatives answering to us, those who elected them, or to another elected official?

This is, simply, about standing up for our democracy." Rep. Charlotte Warren published by Kennebec Journal

September 09, 2015

Members of Maine's Legislative Committee on Government Oversight

As a lifelong Maine resident, 23 year veteran of state and municipal government, and current Vassalboro resident, I request you support impeachment proceedings against Governor Paul Lepage.

With the conclusion of the Office of Program Evaluation and Government Accountability's (OPEGA) investigation and subsequent report, there is a strong likelihood the Governor has inappropriately used his influence and abused his power as the Governor of Maine. OPEGA has indicated there is no "smoking gun" yet this is likely due to the unwillingness of the Governor's office, including the Governor himself, to participate in OPEGA's fact finding session. Meaning, if the alleged perpetrator does not provide information nor respond to questions, a fact finding body (OPEGA) cannot reach a definitive conclusion; this is akin to a defendant in a court proceeding "pleading the 5th" against self-incrimination. However, OPEGA did determine a potential withholding of State funds did occur, in relation to the basis of Speaker Eves' employment with the Good Will-Hinckley institution.

*Maine Constitution Article 9, Section 5. Removal by impeachment or address. Every person holding any civil office under this State, may be removed by impeachment, for misdemeanor in office.*

OPEGA was not given, nor does it have, the authority to make a determination of misconduct. However, the Maine Legislature does have this authority. Even though there have never been impeachment proceedings of a Maine Governor, this is no reason to hesitate. As elected officials, you represent Maine citizens and businesses but you are also elected to uphold Maine's Constitution and Laws. With the OPEGA report as well as recorded statements of Governor Lepage to WMTW TV reporter Paul Merrill, there is a sufficient basis to hold impeachment hearings. The impeachment proceedings may likely include subpoenas of all involved parties, but specifically should include Good Will-Hinckley Board Chair Jack Moore, Acting Education Commissioner Tom Desjardin, and Governor Paul Lepage so the Maine Legislature, by way of the Maine Senate, can gather information to make an informed decision and determination of whether misconduct has or has not occurred.

In conclusion, it is clear that sufficient information has been presented to initiate impeachment proceedings. Even though this is unchartered territory, I urge Maine's Government Oversight Committee to not take the path of least resistance but to do the right thing; recommend and put forward legislation to Maine's House of Representatives that an impeachment of Governor Paul Lepage is warranted.

Sincerely,

Brian S. Hodges

Brian S. Hodges

Senator Katz, Representative Kruger, members of Maine's Government Oversight Committee

My name is Brian Hodges of Vassalboro Maine. I'm here today to request you initiate impeachment proceedings against our Governor, Paul Lepage, by taking a vote in the affirmative and then supporting such legislation. This is not a statement I, you, or any citizen of Maine should take lightly but given the circumstances, it is, unfortunately, appropriate.

For 46 years, I have called Maine my home. For 23 of those years, I dedicated my professional career to public service in State and municipal government. As each and every one of you know, public service is not a commitment to be taken lightly. For many of us, it is a calling that involves sacrificing time with family to serve the public. It is a calling to sacrifice more lucrative careers. Why do we make these sacrifices? We do so because we want to leave a legacy of making Maine a better place because of our efforts. But when serving the public, it is critical to do so with grace, with compassion, and with professionalism. Why is this important? Because the public wants to know they are treated fairly with the highest level of service possible. While I have lived in Maine for all 46 of my years, the past several years have resulted in me hesitating when asked if I'm proud to call Maine my home because of the reputation we've been given under the Lepage administration.

Nobody can question whether or not something happened between the Governor, Good Will Hinckley, and Mark Eves. Something has indeed happened as stated in the OPEGA report and I quote "*Events described in this Information Brief strongly suggest that the threat of Good Will Hinckley losing State funding, and the subsequent holding of a payment already in process for Good Will Hinckley's first quarter of FY2016, are directly linked to the Governor learning that Good Will Hinckley had decided to hire the Speaker as President.*" The question remains, what involvement did the Governor and his staff have and did any involvement rise to the level of misconduct by a government official which meets the Maine Constitution's definition of a basis for impeachment proceedings? You, the Government Oversight Committee, tasked OPEGA with investigating the allegation and reporting on their findings. In the State of Maine, across the country, and around the world, people experience allegations of wrongdoing but after an investigation of due diligence, determinations are made which sometimes result in charges being filed and other times do not.

With the Good Will Hinckley incident, that determination has not been reached yet. With an elected official ranking as high as the Governor, the roles of authority and oversight are different than dealing with ordinary citizens. While a citizen's fate is often impacted by District Attorneys, a Governor's oversight is the responsibility of the Legislature. You are the authorities. This committee is to the Governor as the District Attorney is to a citizen. This case is a clear example of why checks and balances are instituted between the Executive, Legislative, and Judicial branches. Maine citizens elected you to represent them and when you took your oath via Article 9 Section 1 of Maine's Constitution, you agreed to uphold Maine's Constitution...not parts of the Constitution but all of the Constitution.

The Governor and his administration would not fully participate in OPEGA's investigation. Accused individuals may never willingly participate so without the power of subpoenas, a body like OPEGA can never make a definitive conclusion. But you can. As Maine's Government Oversight Committee, you have the ability to ensure justice throughout State government prevails. Do not let this situation being the first of its kind dissuade you. Maine's Constitution does not require you to uphold your oath only when situations have a prior history. Instead, you are required to uphold your oath under any circumstance and the Maine Constitution clearly states via Article 9 Section 5 that every person holding any civil office in this state may be removed by impeachment, for misdemeanor in office.

In conclusion, due diligence is needed. Not only for Mark Eves, Good Will Hinckley, or even Governor Lepage. Due diligence is needed for Maine and all of its citizens to ensure our democracy is intact, credible, and worthy of support. Again, OPEGA was unable to make a determination of whether there was misconduct but you have the authority and responsibility to do so. I, and so many others, want to see a fair and impartial hearing conducted, whether or not the Governor and his staff participate. Your constituents deserve that. All Maine citizens deserve that. Maine deserves that. And even the Governor himself deserves a fair and impartial hearing so his name can either be cleared or justice can be served. Let's make Maine a place we're proud to serve and call home. Do the right thing and move the process of impeachment forward. Thank you for your commitment to serving the people of Maine.

October 15, 2015

Brian S. Hodges

Paul LePage has made a mockery of the first amendment. Paul LePage told a high school student that his father, who is a journalist, should be shot. He has caused more than one political rival to lose their jobs – and that's what we know about. He has vowed to veto every bill and go through referendums, but also refuses to follow the will of the people on referendums if he doesn't like them or wants to use them for playing political games. He has proven over and over his inability to understand the concept of democracy, never mind that of compromise.

I even hesitated to write this and put my name on it. Some of my thoughts..... Is someone in his office making a note and keeping a list of those speaking against him? Can this come back and hurt me or my family somehow? Am I unimportant enough in the scheme of things, that he won't bother remembering who I am, so that will keep me safe from reprisal?

These are things that no one in the United States should ever have to worry about when speaking of those elected to office. That these are things we have to worry about in Maine in relation to our governor seems incomprehensible to me. I have always believed Maine to be one of the most politically reasonable and democratic of states. But, sadly, this is now a concern here because of Paul LePage.

And unless we do speak out, nothing will change. Not even after he leaves office, if he is allowed to serve his full term. He will have set a precedent that allows a governor to bully, threaten and actually cause harm to those that disagree with him. And we will become more afraid to speak out.

