



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

MEMBERS:

SEN. MARGARET M. CRAVEN  
SEN. BILL DIAMOND  
SEN. EARLE L. MCCORMICK  
SEN. NANCY B. SULLIVAN  
SEN. DAVID TRAHAN  
REP. DONALD E. PILON  
REP. ANDREA M. BOLAND  
REP. JOYCE A. FITZPATRICK  
REP. LESLIE T. FOSSEL  
REP. STEPHEN D. LOVEJOY

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

Meeting Summary  
July 19, 2011

**CALL TO ORDER**

The Chair, Senator Katz, called the Government Oversight Committee to order at 9:33 a.m. in the Burton Cross Building.

**ATTENDANCE**

Senators:	Sen. Katz, Sen. Craven, and Sen. McCormick Joining the meeting in progress: Sen. Trahan and Sen. Sullivan
Representatives:	Rep. Burns, Rep. Pilon, Rep. Fossel, Rep. Fitzpatrick, and Rep. Lovejoy Absent: Rep. Boland
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Wendy Cherubini, Senior Analyst, OPEGA Etta Begin, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information to the Committee:	Sawin Millett, Commissioner, Department of Administrative and Financial Services Peter Mills, Executive Director, Maine Turnpike Authority

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

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

**NEW BUSINESS**

• **Request for OPEGA Review: Sale of State Property to Prison Warden**

Chair Katz said at today's meeting Director Ashcroft will report what OPEGA staff have learned regarding the sale of State property to Warden Barnhart. The Chair noted that at the meeting were Commissioner Millett, and the Chairs of the Criminal Justice and Public Safety (CJPS) Committee, Sen. Mason and Rep. Plummer.

The following questions were asked by the CJPS Committee in their memo to the GOC dated July 1, 2011:

- How was Warden Barnhart made aware of the property?
- When was she made aware of the property?
- Who authorized the sale of the property?
- Who was responsible for the appraisal of the property?
- Did this sale violate any state statutes governing the sale of state owned property?
- What attempts were made to market the property?
- Was the property publically listed for a price higher than what Warden Barnhart eventually paid for the property?
- Is any other government employee, municipal official, or agency generally, and at Maine Bureau of General Services or CBRE/The Boulos Company (Boulos) specifically, involved in the planned subdivision on the property?

Director Ashcroft summarized OPEGA's research on the sale of the State property to Warden Barnhart. (A copy of OPEGA's Summary and Timeline of Events is attached to this Meeting Summary). She noted that Commissioner Millett and Betty Lamoreau, Acting Director, Bureau of General Services, DAFS were at the meeting, but not certain they could answer all the questions regarding the sale because they were not involved in the transaction.

Concerns and questions of the GOC members included:

- The large lapse of time between the time it was critical to sell the property, June 2009, to the time it was listed with Boulos.
- What Boulos had indicated they would do to market the Ship Street property and what they actually did.
- The amount of other State owned property that has been for sale and difficult to sell.
- Had there been any discussions regarding violating State law and whether the Attorney General's Office was going to follow-up.
- Whether the Maine State Prison told the Warden she could stay in the house being discussed until it sold.
- That State property in Hallowell has been on the market and, even though heavily marketed, still has not sold.
- What process the State used to hire Boulos as the broker.

The Committee asked Director Ashcroft to go back five years on other sales that the State made to determine if the lack of public marketing occurred in other transactions and ask the individuals listed in the attached Summary of OPEGA Research on Sale of State Property to come before the GOC at a later meeting to answer questions regarding the sale of the property. The Director was also asked to review the State's procedure regarding contracting with Boulos.

Commissioner Millett was appointed Acting Commissioner on January 6, 2011 and was confirmed by the Senate on January 20, 2011. He noted the Appropriations and Financial Affairs (AFA) Committee's action in the spring of 2010 of meeting \$1.5 million in sale of property perhaps was not reachable. Commissioner Millett was a member of the AFA Committee at that time.

