Aaron M. Frey
Attorney General

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

State of Maine
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006

Regional Offices
84 Harlow St. 2nd Floor
Bangor, Maine 04401
Tel: (207) 941-3070
Fax: (207) 941-3075

415 Congress St., Ste. 301
Portland, Maine 04101
Tel: (207) 822-0260
Fax: (207) 822-0259

14 Access Highway, Ste. 1
Caribou, Maine 04736
Tel: (207) 496-3792
Fax: (207) 496-3291

September 15, 2026

Hon. Craig V. Hickman, Senate Chair
Hon. Anne-Marie Mastraccio, House Chair
Government Oversight Committee
82 State House Station
Augusta, Maine 04333-0082

RE: Scope of OPEGA's authority to pursue a program evaluation of Maine Community Foundation's collection, management and distribution of funds in response to the October 2023 mass casualty shooting in Lewiston, Maine

Dear Senator Hickman and Representative Mastraccio:

In your letter of June 24, 2026, you have asked our office to address three specific questions regarding the scope of authority of the Office of Program Evaluation and Government Accountability (OPEGA) to pursue a program evaluation of Maine Community Foundation's collection, management and distribution of funds in response to the October 2023 mass casualty shooting in Lewiston, Maine. For the reasons explained more fully below, we concur with the OPEGA director's assessment that the office lacks jurisdiction to perform a program evaluation as described.

Facts

Our understanding of the facts that are germane to your inquiry is drawn from the "City of Lewiston Mass Shooting Fund History and Timeline" posted on the City's web site on February 3, 2026, supported by additional documentation provided by the City's deputy administrator, as well as information provided by the Maine Community Foundation (MCF).

In the first several days following the shooting, the City received $19,756.00 in credit card payments from individual donors through a portal on the City's Recreation Department web page, previously established to allow members of the public to pay when registering for recreation programs. On or about November 1, 2023, these donated funds were transferred by the city administrator into a dedicated account that she established at Androscoggin Bank for the purpose of receiving private donations for victims and families. The bank established a portal (to which the City posted a link on its website) to accept donations electronically, and private donors also deposited cash into this account at various Androscoggin Bank branch locations. The bank received a total of $617,258.91 in private donations into this account, including the initial deposit of $19,756.00 and accrued interest. The City has a record of the source and amount of each donation. On or about February 13, 2024, the City closed this account, and the bank transferred the entire sum of $617,258.91 (including accrued interest) to the Lewiston-Auburn Area Response Fund for Victims and Families established by MCF. An acknowledgment letter confirming receipt of this gift to the Fund for Victims and Families was sent by MCF to the Androscoggin Bank the following day.

The City also established the OneLewiston Fund in partnership with the Lewiston Auburn Metropolitan Chamber of Commerce Foundation (LAMCC). This fund received private donations through a website managed by LAMCC pursuant to a memorandum of understanding with the City. When the OneLewiston Fund was closed on February 14, 2024, LAMCC transferred the balance of funds, totaling $193,564.29 to MCF.

Statutory framework

The purposes for which OPEGA was created are outlined in Title 3, section 991 and include three key provisions in a single paragraph. Below is the full text of section 991, showing each sentence separately and highlighting key terms.

> The Office of Program Evaluation and Government Accountability is created for the purpose of providing *program evaluation* of agencies and programs of State Government and, when determined necessary by the committee, local_and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation.
>
> The office is also established to ensure that *public funds* provided to local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation are expended for the purposes for which they were allocated, appropriated or contracted.
>
> When authorized by the committee, the office also may examine or direct an examination of any state contractor financed in whole or part by public funds and any expenditure by any public official or public employee during the course of public duty, including, but not limited to, any expenditure of *private money* for the purposes of the agency or *other entity*.

"Program evaluation" is defined in section 992(5) as "*an examination of any government program* that includes performance audits, management analysis, inspections, operations, research or examinations of efficiency, effectiveness or economy or the evaluation of any tax expenditures required under this chapter." (Emphasis added.) "Government program" is not further defined.

"Other entity," as defined in section 992(4), means:

> *any public or private entity* in this State that may be *subject to program evaluation* under this chapter *as the result of its receipt or expenditure of public funds*. "Other entity" may include local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation.