We will always wonder if our legislature is voting in a way that reflects their beliefs about what is best for our state – or if they are voting in a way that protects them, not only politically (which is always a concern, unfortunately), but personally as well. Will we actually have a state legislature and population that is AFRAID to do what we believe is right. How can that be, in the US, in the 21st century?

Governor LePage said that he would step down if citizens of the state asked him to. The time has come for all of us to do just that. Because regardless of whether or not you agree with his economic policies or environmental policies, or other policies, he has shown a blatant disregard for the will of the people with his actions on the referendums on bond issues and an even more blatant disregard for one of the most basic rights under our constitution – the right to our freedom of speech.

There is a reason the freedom of speech is the first amendment. We need to understand that without that right, all of the others are meaningless. Because if we can't speak out when our rights are violated, what is the point of having them? If we are afraid to speak out for what is right, then we are truly lost.

Lianne Mitchell
Yarmouth, Maine

October 14, 2015

Dear Sen. Katz, Rep. Kruger and members of the Government Oversight Committee:

As U.S. Senate Majority Leader, Senator George Mitchell told the Republicans that, although he might disagree with them on policies, he would never embarrass them. That is how a statesman conducts him or herself. We have a governor who demonizes anyone who disagrees with him. His bullying tactics are more than impolite and disrespectful. They are hurting our State and its people.

Karen Heck, former mayor of Waterville, has said that business and opportunities for economic development are not coming to Maine because of LePage. By attacking teachers, state employees, workers and others who disagree with him, Governor LePage has demoralized Maine people. The Governor has abused his power by threatening revenge against outstanding public servants and the Legislature, including members of his own party. By blackmailing the Legislature and preventing the passage of good legislation, the Governor has hurt Maine people and stifled progress. By refusing to implement bond packages voted for by Maine people, he thwarts the democratic process and disrespects our citizens.

LePage himself has said he would resign if asked. But we really understand that he will stay and continue to bully no matter what is said. Only the Legislature has the power to stand up to this rogue governor. Please come to the aid of Maine and our people.

Sincerely,

Edward (Ted) and Diane Potter
Gardiner

RECEIVED OCT 1 3 2015

Government Oversight Committee at:
82 State House Station
Room 107, First Floor, Cross Office Living Building Challenge
Augusta, ME 04333-0082

Maine State Government Oversight Committee:

Governor LePage has consistently spoken crudely and negatively about legislators, Maine schools and teachers, members of the NAACP, the Portland Press Herald, and the President, comparing the IRS to the Gestapo. The governor has the responsibility to perform the historic role of leadership defined by tradition and the democratic process; but, he does not have the right to bully or lie to the people of Maine, while ignoring citizen-led and approved initives like Land For Maine's Future. He claims to be a man of the people and then ignores what the voters have asked for. He has consistently refused to honor the bonds that the voters overwhelmingly voted for, holding the bonds as political hostage.

LePage's record as successful and shrewd business executive at the state level is abysmal. LePage had signs erected saying "Welcome to Maine, open for business." Yet under his leadership Maine paper mills (and their well-paid jobs) are being shuttered and sold for scrap. LePage has not succeeded at fulfilling his own billboard.

I offer the situation regarding the Dolby Landfill and the loan to Cate Street Capitol as an example of why the State of Maine cannot afford LePage's leadership. As part of the deal to keep the mills in Millinocket and East Millinocket open, the state agreed to take over the running and management of the Dolby Landfill so that Cate Street Capitol could purchase the Millinocket and East Millinocket mills for $1.00. Paul LePage spoke to the Board of FAME and encouraged a loan to Cate Street Capitol (It later emerged that Cate Street Capitol ...including corporate officers and their families donated $7,500.00 to LePage's

election campaign). Obviously the plans to keep the mills open failed miserably and Cate Street Capitol investors are earning $16 million in tax credits for monies that were in the state of Maine for minimal time. In the meantime the good taxpayers of Maine will also be paying for the closure of the Dolby landfill ...a cost estimated at up to $16 million (including testing). To make things worse for the people of Millinocket, Governor LePage later attempted to coerce Millinocket town officials into paying $50,000.00 a year instead of the one time fee of $50,000.00 they had originally agreed to kick in to manage the landfill. When the town officials refused to pay, LePage withheld $216.000.00 in sudden and severe impact funds....monies that were necessary to run the Millinocket schools.

Remembering LePage's comments about Maine's public schools, "If you want a good education, go to private schools. If you can't afford it, tough luck. You can go to public school." It is obvious that the Governor has no respect for Maine schools, students, parents, teachers, and taxpayers. Currently, the Annie E Casey Foundation Kids Count Data Center ranks Maine schools as the 16th best in the country...an amazing rating considering the poverty rate of many Maine children and families. For many years Maine has been ranked (by NAEP National Assessment of Educational Programs) among the highest states in the country for their public school systems.

Most recently, Governor LePage's behavior has alienated many in his own party. Last summer Republicans joined Democratic legislators when the Governor declared that the legislature had officially adjourned and that he did not need to veto numerous bills. Those bills have now become law, since the State Supreme Court ruled against the governor and the state is now involved in a further investigation regarding whether or not Mr. LePage blackmailed a charter school.

Maine needs an intelligent and creative governor, one who does not attempt to misuse his power and one who can unite the people of Maine. We need a governor who can attract business instead of handing out corporate welfare, rather than arrogantly questioning and squeezing each dollar spent on welfare for Maine's poor. Paul LePage's leadership has failed the people of Maine and it is time for him be removed from office. As horrible as his incompetence is, Paul LePage's performance as

a role model is even worse; he has demonstrated arrogance, rudeness, and a lack of respect for Maine's traditional democratic principles.

Respectfully,

E. C. Ramsey

Elisabeth C. Ramsey
PO Box 45, Smithfield, Maine, 452 Village Rd.
207-362-3366.....Airedale@tdstelme.net

RECEIVED OCT 1 4 2015

Government Oversight Committee at:
82 State House Station
Room 107, First Floor, Cross Office Living Building Challenge
Augusta, ME 04333-0082

Maine State Government Oversight Committee:

The purpose of my letter is to underscore the profoundly incompetent and arrogantly dismissive tenure of Governor Paul LaPage. As a public school teacher for over forty years I am extremely upset at LePage's rude, bullying behavior, offering a horribly destructive role model for the young people of Maine. Paul LePage's many embarrassing statements are well known to the citizens of Maine: his ridiculous statement that Maine students can't get into the best out-of-state universities is demeaning and false; equally irresponsible was his comment saying that he would like to blow up the *Portland Press Herald*, as was his disrespectful, inappropriate comment regarding the NAACP, as was his degrading reference to President Obama, as well as his attempted sexual-political reference to potential campaign opponent Troy Jackson; our Governor's countless crude, belittling statements about Mainers in general, whether they be students, legislators, or cabinet heads, make a mockery of Maine's governmental traditions.

While the realities of political office inevitably involve partisanship and party preference, it has become very clear that LePage lives in a world of "Good Guys"(Republicans-anyone who supports him) versus "Bad Guys"(Democrats-anyone who disagrees with him). Destructively, Maine's Governor consistently applies this simplistic attitude to an absurd, irresponsible degree-referring to Southern Maine as the home of crooks and welfare cheats. It would seem that Mr. LePage isn't concerned with being the Governor of all the people-but only those who reside in geographically pro-LePage areas. Central to his disdain for Maine citizens is his arrogant dismissal of the democratic process in citizen initiatives-most notably his withholding funding of citizen-approved bond issues; this subject alone would seem to warrant the dismissal of Paul LePage.