The Commissioner accepted responsibility for his role in the sale and said he has great respect for the individuals that were involved. The timelines and the process followed are clear, but he was not in a position to provide factual information on whether marketing and advertising was done in direct and complete accord with the resolve authorized by the 119<sup>th</sup> Legislature. In his discussion with Director Gavin in January, it was clear that the \$1.5 million in sales of State property set by the AFA Committee was not going to be able to be reached in FY 11.

In his discussions with Director Gavin, he also knew that the negotiations with the Warden were well underway before the end of December, 2010 and then a flurry of activity before Director Gavin left in February, 2011.

The purchase price was \$175,000, had a lease back of at least 3 years for \$1.00 a year, the Warden was the only bidder on the property, and the value was comparable to what the real estate was worth.

The public perception issue ties closely to the issue of the legality of the Warden being a bidder and the realistic statement of value. Commissioner Millett made the assumption that the contract language, which always implies clearly that a contract cannot engage a State employee as a beneficiary, had been discussed in the fall. It was not a point brought to his attention, but he took full responsibility for not pursuing that directly. That fact was overlooked, but will not be missed again going forward. The Commissioner referred the GOC to the information in their packet – Department of Administration and Financial Services Bureau of General Services Property Sales Policy and Procedures and the Governor’s Executive Order Increasing Oversight Over Sales of State-Owned Real Estate dated July 11, 2011.

Committee members’ discussion included:

- The public appearance of having Prison inmates working at the Warden’s home.
- The property was sold to a Maine State employee.
- The maintenance on the property was negotiated with the realtor and does not appear nontransparent.
- The State had an obligation to do certain maintenance of the property and the lease agreement does not specify how DOC’s obligation to take care of the maintenance on the property will be fulfilled. It had been past practice for the Prison Inmate Work Program to provide the labor for the maintenance on the Ship Street property when DOC owned it, but nothing has been seen in writing of who was going to provide the maintenance once it was a private residence. All the lease agreement requires is that DOC be responsible for the residence, but does not specify that Prison labor will be used.
- Prison inmates are directly accountable to the Warden, and having them do the work on the property creates an interaction and relationship that is totally inappropriate. It was noted that the lease agreement did not technically speak to how that obligation was going to be fulfilled.
- The maintenance was going to be done in consideration of the fact that the lease was being provided for \$1.00 per year and therefore was negotiated around what the lease price was going to be.

Chair Burns was concerned about what the past procedures have been. He asked the Commissioner if he was aware that no marketing was done when he asked Director Gavin if the Warden was the only bidder on the property. Commissioner Millett was not aware of the lack of formal advertising or marketing post mid-September. His recollection is that the initial approach was made on September 2<sup>nd</sup>, conversations occurred the following week, and the name of the Warden was given to Boulos as a potential purchaser. Chair Burns said if there had been marketing done and there was only one bidder is a different situation of there being no marketing and one bidder. Commissioner Millett assured the GOC and the Legislature the full cooperation of his Department and the Bureau of General Service in answering questions and improving communications as they move forward.

Rep. Fitzpatrick thought it odd that the State has not had a formal policy for selling its property. Commissioner Millett believes the lacking of policies for sales of property is because the sales were sporadic and authorized by a single piece of property by a single Resolve. The need for the assignment of responsibilities, the sequence of events and the written policy is evident now, but there had not been a policy in the past.

Rep. Pilon said the Town of Thomaston assessed the property for \$512,000 and asked if the Town assesses at 100% valuation. The Commissioner will get an answer to Rep. Pilon’s question.

Rep. Pilon asked if any information was provided by Boulos to the State as to the true value of the property. Commissioner Millett said Boulos provided information on comparable property that sold and considered their \$220,000 figure as an opinion of value.

Sen. Sullivan said it does not appear that there is a standard policy for the sale of real estate and that each department does not know what is being sold. Commissioner Millett thinks there are two different procedures for the sale of property. One is the Department of Transportation (DOT) has been given the ability to handle a variety of real estate transactions, including right of ways, taking eminent domain property and correcting boundaries where road construction is involved. DOT has been authorized, in a separate set of statutes, to have their own real estate staff on hand to process those actions with the approval of the Governor. Every other State real estate sale is authorized by the Legislature pursuant to the Constitution under a resolve directly obligating the Commissioner of DAFS to oversee the sale. He said Risk Management maintains a record of all State owned property with the insurance value attached to it and the Bureau of General Services has records of what the State leases for space.