3 MRSA § 992(4) (Emphasis added).

The term "public funds" is not defined in the OPEGA statute, nor is there a generally applicable definition of that phrase in the Maine Revised Statutes. The phrase "when determined necessary by the committee" in the first sentence of section 991 is not further explained in the OPEGA statute. However, the legislative history of section 991 sheds light on the intent of this phrase, as discussed below.

Analysis and Responses

Question 1: ***Is the OPEGA director correct that his office may lack jurisdiction to perform a program evaluation of purely private donations received by the Maine Community Foundation, a nonprofit corporation, despite the reference to nonprofit corporations in 3 M.R.S.A §991?***

Yes, based upon the following analysis of the statute.

Under the first sentence of section 991, a nonprofit corporation such as MCF could become the subject of an OPEGA review if it is "determined necessary" by the Government Oversight Committee for the purpose of conducting a "program evaluation." However, a program evaluation is "an examination of any *government* program," not the program of a private, nonprofit entity acting independently. If the State or the City had created a program by statute or local ordinance and MCF were implementing it on the government's behalf as an independent contractor, then MCF's activities in receiving and spending those funds could fall within OPEGA's jurisdiction if deemed necessary by the committee.

In this instance, there was no government program established by statute or ordinance. MCF did not have a contract with any governmental entity to administer a fund for victims and their families. MCF acted independently as a nonprofit, charitable corporation and set up its own funds and methodologies for receiving and distributing donations from private sources. City officials responded to an immediate crisis by establishing a bank account – separate from the City's public funds – in which to deposit donations that were given by private individuals and businesses. These donations were not given to the City for any municipal purpose, but rather to benefit injured and bereaved private citizens. The City served as a conduit, but it did not do so as part of any program funded by the City or the State.[1]

---

[1] By contrast, there are examples in state statutes where agencies are expressly authorized to receive private donations for a statutorily created program that is to be used for certain defined public purposes. *See, e.g.,* the Maine Organ and Tissue Donation Fund, 29-A M.R.S. §1402-B(4) ("Any private or public funds appropriated, allocated, dedicated or donated to the fund...must be deposited into the fund [and] [a]ll money received into that fund must be used for the purposes of the fund"); the ATV Enforcement Grant Program Fund,12 M.R.S. §10322(2) (fund includes "any other funds appropriated or allocated for inclusion in the fund, from whatever source, and any other money available for deposit in the fund, including any federal funds or other public funds or any donations made to the fund"); and the Digital Literacy Fund, 20-A M.R.S. §19251(2) ("Any private or public funds appropriated, allocated or dedicated to the fund as well as income from any other source directed to the fund" to be used as provided in §19251(3)). In such situations, OPEGA would have jurisdiction to address the receipt and expenditure of those private funds as part of a program evaluation of any of these programs.

Under the second sentence of section 991, OPEGA has jurisdiction to "ensure that *public funds* provided to ... any...nonprofit corporation are expended for the purposes for which they were allocated, appropriated or contracted." As noted above, the phrase "public funds" is not defined in Maine statutes. It thus has to be given its plain and ordinary meaning in the context of the statute as a whole, to give effect to the intent of the Legislature. In Black's Law Dictionary (12th ed. 2024), "public fund" is defined as "the revenue or money of a governmental body," including "bank deposits and instruments representing investments of public money", as well as "the securities of a state or national government."

"Public funds" thus include revenues from taxes, fees and other sources, which are appropriated and allocated in the state budget and may be expended by a state agency through a contract with a nonprofit corporation or distribution to a local government. Here, the facts show that donations made voluntarily by individuals and businesses were sent to the City's Recreation Department, initially, and later to a specially designated bank account established by the city administrator and LAMCC to keep the funds separate from the City's treasury. The donations were sent to the City and/or deposited directly into the dedicated bank account, not for municipal purposes, but as gifts to be used for the benefit of private individuals and families who had suffered from the tragedy on October 25th. The placement of these funds temporarily in an account established by city officials, and/or the City and LAMCC, does not transform them into public funds.[2]

Moreover, the term "private money" is addressed separately from "public funds" in section 991, which demonstrates that the drafters did not intend to conflate the two. The spending of private money falls within OPEGA's jurisdiction only when such spending is by "any public official or public employee" during the course of their public duty and for the purposes of the agency or "other entity." The definition of "other entity" includes a private, nonprofit corporation only if the nonprofit "may be subject to program evaluation ... *as the result of its receipt or expenditure of public funds*." Thus, the statute appears to give OPEGA jurisdiction to examine a public official's or public employee's expenditure of private funds for purposes of a nonprofit corporation *only if* that nonprofit corporation is administering a government program or is also receiving or spending public funds.