Our Governor began his tenure by pushing through significant tax breaks for the wealthiest Mainers, thus depleting Maine's financial resources; then, having taken away the State's money he pompously, deceptively announced that Maine had a severe economic problem and would have to face budget cuts impacting State programs-programs that he opposed. This began the LePage strategy of manufacturing relatively nonexistent problems which he would then use as a rationale to eviscerate anything he didn't like-integrating the priorities and solutions of the A.L.E.C. playbook.

LePage's arrogant adventurism has cost the State of Maine untold money....from prolonged lawyer's fees in his unilateral assault on Obamacare, as he attempted to undercut the breadth of Maine's responsibility to provide

Medicaid for children according to nationally proscribed levels. LePage has lost on this and other issues, while the citizens of Maine picked up the bill for his incompetence. Similar incompetence and arrogance can be seen in his making promises (which could not be fulfilled) to the individuals attempting to rejuvenate the East Millinocket Mill and landfill-which with the Governor's guidance went bust-and again the State had to pick up the tab. Initially, at the beginning of his tenure, Maine's chief administrator promised a dramatic increase in jobs-saying that he would "turn things around" in just eighteen months-that Mainers should hold him accountable. Of course, LePage's magic, irrational revolution has not fulfilled his jobs promise.....and sadly, his pro-gas and oil manipulation, at the same time undermining alternative energy options, has also diminished potential growth in Maine jobs.

I knew the State was in trouble when LePage categorically said that "tourism" is not an industry....whereas the environmentally fragile mining businesses that he is encouraging to set up in Northern Maine fulfill his definition of "industry" (evidently pollution of the environment must occur). Then, I became even more alarmed following an Environmental Roundtable in which twelve small businessmen (majority Republicans), utilizing Maine's natural resources, each discussed the absolute importance of maintaining a clean, viable environment, necessary to their business success. Sitting ten feet away from Mr. LePage, I listened to his response regarding air pollution from the Mid-West, when he feigned outrage at the coal companies for their eastward pollution; he said that pushing for more regulation of coal was a priority which he would act on immediately. I left the roundtable relieved, thinking that maybe Governor LePage would act responsibly. However, three days later LePage turned 180 degrees from his statement at the Environmental Roundtable, withdrawing from the group of NE Governors seeking increased regulatory strictures on Big Coal. This deception has become the dominant pattern of the LePage Administration.

Demeaning name calling, blatant misinformation, and bold lies-I could enumerate a long list of egregious LePage deceit and incompetence; yet, even worse is his rude, crude bullying, his arrogant condescension-defying Maine's history and tradition of democratic principles and outstanding statesmanship. Mr. LePage is a destructive role model for Maine's young people-cheapening the image of our state in the eyes of the rest of our country. Historically, Maine has taken great pride in its motto "Dirigo." We can't allow Paul LePage to destroy all that Maine stands for.

Respectfully,

Jim Ramsey

Jim Ramsey,
PO Box 45, Smithfield, Maine....04978
Airedale@tdstelme.net

**Testimony of Cushing Samp before the Government Oversight Committee**
**October 15, 2015**

Senate chairman Katz, House chairman Kruger, Members of the Committee, my name is Cushing Samp and I am a resident of Saco. My testimony is supported today by 24 other residents of Maine who are unable to be present today, Sandra Johnson and Sarah Clark of Orono, Margaret Baillie, Lee Souweine and Emily Bean of Bangor, Jean Camuso and Eric Brown M.D. of Hampden, Cheryl Olson and John Lorenz of Hermon, Carol Sullivan of Rangeley, Emily Hawkins of Deer Isle, Russ and Mel Banton of Brunswick, Jim Chute and Stephen Goetz of Freeport, Martica Douglas of Portland, Jody Sataloff of Cape Elizabeth, my husband, Eric Samp, Donna Beveridge, Betsey Pace, Deb C ote Anderson, Karyn Cote and Etienne Guillory of Saco, and Cornelia Kittredge of Arundel, as well as by four others who are unwilling to have their names made public.

First, I am not here to oppose any positions taken by the Governor, nor am I here because I am embarrassed by public statements that he has made. I am here because I cannot stand silent in the face of the blatant contempt that the Governor has demonstrated by his actions towards the governing process and, by extension, to the people of Maine.

With respect to the events surrounding the offer of employment extended to Speaker Eves and its subsequent withdrawal, the Governor has crossed the line. The Governor is entitled to express his opinion of Speaker Eves and to express it publicly. What he cannot do is use his authority as governor of this State to cause personal harm to a political opponent solely as a result of the views held by that opponent. Nor can he use his authority to blackmail an independent organization in this State. His authority over the funds in question may be "discretionary." However, "discretionary" cannot be construed to include the ability to withhold funds for a malicious purpose. That is clearly what the Governor, or the Governor's subordinates with his approbation, has done.

Failure to act further in this investigation will have the effect of empowering the Governor.

This is a man who has held hostage the Land for Maine's Future program by failing to issue bonds that have met every single constitutional requirement for issuance, save for his final signature. These are bonds that have been overwhelmingly approved by the voters of this State. While there is some latitude permitted in the timing of the issuance, it is clear that that latitude does not include refusing to issue the bonds for political purposes or because he disagrees with the purpose of the bonds.

This is a man who vetoed bills, not because, as he is constitutionally entitled to do, he disagreed with the bills, but for the stated purpose of wasting the Legislature's time.

This is a man who, either through gross incompetence or malicious intent, refused to veto bills, ignoring long-standing constitutional practice.

This is a man who has withdrawn names for filling vacancies on various boards and agencies so that they can do their work, not because he has been unable to find people who are qualified, but because he wants to hinder or destroy the proper functioning of state government .

This is a man who instituted an investigation of the Maine Human Rights Commission because he was not allowed to interfere with an administrative proceeding.

This is a man who state residents dare not speak about publicly because of fear of retaliation.

The Mark Eves incident, in and of itself disqualifies the Governor from continuing in his official capacity. When viewed in the context of the many other actions he has taken, the inescapable conclusion is that this Governor has violated his oath of office. He has spat in the face of our constitutional process. The people of Maine elected a governor, not a demagogue. Only the Legislature can stop him. You must issue subpoenas for witnesses today, you must make findings and and you must turn to matter over to the House for a decision on whether impeachment proceedings are warranted.

RECEIVED SEP 2 2 2015

10 Robinson ST
South Portland, ME 04106

September 18, 2015

Government Oversight Committee
c/o Office of Program Evaluation and Government Accountability
82 State House Station
Augusta, ME 04333

Gentlemen,

I believe your recent report verifies that Governor Paul LePage has grossly overstepped his office's prerogatives and should be brought to account for criminal extortion.

Sincerely,

Charles L. Sims

Oct. 15, 2015 Testimony for Government Oversight Committee Public Hearing

Dear Senate Chair Katz, House Chair Kruger, and Honorable Members of the Government Oversight Committee,

We have a crisis in this State which has prompted this Hearing. Our Governor has been testing the bounds of Executive Power and has seemingly crossed the line with his successful attempt to void an open-search hiring at Goddwill-Hinckley for political reasons. This cannot be allowed to stand unchallenged or without most serious repercussion unless we want a Maine in the future where job applicants must pass a litmus test of some sort. This turns us away from democracy and meritocracy to something perhaps resembling the McCarthy era of the early 50's when anyone who was tagged as a "communist sympathizer" was disqualified from service to country. I know this first hand because my father graduated from Georgetown University's School of Foreign Service in 1951, and could not get clearance for a State Department Job for two years due to the disfunction of government prevalent at the time. Sound familiar to anyone?