Chair Katz noted the new State policy for the sale of real estate did not include information on how the price of the real estate would be set. The State's realtor RFP asked the company to explain how they will market the properties for sale or lease. If State property is not to be marketed to the general public, maybe there should be an explanation of why it was not going to be marketed to the public. Commissioner Millett said DAFS' proposal for the sale of State owned property that goes to the Governor requires a Committee of Review to present a calculation of the State's financial interest in the proposed sale as compared to the property's fair market value. It is their intent to arrive at that calculation and make that information a part of the public record before it gets to the level of recommending to the Governor and to the Commissioner that a sale take place. It is DAFS' intent that everything be captured in an annual report prepared by the Bureau of General Services describing each real estate transfer and will include a description of the property sold, name of the purchaser, the purchase amount, other considerations, statement of authority to sell the property and other information of relevance. The report will be provided to the State and Local Government Committee, Governor and posted to the State's Website. He agrees that the inventory of property needs to be up-to-date, accurate and complete for both sale and leased property.

Rep. Fitzpatrick asked if Warden Barnhart's request for a subdivision of the property had been approved. Commissioner Millett said the Warden did file a subdivision plan with the Town of Thomaston before the opinion was rendered by Attorney General Schneider that made the transaction of the sale null and void.

Sen. Craven asked if the sale of the real estate to the Warden was discussed with the Criminal Justice and Public Safety Committee. Chair Katz understood from talking with the Chairs of that Committee the matter was not discussed with the CJPS or AFA Committees.

Chair Burns asked why the State would have an arrangement where they sell a piece of property and then lease that property back for \$1.00 a year. If an agency has that need, why would the property be sold in the first place? Commissioner Millett said from September 2<sup>nd</sup> forward there are references in emails provided advising the importance to DOC of having the third building on the property available for prison workers who work a double shift and for trainees. DOC used the building for overnight housing and did not want to give it up because they did not have the resources to buy similar space or that would have that kind of available access. That was a point made by DOC during the previous fall.

The members of the GOC thanked Commissioner Millett for attending the meeting and answering their questions.

Chair Katz said the GOC had asked Director Ashcroft to research the subject of other State sale of property in the last five years to determine if there were similar issues of the sales not being made public. Director Ashcroft asked if the Committee was asking for the review of DAFS sales or to also include DOT's sale

transactions. Following Committee discussion it was decided that OPEGA will review whether all State property sales, over the past five years, were publicly marketed, what was the State's process, and what process was used to hire Boulos.

The GOC scheduled Augusta 16, 2011 at 9:00 a.m. for the report back on the selection of Boulos and for asking the individuals listed in Director Ashcroft's Summary who may have additional information of explanations regarding the sale property to the Warden.

**Motion:** That the Government Oversight Committee request that OPEGA review the sale of the property located at Ship Street Circle, Thomaston, Maine to the Warden of the Maine State Prison. (Motion by Rep. Fossel, second by Sen. Sullivan, passed unanimous vote, 10-0).

## RECESS

Chair Katz recessed the Government Oversight Committee at 11:00 a.m..

## RECONVENED

Chair Katz reconvened the meeting at 12:10 p.m.

## UNFINISHED BUSINESS

- **Report Back of Requested Information Regarding Maine Turnpike Authority**
  - Board Members and Current Terms from Maine Turnpike Authority
  - Report back from MTA Board in response to GOC's May 13<sup>th</sup> letter to the Board
  - Explanation of whether MTA may provide certain information to the GOC from Chief Deputy Attorney General Linda Pistner

Director Ashcroft reminded the GOC of what they had requested for information and were expecting to receive from MTA at this meeting. The information regarding the current Board members and the report back on the GOC's May 13<sup>th</sup> letter sent to the Board had been received and she referred them to that information in their packet of material.

Executive Director Mills was at the meeting to provide the information requested by the GOC and to answer questions.