Finally, to the extent there is any ambiguity in the use of the phrase "public funds" in section 991, the legislative history supports the interpretation offered here. The underscored language below was added to section 991 by P.L. 2003, c. 673, Part GGGG-1 through Senate Amendment "A" (S-518).

§991. Evaluation and Government Accountability

The Office of Program Evaluation and Government Accountability is created for the purpose of providing program evaluation of agencies and programs of State Government

---

2 In a case involving a town subsidy to a family paying private tuition for high school, the Law Court construed the phrase "public funds" to encompass "funds flowing from the public coffers" whether the source was state or municipal, citing a New Mexico case for the proposition that "when funds enter the public treasury at any level they become public funds." *Joyce v. State*, 2008 ME 108, ¶11, 951 A.2d 69. The issue in *Joyce*, however, concerned only state and local funds, not private funds for which the municipality acted merely as a conduit.

> <u>and, when determined necessary by the committee, local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation</u>. The office also is established to ensure that public funds provided to local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation are expended for the purposes for which they were allocated, appropriated or contracted. When authorized by the committee, the office also may examine or direct an examination of any state contractor financed in whole or part by public funds <u>and any expenditure by any public official or public employee during the course of public duty, including, but not limited to, any expenditure of private money for the purposes of the agency or other entity</u>.

Speaking in favor of the amendment on the floor of the Senate on April 16, 2004, Senator Youngblood explained the purpose of the amendment as follows:

> It restores the ability of the OPEGA Oversight Committee to say it is not only important to look at the items that are run, the budgets that are run, or the programs that are run by our own state agencies; it is important *to follow the money, whoever is spending state money.*
>
> ...
>
> What are we getting for the money that we are spending in all these programs?

Legis. Rec. at S-1665 (121st Legis., 2nd Reg. Sess. 2004) (Emphasis added). Inclusion of the phrase "when determined necessary by the committee" in this amendment makes sense in this context. If a local or nonprofit entity were spending funds appropriated or allocated by the Legislature, then the committee might deem it necessary to "follow the [State] money" wherever it went, even if that were to a private, nonprofit corporation. There is no suggestion in the language or legislative history of section 991 that the Maine Legislature intended OPEGA to examine the activities of a private, nonprofit corporation except to the extent that such a private entity was receiving and spending public funds.

Based on the facts presented, MCF was neither receiving public funds nor administering a government program, nor are any of MCF's officers or employees "public officials" or "public employees." Accordingly, none of the provisions in section 991 supports finding that OPEGA has jurisdiction to perform a program evaluation of MCF's receipt or expenditure of private funds donated for the purpose of helping victims and families of the Lewiston mass casualty shooting.

<u>Question 2:</u> *Whether the City of Lewiston's distribution to the Maine Community Foundation of funds (as reported by Lewiston) would be subject to OPEGA program evaluation, including but not limited to by operation of revenue sharing by the State of Maine with Lewiston (see 30-A M.R.S. §5681)?*

It appears from the documents we reviewed that all of the funds the City of Lewiston reported distributing to MCF were private monies donated voluntarily by individuals and businesses or other private organizations, plus the bank interest generated from deposits of those funds in the Androscoggin Bank. The City did not transfer any municipal or state funds to MCF and thus did not transfer any funds obtained through state revenue sharing.

__Question 3__: ***If there are any facts establishing that some "public funds" (as that term is used in the OPEGA statutes (see 3 M.R.S. §992(4)) were part of any funds at issue here, would such a portion of "public" funds somehow confer program evaluation authority upon OPEGA to review even the handling and disposition of the private donations?***

We are not aware of any facts establishing that any public funds – i.e., funds from governmental sources, as discussed in response to Question 1 above – were received or distributed by MCF. Accordingly, we have not attempted to answer what we believe to be a hypothetical question.

I hope this analysis is helpful to the Committee. Please let me know if you have further questions. I also plan to attend your meeting on September 16 if you wish to discuss this further.

Sincerely,

Aaron M. Frey

Aaron M. Frey
Attorney General

AMF/rjs

cc: Peter Schleck, Director Office of Program Evaluation and Government Accountability