Our Senator Margaret Chase Smith stood up to McCarthy and delivered her Declaration of Conscience Speech, which is generally credited with recharting the ship of State back to our founding principles. This is that kind of a time, and demands that all of you give deep thought to what sort of State we want in the future. Do we want the best and the brightest to hold leadership positions, with a level playing field for all, or a State where all jobseekers with Executive discretion or influence on their funding are subject to that Executive's whims? Looking back in history, really bad things happen when good people do nothing . My observations of State Government show a lot of people making excuses or taking the easy path away from difficult tasks, on the basis of "Oh, we'd never get two-thirds vote" or "It won't get by Executive Council", when often what that really means is some lobbyists have them in a position where Just Doing The Right Thing becomes deleterious to some other issue being resolved.

I have heard both Sen. Katz and Rep. Kruger discussing the LePage/Goodwill-Hinckley/Eaves matter before you now on Stephen King's AM 620 radio station in Bangor, and these are rational and reasonable public servants. Now the question becomes, who will lead? My advice is to pursue the entire truth in this matter, whether that requires subpoenas and lengthy hearings or there is enough evidence already accumulated by OPEGA to form a conclusion of whether laws and rules were broken and what the consequences should be. Mohandas Gandhi followed the path of what he called Satyagraha, which means "insistence on the truth". To some he may have been a scrawny little foreigner with a walking stick in his hand and wearing a loin cloth, but he accomplished the same thing our tri-hat wearing, musket-carrying forefathers did for us: They threw off the yoke of British oppression.

There are certainly other grievous actions of this administration, like document-shredding at CDC and the Alexander Report, and certainly others will be brought to your attention in short order. You should also be aware that the State is about to expeditiously permit landfill capacity to Casella worth about a half a Billion Dollars. The funds threatened to be withheld if Rep. Eaves was hired was about a half a million dollars. A group of citizens and legislators approached GOC over three and a half years ago and pushed for a review of the State's dealings with Casella, who operates the State-owned Juniper Ridge

Landfill (JRL) in Old Town. While GOC declined to ask for an OPEGA investigation, you did send a letter to the Environment and Natural Resources Committee asking them to address four areas of concern. ENR has declined to do anything of the sort, and their Chair Saviello, who came to you 3 times back then to assure you of their careful oversight of JRL still shows no inclination to fulfill your Committee's formal request. Perhaps we will bring a new request to you soon. Currently, our DEP Commissioner has resigned, and the acting commissioner has kept his first job in the Governor's office. When BEP decided to take jurisdiction of the Expansion Hearing for JRL, which is coming soon, Chair Parker was surprised to see that the garbage company's attorney, Tom Doyle, would represent both Casella and the State's interests. Does this seem right to you? Our fear is that since the Bureau of General Services JRL overseer, Mike Barden, admits that the State has done nothing to seek alternatives to dumping in Old Town, that we will not get a full independent evaluation of the wisdom of building a 20 million cubic yard Dump in Old Town. It may seem like progress to some if the Department of Environment Protection becomes the Department of Expedited Permits, but there has been corruption in the process of JRL from its inception in 2003. This is not a partisan issue, as problems that began with a Democratic Executive giving Casella a half billion dollars worth of space have become a Republican Executive's apparent objective. So, where is the Review? If this were a like amount for liquor or gaming, there would be intense and massive efforts to understand exactly what is going on. Why does Garbage get a Free Pass? In my opinion, people at Pierce-Atwood have everything to do with it.

Suffice it to say, there are many issues of great importance facing the State right now, and one of them is before you now. Please follow your conscience and insist on the truth and please bring a forceful resolution to the people of Maine. I am not calling for Impeachment, although that may become an option. We deserve better, and we want transparency and accountability.

Respectfully submitted,

Ed Spencer

PO Box 12, Stillwater, ME 04489

827-8359

# RESTORE:

## TESTIMONY OF JAMES A. ST. PIERRE
## MAINE DIRECTOR, RESTORE: THE NORTH WOODS
## TO THE MAINE GOVERNMENT OVERSIGHT COMMITTEE

October 15, 2015

Sen. Katz, Rep. Kruger, and committee members: My name is James St. Pierre. I am Maine Director of RESTORE: The North Woods, a regional conservation organization based in Hallowell. I have been involved in land conservation and economic activities at the local, regional, and state levels in Maine for forty years. Our organization has been involved in wildlife and land issues in Maine for more than twenty years.

**We believe that Governor Paul LePage has abrogated his responsibilities as Maine's top elected official.**

As he has admitted, and as an independent probe by the Legislature's Office of Program Evaluation and Government Accountability has confirmed, he threatened to withhold state funds from the Good Will-Hinckley School unless it reversed its plans to hire a lawmaker with whom the Governor has strong policy disagreements.

Clearly, Governor LePage's goal was to punish a legislator for his voting record and his leadership. The Governor abused his public office turning a political grudge into a personal vendetta. He not only jeopardized the independence and livelihood of a fellow elected official, his misuse of taxpayer funds to bludgeon an important educational institution would have thrust the school to the edge of financial collapse if they had not done his apparently unlawful bidding.

However, the Good Will-Hinckley matter cannot be judged in isolation. It is part of a long pattern of behavior by Governor LePage that demonstrates that he is unwilling to properly discharge many of the essential constitutional powers and duties of his office.

For instance, Governor LePage has improperly withheld funds authorized by the Maine Legislature and approved by the voters. He has abandoned his obligation to submit a balanced budget. He has arbitrarily vetoed dozens of legislative bills without any cause. He has refused to fill scores of crucial appointments so that lawfully constituted boards and commissions can conduct their business as they are legally obligated to do.

In addition, in the areas of environmental and conservation concerns, which are especially important to our work, Governor LePage and his Administration have taken numerous actions to:

- reject new conservation lands
- sabotage implementation of the Kid-Safe Product Act
- undermine sustainable logging on Maine's state forests
- advocate development of a toxic mine at Bald Mountain
- subvert the Efficiency Maine Trust weatherization program
- waste millions of dollars on the bankrupt Great Northern Paper Co. mills
- submerge the Department of Conservation into the Department of Agriculture
- push nuclear power plants while defunding renewable and solar energy initiatives
- send anti park letters to President Obama and Maine's congressional delegation
- dismantle the State Planning Office, Land Use Regulation Commission and other agencies
- destroy institutional memory by driving long-time employees from key environmental agencies

In short, not only has Governor LePage caused serious harm to the government, the economy, the environment, and the people of Maine by his actions and inactions, he has violated and even scorned his constitutional duties to "take care that the laws be faithfully executed." (Maine Constitution, Article V, Section 12)

What can Maine citizens do about this? Unlike a dozen and a half other states, Maine has no process for citizens to recall a sitting Governor. However, the Maine state constitution provides that "Every person holding any civil office under this State, may be removed by impeachment" upon presentation of charges by the Maine House of Representatives against a public official "for misdemeanor in office" and trial before the Maine Senate. (Maine Constitution, Article IX, Section 5)

During one weekend last month, by standing in just one place, we collected hundreds of signatures on petitions requesting that the Maine House of Representatives present charges against Governor LePage "for misdemeanor in office," (Maine Constitution, Article IV, Part First, Section 8) and that the Maine Senate try the impeachment to judge whether the charges warrant "removal from office." (Maine Constitution, Article IV, Part Second, Section 7)

Other petitions we have seen online seeking impeachment or recall of Governor LePage have amassed nearly 40,000 signatures.