Director Mills said MTA is in the process of preparing an RFQ for a contracted auditor who would come in unannounced to do an audit and would report their findings directly to the MTA Board and the Transportation Committee. MTA has an auditing firm that reports to the bond holders and the public at large. That firm is looking to see if the accounts are properly structured, that the bond holders are being told fundamental truths about the solvency of the organization, but they are not looking for a \$250 gift card that was cashed during the year. That is the level of detail of auditing function the RFQ is seeking.

Director Ashcroft believes the GOC has identified a topic that has been tossed around in several of OPEGA's reviews and that is what do they have in the State for auditing resources and how are they employed? The State Audit Department, for the most part, are employed in doing the audit being discussed for nonprofits. It is called a single audit, but is for the purpose of informing the federal government that the State is handling the federal funds it receives correctly and to make sure the State's financial statements are accurate in terms of everything that has been recorded and has made its way to the financial statements and the presentation of those statements are a truthful reflection of the State's financial situation. The State Controller's Office has a division of auditors who are suppose to be doing internal auditing for the State, but in recent years have been consumed by ARRA requirements and Director Ashcroft thinks they frequently get deployed to tasks other than their internal auditing function. Several State agencies have auditors including DOT and Bureau of Motor Vehicles. DHHS was

supposed to start an internal audit function in 2005 after OPEGA's first review of the Department, but the Director does not believe that has fully evolved into an internal audit function. She would advocate for built in structure, but would want to make sure there is not overlapping functions. The independence of the structure is vitally important to its value.

Executive Director Mills, Jonathan Arey and other MTA staff have discussed and addressed the need for change with regard to the MTA Board and employees. Changes were made to the by-laws, amended the travel and expense policy, conflict of interest rules, an ethics policy that applies to all employees, and training is conducted regularly under the ethics policy.

The Transportation Committee exhibited a great deal of concern about costs and expenses at the Maine Turnpike Authority. They approved MTA's budget with the idea that the numbers were ceiling numbers for 2012 and provided a letter directing MTA to report back to them in the fall and again in December, 2011 on the progress of bringing costs under control. The Turnpike will be reporting directly to the Transportation Committee on what has been done.

Executive Director Mills reported that earlier in the day the MTA filed a civil lawsuit against Paul Violette, former Executive Director of the MTA that included a Motion for Attachment. Although he did not have copies for the GOC he thinks members will be assured that the latest up-to-date information at the disposal of the Turnpike Authority is captured by the Complaint, and in some respects, supersedes the forensic audit done that the GOC was seeking disclosure of. He said Maine Statute makes it clear that they are not to make public disclosure of the audit.

Director Ashcroft referred the GOC to the memo they sent to Linda Pistner, Chief Deputy Attorney General regarding public disclosure of the Maine Turnpike Authority Audit Report and Attorney Pistner's response. The Forensic Audit is part of a criminal ongoing investigation by the AG's Office and is one of the reasons it will be kept confidential. Chair Katz disagreed with the interpretation of the law.

The Committee thanked Executive Director Mills for his report back regarding MTA.

- **Summary of Legislative and Executive Branch Action on Evaluating Tax Incentive Programs Stemming from OPEGA's 2006 Report on Economic Development Programs**

Director Ashcroft summarized what action has been taken regarding economic developments programs in Maine since OPEGA issued its report in 2006.

- Legislation was passed that went before the BRED Committee regarding evaluating tax programs. A definition of economic development programs was established and put in statute.
- An inventory of all of Maine's economic development programs was done by the Maine Development Foundation.
- There was a requirement for the Commissioner of the Department of Economic and Community Development (DECD) to conduct a comprehensive annual evaluation of any economic development programs that were not already covered in either a federal review or in the evaluation of research and development programs that were ongoing. DECD suggested to the BRED Committee a proposal of what the study would involve and had received a one-time appropriation of \$150,000 to fund the initial study. An independent party was hired to do the review and it was completed and submitted to the Legislature in 2009. Director Ashcroft explained and provided information that allowed legislators to take action on specific programs or to see whether a specific program was having a particular outcome. DECD was going to try to capture some of that work in the review they did and picked out several programs to do case studies on.