So we are exercising the only legal recourse that is available to Maine citizens to seek redress of our grievances against a Governor who has shown himself repeatedly to be defiant in the face of the law.

**We respectfully request that the Maine Legislature uphold its constitutional responsibility to the people by impeaching and trying Governor LePage for misdemeanor in office.**

This is serious business, which we do not take lightly. We have seen how Governor LePage has used intimidation and retribution against others who challenge him and his Administration. Frankly, my appearance before you causes me deep concern. But the future well being of my home state is more important to me than the fear of retaliation.

Thank you for your service to Maine and for the opportunity to present our petitions to the Maine Legislature today.

Comments Offered to Government Oversite Committee
In Regard to Goodwill-Hinckley
October 15th, 2015

Good morning, Senator Katz, Representative Kruger, and members of the Government Oversite Committee, my name is Alan Tibbetts, I am here today as a concerned Maine citizen to voice my comments on the Goodwill-Hinckley situation.

We would not be at this stage if this was not a serious matter requiring serious consideration. Governor LePage is entitled to his opinions and entitled to give voice to those opinions. I question whether voicing his opinions on hiring decisions by private sector entities in his capacity as Governor on official stationary was proper. But we are not here to discuss the propriety of voicing an opinion. We are here to discuss his use of discretionary authority over funds to pressure private sector entities to fire someone. This is the equivalent of Governor Baldacci going to Cianbro and saying: "Fire Peter Cianchette or you will never get another state contract as long as I am Governor."

You must also consider where not taking any action in this case leads. If at some future date Representative Sanderson displeases the Governor does that jeopardize funding for Maine Veteran's Homes or mean board members for that organization will stop showing up for meetings? In my opinion, if Governor LePage gets a free pass on this every legislator, every regulator, every municipal official, every "independent" commission and every business with a state contract will be fair game.

It is time for this committee and this legislature to hold Governor LePage accountable.

Alan Tibbetts
23 Field Rd
Sidney, ME 04330

Howard Trotzky
20 Knox Avenue
Bangor, ME 04401

October 15, 2015

Dear Co-Chairs Katz and Kruger,

I write to you as a former Republican member of the Senate.

There are few things as fundamental to our Constitutional government as the three separate and distinct branches of government. The defined roles of each branch and the ability of each to check the powers of the others prevents any one from amassing too much power--and abusing it.

This is why our government works.

Just as seminal to our democracy is the vitality of free speech.

I am deeply disturbed that Governor LePage's actions have compromised these principles.

Many of the facts are not in dispute. Lines were crossed when the governor's disdain for a political rival prompted his meddling. Impassioned political debate is one thing--in fact, it's expected, especially during these times of divided government. But using one's political

Howard Trotzky
20 Knox Avenue
Bangor, ME 04401

power--in this case, the power of the chief executive, to intimidate and threaten a private organization over its right to hire who it wants is vindictive politics at its worst.

The governor's actions have a ripple effect that extends well beyond GoodWill Hinckley and Speaker Eves. Without question, the tragic fact is that the Speaker lost his job because his politics is different from the governor. His firing is more than collateral damage to a political battle. Speaker Eves was deprived of a private employment opportunity and the ability to support his family. No one in this state deserves that treatment--including those who disagree with our governor.

Intimidation and abuse of power hurt everyone. For lawmakers it means that speech may be stifled, votes may be based on a politics of fear and retribution rather than merits of policy, and the sacrosanct details of one's personal life--including one's family and job--may now become political casualties to the governor's vendetta du jour.

It's clear that the governor's personal threats aren't confined to one person or even limited to one political party. Just days ago, the governor lashed out attacking and threatening this committee's co-chairman, Senator Katz. Make no mistake, the governor's accusations and threats are not limited to Senator Katz. He is threatening each of you on this committee and the Legislature--each of you who have a prerogative to do something about the governor's overreach and abuse of power.

Howard Trotzky
20 Knox Avenue
Bangor, ME 04401

It appears that there is nothing that this governor will not do to avenge his personal grudges. I do not envy you as you shoulder the awesome responsibility before you today. But your actions will set a precedent for those who follow you. On my behalf and on behalf of others who sat in those seats before you, I implore you to do all you can to protect the great institution of the Legislature. You will set the precedent for how those who follow will respond to attacks by a Chief Executive. Push back. Stand up. Do what is right.

Respectfully,

Howard Trotsky

MATTHEW DUNLAP
SECRETARY OF STATE

STATE OF MAINE

OFFICE
OF THE
SECRETARY OF STATE

# Interim Report to the Joint Standing Committee on Government Oversight Regarding Compliance with Public Records Laws

## Office of the Secretary of State

## October 15, 2015

Senator Katz, Representative Kruger, and distinguished members of the Government Oversight Committee; my name is Matt Dunlap of Old Town, and I am the Secretary of State. At the suggestion of your staff, I am providing you with a written report of our progress since the committee met last. I am attaching the minutes from the last Stakeholder Group meeting, held October 8th of this year which includes the topics and action items that the Stakeholder Group has been considering in its work, including the role of the Archives Advisory Board in respect to the disposition of archival records and nonpermanent records held by state agencies. A happy coincidence of the schedule saw the Archives Advisory Board—complete with two new members—meeting the next day, which I also attended.

After much discussion and focus on the problems that Hector state agencies regarding records, and the role of this department, we do feel that we are well-positioned to propose revisions to the statutes that describe and govern the work of the Archives Advisory Board. To wit:

- We will be drafting language that addresses the described expertise of the members of the board, to insure a strong cross-section
- We are considering adding a provision for additional support through subcommittees formed by the Archives Advisory Board
- We will include a provision for the Archives Advisory Board to develop frameworks for records retention by state agencies that will expedite the adoption of records retention schedules

In addition, we have discussed the role of the Archives Advisory Board in advising the Archivist and Director of the Archives in the adoption of proposed rules.

Parallel to this work, the Archives has been vigilantly preparing training sessions and providing the same for a variety of state agencies. Interest in this work is high, and has been elevated by the visibility provided by this Committee's work in highlighting the importance of proper recordkeeping by state agencies.

At the request of the Stakeholder Group, I have reached out to the Maine Municipal Association for a designee to represent the interests of our cities, towns and plantations regarding their responsibilities and needs regarding recordkeeping and public access.

We have scheduled a meeting on October 28th in the State House to discuss these action items and to review draft language. Please do not hesitate to contact me if you have questions.

148 STATE HOUSE STATION • AUGUSTA, MAINE • 04333-0148 • TELEPHONE: (207) 626-8400 • FAX: (207) 287-8598

**Records Management Stakeholder Group**
**Minutes and Actions**
**Thursday, October 8, 2015, 10:00 – noon**
State Archives conference room

NOTE: Web links were added after the meeting to enhance the value of the topics discussed.

## STAKEHOLDER GROUP MEMBERS:

- **Secretary of State/ State Archives:**
  - Matt Dunlap, Secretary of State
  - David Cheever, Maine State Archivist
  - Tammy Marks, Archives Director
  - Donna Grant, Deputy Secretary of State, Information Systems
  - Kristen Muszynski, Communications Director for Secretary of State
- **Attorney General's Office:**
  - Brenda Kielty, Public Access Ombudsman [absent today – attending Maine Civil Legal Services Fund Commission]
- **Legislature:**
  - Grant Pennoyer, Executive Director
  - John Barden, Director, Law and Legislative Reference Library
  - Kevin Dieterich, Director, Legislative Information Technology
- **Judicial Branch/ Courts:**
  - David Packard, Chief Information Officer for Judicial/ Courts [Barry Lucier attending instead]
- **Executive Branch:**
  - Greg McNeal, Chief Technology Officer, Office of Information Technology
  - Eric Stout, IT Project Manager and OIT Records Officer (staff support to group)
- **Citizen Member:**
  - Howard Lowell (formerly with National Archives and Records Administration, as well as Maine State Archives, Delaware Archives, and Oklahoma Archives)
- **Public Observer (not a Group member):**
  - Dwight Hines, PhD (retired)

## MEETING AGENDA:

1. **Review and acceptance of minutes** from August 4 meeting (attached)
2. **Review and acceptance of the 10 identified topics** – decide which topics to work on first, second, etc. (attached table)
3. **Review summary status of recommendations from the Records Retention and Management Report** – discuss how to make progress on each recommendation (attached color-coded table which Brenda and Tammy provided to the Right to Know Advisory Committee as part of their follow-up on their report to the Government Oversight Committee): http://legislature.maine.gov/uploads/originals/records-retention-and-management-report-to-goc-2015-4215.pdf
4. **In-depth discussion of Archives Advisory Board** (pages 10-13 of the report above will be provided as a handout)

5. **Discuss the request from the Right to Know Advisory Committee and support staff from the Office of Policy and Legal Analysis:**
    - "The Right to Know Advisory Committee (RTK AC) is interested in following the progress of the Stakeholder Group. Do we have an interested persons mailing list that OPLA staff could be added to for notices of meetings, agendas, minutes and background materials?"
    - "There are also specific requests that the RTK AC be given an opportunity to review any proposed legislation and provide input into discussions that could impact school districts, municipal or other governmental interests outside of State government. Changes to the Archives Advisory Board, including the creation of a separate review subcommittee for local records as recommended in the April 2015 Report to GOC, would implicate these interests. Since the Stakeholder Group currently has no representatives from local government, we should discuss this request and determine a procedure for gathering input."
6. **Agree on focus of next meeting** – also discuss whether certain members want to work off-line on selected topics and bring their recommendations to the Stakeholder Group.

**Introductions:**

- All attendees introduced themselves and what group they represent.
- All Stakeholder Group members were present except Brenda Kielty from the Attorney General's Office (had another commitment) and Dave Packard from Judicial Branch (represented by Barry Lucier).

**Quick summary of prior meeting:**

- Last meeting we had a good discussion of topics we've discussed at various other times.
- Did a tour of the permanent archives (held at State Archives).
- **ACTION:** Maybe we should also do a tour of the Records Center (long-term storage of records belonging to agencies – not part of the State Archives holdings).
- See attached table (also on next page) for 10 topics of focus for future meetings.
- See attached chart of progress on the recommendations in the GOC report. This was presented by Brenda Kielty (and Tammy Marks) to the Right to Know Advisory Committee.

**Suggested topics – walking through list of 10 topics identified at the Aug. 4th meeting (see table on next page):**

**RECORDS MANAGEMENT STAKEHOLDERS COMMITTEE**
**SUMMARY OF SUGGESTED TOPICS FOR NEXT MEETINGS**
(based on detailed discussion points at August 4, 2015 meeting – see minutes)

| # | Suggested Topics | Background/ Resources |
|---|---|---|
| 1 | **Records management's legal, policy, technical, and fiscal implications throughout State Government** | Overview topic – see sub-topics below |
| 2 | **"Records Retention and Management Report to Government Oversight Committee"** (summary of 21 recommendations on page 23-24)<br>• ACTION: Discuss how to promote/ ensure effective implementation of each recommendation. | http://legislature.maine.gov/uploads/originals/records-retention-and-management-report-to-goc-2015-4215.pdf |
| 3 | **Archives and Records Management Law**<br>• ACTION: Review statute for recommended changes by the Legislature. | http://www.mainelegislature.org/legis/statutes/5/title5sec91.html (sec. 91-98) |
| 4 | **Review role and membership of Archives Advisory Board (AAB)**<br>• ACTION: Recommend changes to statute, rule, and policy for the strengthening the AAB. | Maine State Archives Rule ("Chapter 1"): http://www.maine.gov/sos/cec/rules/29/255/255c001.doc – role described in sec. 12B |
| 5 | **Staffing at State Archives and in State Agencies**<br>• ACTION: Recommend needed staffing levels at both State Archives and State Agencies. | Currently less than half the staff of what it was originally |
| 6 | **Agency records management programs**<br>• ACTION: Review how to strengthen State Agency compliance with records management law, rules, policy, guidance, training, and accountability. | GOC report at #2 above |
| 7 | **Freedom of access to public records**<br>• ACTION: Recommend ways to overcome State Agency poor records retention practices, which blocks full compliance with FOAA.<br>• ACTION: Recommend better technology tools to foster fuller compliance with FOAA. | GOC report at #2 above |
| 8 | **Electronic records and email (non-historical)**<br>• ACTION: Give guidance to agencies on proper management and retention of electronic records and email within the agency.<br>• ACTION: Plan for migration to email platforms (like Office 365) and records management systems (like SharePoint and OpenText) that enable effective/ efficient retrieval of records and email. | Guidance from National Archives:<br>• Email management: http://www.archives.gov/records-mgmt/email-mgmt.html<br>• Electronic Records Management: http://www.archives.gov/records-mgmt/initiatives/erm-guidance.html |
| 9 | **Electronic records and email (historical value)**<br>• ACTION: Recommend technical solution for an Electronic Records Archives – to enable State Agencies to convey electronic records and email to State Archives in digital form. | Guidance from National Archives:<br>• Electronic Records Archives: http://www.archives.gov/era/ |
| 10 | **Other topics?** | |

## Topic 1: Records management's legal, policy, technical, and fiscal implications throughout State Government

- Governor's office is looking at their own records schedules. For example, do they need to keep drafts, or just the final? There is a lot of confusion about what needs to be retained. Confusion about what needs to be kept, like at the end of their term – they're struggling with that. What part of it is submitted for permanent archives?
- Most of records should be electronic. However, many of the case files are paper-based.
- **ACTION:** Consider the impact of retention schedules on other agencies – is that a role for the AAB to clarify? Interface of AAB between needs of generating agency and other agencies that need the records.
  - For example, there are pardon and parole records in the Governor's office, but what is the need for those records in the Courts?
  - Where is the "office of record"?

**Topic 2: "Records Retention and Management Report to Government Oversight Committee":** http://legislature.maine.gov/uploads/originals/records-retention-and-management-report-to-goc-2015-4215.pdf (summary of 21 recommendations on page 23-24)

- **Drafts** (see Report to GOC, chapter on Improved Guidance & Model Policies, p. 7-9):
  - Example of archival records: We have the Maine Constitution, but also the draft. Depending on what it is, it is instructive to have some important drafts to know what the thought process was as it developed.
  - **ISSUE:** How much of the draft should be retained, in the back-and-forth? How much is to be retained and for how long? That's what the whole retention scheduling process is for.
  - Tammy did training for agency heads and executives, and one handout was about drafts (see below):

> **"Are Drafts Considered Records?"**
>
> Drafts or working documents are records but they might only need to be retained for a brief period of time if they do not have significant administrative, legal, fiscal or historical value.
>
> Examples of drafts that might be immediately discarded following the creation of a new draft are those which contain only minor non-substantive changes such as correction of grammar and/or spelling or minor "word-smithing."
>
> Any decision regarding the disposition of a draft or working document should be made on a case-by-case basis in consultation with your Records Officer or clearly defined by agency policy.

- On a case-by-case basis if you're working on policies, you should check with the agency Records Officer about what to keep or not. If the agency has created a policy about drafts, then they don't need to keep asking the Records Officer. Most drafts are "word-smithing" and we recommend not keeping all those – except for policies.

- For the Courts, a lot of the draft material is deemed discoverable. Metadata is requested in some cases. Question is how far back to keep it. Material is subject to Freedom of Access Act (FOAA) and to interested parties in the cases.
- **ACTION:** This is something for the AAB to do, to develop and review standard policy for retention of working documents.

**Topic 3: Archives and Records Management Law:**
http://www.mainelegislature.org/legis/statutes/5/title5sec91.html (sec. 91-98)

- **ACTION:** Propose possible changes to statute:
  - See Title 5, Chapter 6, State Archivist, sections 91-98 which covers many of the topics we're discussing): http://legislature.maine.gov/statutes/5/title5ch6sec0.html (FYI, a Word document of 5 MRS chapter 6 is attached to these minutes, to make it easy to propose edits)
  - Personally identifiable information (PII) in archival public records that are held by State Archives. All kinds of public records may have PII embedded in them: city/ town, judicial/ probate, town history, etc.
  - AAB – role and who appoints. Now all members are appointed by the Governor's office, but it could be changed to have some or all appointed by the State Archivist or Secretary of State.
  - Responsibilities of state agencies in having a Records Management program.
- **ACTION:** Include Legislature's Office of Policy and Legal Analysis (OPLA) staff assigned to the Right to Know Advisory Committee (Natalie Haynes, Henry Fouts, Craig Nale) on information and invites for the Records Management Stakeholder Group meetings that discuss all these issues.

**Topic 4: Review Role and Membership of Archives Advisory Board:**
**Archives Advisory Board (AAB):**

- Howard Lowell and Nina Osier were recently appointed.
- History of original make-up of AAB – see details in the report to GOC, pages 11-13:
  - "The Archives Advisory Board was created in 1965, at the same time as the office of the State Archivist. It was originally composed of representatives of the Attorney General, the Commissioner of Finance and Administration, the State Librarian, the State Historian and the Registrar of Vital Statistics as well as six other persons especially interested in Maine history. The composition of the AAB changed four years later to replace the State government members with three ore citizen members."
- Recommendations in the Records Retention and Management Report to the GOC are to reconsider and clarify the make-up and role of the AAB:
  - "GOC should consider, with input from interested persons, changes to the AAB, including appointing members with expertise in the administrative, fiscal, legal and historical value of records; creating separate review subcommittees for local records and historical archive issues; and ensuring timely renewals or changes to appointments."
  - "GOC should consider, with input from interested persons, clarifying the schedule approval process so that the roles of the Archives and the AAB are clearer; this may require legislative action."

- **ACTION:** AAB will meet October 9 to review proposed records schedule changes from an agency (Department of Environmental Protection).
- See chapter in report to GOC report on Record Retention Schedules: http://legislature.maine.gov/uploads/originals/records-retention-and-management-report-to-goc-2015-4215.pdf. This chapter includes a detailed discussion of the AAB, and specific citations from the statute and rule.
    - See Archives and Records Management Law at: http://www.mainelegislature.org/legis/statutes/5/title5sec91.html (sec. 91-98)
    - See Maine State Archives Rule 29-255 chapter 1, State Agency Records Programs: http://www.maine.gov/sos/cec/rules/29/255/255c001.doc
- Debate on role of AAB regarding approving records schedules (direct involvement versus final review):
    - Point: If AAB has to approve all records schedules, they would have to be with us here 6 hours every day.
    - Counter-point: AAB has a meeting tomorrow, and we have only one schedule to review. Where are all the other schedules to be reviewed?
- The way government agencies do business and create and maintain records has changed over the years, but the process for reviewing schedules has not changed.
    - **ACTION:** Need to re-look at the role of the AAB.
- The AAB serves as a check-and-balance so that one person (at State Archives) doesn't have sole authority to decide what to keep or not.
- **ISSUE:** Is the role of the AAB for just historical/ archival records that come to the State Archives to hold, or also the 99% of "work-a-day" records that never leave the agency?
- **ACTION:** Should pull the old statute, and maybe go back to that. See citations above, for both statute and rule.
- In 1965, the Committee on Destruction of Historical Records became the AAB. They couldn't get the other members – State Finance Director, Attorney General, et al. to come to meetings, so they changed to all public members. In Oklahoma, the constitutional officers could designate a substitute, and that worked out pretty well.
- At the Federal level (National Archives and Records Administration), there is no "committee" to review general schedules, but it's a more public process, with input from many groups.
- Has to be practical, simple, and make sense to the public.
- **Make-up of AAB:**
    - What expertise? Is their scope only historical records, or all records? Since it's legal, fiscal, financial, and public rights questions, then you need expertise for those areas. The 4-part criteria (which determines proper retention time) needs to represented in the AAB members' expertise:
        - (1) administrative use
        - (2) legal
        - (3) fiscal
        - (4) historical value of records
    - A slide from "Records Management Basic Principles for State Employees": http://www.maine.gov/sos/arc/records/state/trainingstandardjuly2015.pdf

**The Four Part Criteria for Determining Retention**

- **Administrative use:** What is the value of the records in carrying out the functions of your department? How long will you need to be able to retrieve them immediately?
- **Legal requirements:** Are there any State Statutes or Federal regulations involved?
- **Fiscal requirements:** How much time must you allow for the completion of fiscal activities such as audit or budget?
- **Historical/Archival:** Do these records document important events, or the history and development of your department?"

- **ACTION:**
  - Charge: What are you going to ask AAB to do? Charge the AAB with a framework for approving schedules.
  - Accountability: Show what they've done with those responsibilities. Maybe periodically review what State Archives is doing, and have AAB assess that.
- **ISSUE:** For the process of approving schedules, is there a legal review, or sign-off by auditors? AAB would have the final stamp of approval of the schedules, after worked between Archives and agencies.
- It's not efficient to make agencies wait until the next meeting of the AAB.
  - NOTE: The AAB has met only once or twice a year over the past few years, but they are committed to meet quarterly. There hasn't been an agency schedule to review in a long time.
- **ACTION:** Now we have to consider scheduling of electronic/ digital records. Someone representing IT should be on the AAB because of "born digital" records.
- **ACTION:** Need a fuller representation from the other Branches of government. Now they are only public members. Should there be a member from the Executive Branch? The original AAB had representation from Attorney General, Finance, etc. Have we backed away from having each Branch of Government on the AAB (Executive, Judicial, Legislative, Local Government)? Each "producing" agency should have someone representing on the AAB.
- **ACTION:** Should have someone from local government on the AAB. We now have Twyla on the AAB. Maybe Maine Municipal Association (MMA) - Peggy.
- Of the 9 members, AAB still has 3 vacancies. Of the 6 members, 4 have been serving on expired terms. Howard Lowell and Nina Osier were just appointed (as members 5 and 6). We have former town clerks, librarians, plus Howard Lowell and Nina Osier now. All AAB are public members. What is their level of expertise?
- **ACTION:** Should have members who understand the 4-part criteria (administrative use, legal, fiscal, historical). Statute now says, "9 members who have an interest in the history of Maine."
- **ACTION:** Write proposed statutory changes related to the AAB, and distribute to everyone on the Stakeholder Group.
- **ACTION:** Topics 6, 7, 8, and 9 should generate from the AAB.

**Topic 5: Staffing at State Archives and in State Agencies**

- **ISSUE:** What is the staffing level that should be at the State Archives? The staff is grossly under-staffed, and pay scales are the same as what they were 30 years ago. Need to be looking at specialized talent.
- **ACTION:** There will be a fiscal note to this.

**Topic 6: Agency records management programs**

- **ACTION:** Topics 6, 7, 8, and 9 should generate from the AAB.
- **ACTION:** Agencies have all kinds of records retention policies (practices) they are working under – and need guidance.

**Topic 7: Freedom of access to public records**

- **ACTION:** Topics 6, 7, 8, and 9 should generate from the AAB.
- **Personally identifiable information (PII)**
  - Would PII be redacted from permanent public records?
  - Archives has no authority to redact PII from public records?
  - Is that in statute? Do we have a PII statute?
  - There is a Federal statute [the Federal Privacy Act] that prohibits release of SSNs. See Federal Privacy Act at: http://www.justice.gov/opcl/privacy-act-1974.
  - PII is a risk to the integrity of public records.
  - Archives were told by an attorney in the Attorney General's Office that prior to 2009 Social Security Numbers are not private.
  - Look at the FOAA website for the 300+ statutory exemptions to releasing public records. See: http://www.maine.gov/foaa/law/exceptions.htm. In Federal Government, Privacy Act broadly protects PII. But here in Maine, there is FOAA, with over 300 specific statutory exemptions of certain types of records, such as PII and other confidential information.
  - **ACTION:** We could send out the Redaction Symposium document, "Privacy, Public Access & Policymaking in State Redaction Practices: Dealing with Sensitive Data in an Era of Open & Accessible Public Records" (see attached).

**Topic 8: Electronic records and email (non-historical) and Topic 9: Electronic records and email (historical value)**

- **ACTION:** Topics 6, 7, 8, and 9 should generate from the AAB.
- **ACTION:** For the AAB, bring in a technical person to remind about digital records.
- **ISSUE:** What about the creation of a record? What about technology approaches to born-digital records? In an electronic records management system, the retention would be retained automatically. Agencies are retaining long-term records digitally. Technology is built around business issues and business rules.
- OpenText is an electronic records management (ERM) system that has retention rules "baked in" for different types of records. OIT and several Executive Branch agencies now use Fortis for document scanning, but we will be migrating to OpenText. OpenText is cloud-based (or can be on-premises if preferred.
- **ISSUE:** Adjusting from a hard-copy retention schedule to a digital retention schedule. They will never show up at the State Archives. Those long-term records may never come

over to Archives. May require the record copy at the Archives, and an agency copy, digitally.

- **ISSUE:** Technology can give good solutions, provided that underlying business processes are there. Look at the business process first. Can eliminate some steps in the process before use of automation. Is there an easier, straighter line to make it more efficient? Look at workflow to eliminate steps, then apply technology.
- **ISSUE:** When digitizing, you should have an index/ plan in order to be able to find the files you need.
- **ACTION:** Look at other states to see how they have solved these problems – a lot of experience out there. National Association of State CIOs (NASCIO) is working on this too, because it's the same problem of access.
- **ISSUE/ ACTION:** Could the OIT print shop staff be re-purposed to scanning, to make it easier for agencies? U.S. Government Printing Office (GPO) has gone through that process, basically getting out of the printing business.
- **ISSUE:** What guidance do we give to agencies and technology people on electronic records?
    - NARA has a Records and Information Management (RIM) maturity model user guide: https://www.archives.gov/records-mgmt/prmd/maturity-model-user-guide.pdf. The related tool as an Excel file is attached. This tool is for the purpose of evaluating the effectiveness of agency records management programs, which for the Federal Government is required under OMB Memo 12-18: https://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-18.pdf
    - See NARA guidance on electronic records management:
        - http://www.archives.gov/records-mgmt/initiatives/erm-overview.html
        - http://www.archives.gov/records-mgmt/toolkit/
        - http://www.archives.gov/records-mgmt/era/
        - http://www.archives.gov/records-mgmt/initiatives/erm-guidance.html
    - See Council of State Archivists (CoSA) Resource Center for Electronic Records: http://rc.statearchivists.org/PERTTS/Default.aspx
- **ISSUE:** In training, we encourage agencies to scan paper, but they say they don't have money to scan. If scanning, there are the technical guidance for formats, etc. so it won't give a problem if it comes to Archives.
- **ISSUE:** Do we have multiple digital archives in the agencies, with some records come here? Now, Archives only digitizing permanent records, but not records in the agencies.
- **ACTION:** Have someone on the AAB who can advise about how to adapt the records schedules for electronic records.
- **ISSUE:** As technology products are sunsetted, we need to have a plan.
- **ACTION:** Could have a sub-set of us in IT meet to come up with recommendations to bring back to Archives and AAB.
- **ISSUE:** Biggest impediment is resources and funding. If Legislature wants to come up with the funding, then can focus on what you want.
- Enterprise solutions should be adopted versus 1-offs.

- **ISSUE:** Evolution of cloud storage. Don't need to have in-house servers. It's a policy question about storage in the cloud – something else for the AAB to consider. These discussions have happened at Federal level and other states.
- We have the tendency to "pave the cow-path" instead of change the cow-path.
- **ISSUE:** Can the AAB create sub-committees, like for technology issues? One technology person on the AAB would not be enough. The AAB technology person could be a "point-person."
- **ACTION:** Technology-related people from the Stakeholder Group (different Branches of Government) could meet to work on issues of joint interest.
- **ISSUE:** Challenge of electronic records coming to Archives:
    - Can't be in proprietary format
    - No passwords, etc.
- **ACTION:** Building a Digital Archive for Secretary of State/ Archives. Will have to later uplift the formats of digital files so that they are accessible in the future. A topic for the AAB.
- National Archives and Records Administration (NARA) has defined digital formats for permanent electronic records. See:
    - NARA Bulletin 2014-03, Revised Format Guidance for the Transfer of Permanent Electronic Records: http://www.archives.gov/records-mgmt/bulletins/2014/2014-04.html and Appendix A, Tables of File Formats: http://www.archives.gov/records-mgmt/policy/transfer-guidance-tables.html
    - **ISSUE:** For example, can TIFF (Tagged Image File Format) files be read in the future? See NARA links above for preferred and acceptable file formats for 10 types of digital records.
- **ACTION:** Have to have technology available to read the digital file formats. Will require money to maintain.
- Need to have realistic expectations about the limits of technology.
- 50 States are discussing the same issues – about digital archives.
    - See Council of State Archivists (CoSA) Resource Center for Electronic Records: http://rc.statearchivists.org/PERTTS/Default.aspx
- Technology folks can't solve the problem unless the AAB keeps the issue front and center.
- When agencies are ready to send Archives digital records, Archives/ Secretary of State IT will be ready to receive them. OnBase system does not use proprietary formats. See: https://www.onbase.com/

**Next meeting (Oct. 28, 10-noon at Legislative Conference Room, State House, 1st floor):**

- Discuss staffing levels at Archives.
- Share OpenText PowerPoint on records retention rules that are "baked into" an Electronic Records Management (ERM) system (see attached).
- Topics 6, 7, 8, and 9 should generate from the AAB.