- The Legislature was not enamored with the result of the review because it did not provide answers to the Legislature's questions. DECD had a difficult start with the first evaluation and acknowledged things they would do differently in the future. They received a poor response rate from the businesses that were asked to provide data through a survey. The legislation still requires an annual comprehensive evaluation of the programs and established a funding mechanism by assessing a certain percentage of the economic development program funds being held back to be used for the evaluation, but the legislation had an error in the percentage amount included in the statute. Because of that, by the time they got to the second year of the evaluation, they did not have enough money because it was .08% in the legislation and it should have been .8%. Therefore only \$4,100 was available instead of the maximum \$150,000. DECD is trying to get that language corrected.
- The Legislature passed a Resolve that required the Commissioner of DAFS to lead a task force to make recommendations about how to do a more comprehensive evaluation of tax incentive programs and Ellen Schneiter, former Commissioner of DAFS, presented the results and recommendations of the task force to the AFA and BRED Committees in November, 2010.

Director Ashcroft does not know of any additional move to act on the recommendations made. Some legislators on the AFA Committee had expressed an interest in turning some of the information into legislation, but OPEGA has not seen any legislation yet.

Sen. Sullivan said if a company is receiving three or four TIF programs, they need to provide information requested by the State. There is a great oversight of the programs, but not a great job of finding out what the qualifications are, making sure that companies are not receiving more than they should and to make the companies more forthcoming when responding to the State's request for information. Director Ashcroft said those were issues identified in OPEGA's Report in 2006. There has been some movement on trying to get an arm around some of those things, and in particular, how to evaluate programs. The challenges of getting information on a tax expenditure program as opposed to a grant program is that tax credits do not get the same level of scrutiny by the Legislature, are not an appropriation that gets made, and are more difficult to monitor.

Chair Burns thinks it is a matter of continuity and there should be an ongoing process to evaluate the tax incentive programs and follow-up. Sen. Craven said there are companies that for 50 or 75 years have received tax incentive program money and the Legislature does not know if they ever created a job, but they now think they are entitled to the tax relief. Director Ashcroft said there have been two tracks proposed about how to evaluate tax incentive programs. In statute there is now the requirement for an annual comprehensive economic development program. Everyone still wants a program-by-program of what the State receives for its investment and DAFS has tried to address that in their proposal.

Chair Burns asked for clarification of who would be making the decision of which programs to look at. Director Ashcroft said the responsibility for making the annual comprehensive macro evaluation belongs to the Commissioner of DECD under statute, and the November 3, 2010 Report of the Working Groups in the 2009 Resolve, Chapter 199 is sitting as a report presented to the AFA, Taxation and Labor, Commerce, Research and Economic Development Committees. The GOC needs to decide whether there are any particular programs the Committee would like OPEGA to evaluate.

Rep. Lovejoy said one of the problems for the State is that tax incentive programs are written with great intent but with absolutely no enforcement or follow-up. He would suggest to the GOC that they look into how to modify the programs, not retroactively, but going forward, so that if a company wants to benefit under BETE they agree to provide certain information and that reporting requirements be built in. Director Ashcroft noted that was part of the legislation that was first passed after OPEGA's Report. There is a requirement in the statute that businesses have to provide whatever data is requested by DECD and establish what data would be reported annually.

Chair Katz said when he came into the Legislature, he thought there was a coherent economic development policy and the tax incentives and grants were working in an efficient way, but this area of State government is a mess. Director Ashcroft said there is nobody serving in the role of a portfolio coordinator, there is no State economic development strategy and no process for vetting any new legislation that might include an economic development piece. OPEGA was attempting to get the BRED Committee to set up, or design, a process by which all of those items would get vetted. The GOC is right back to all of OPEGA's original recommendations and questions that are still open about whether there has been sufficient and effective action taken to implement anything.

Chair Katz suggested that the GOC draft a committee bill which will put into place the two prongs Director Ashcroft referred to and have it ready for January, 2012. The Committee asked if Director Ashcroft could work with the Revisor's Office to get something drafted.

Director Ashcroft said the legislation would include:

- Correct the percentage amount in the legislation, if they still want the funding for an annual assessment. She believes DECD wants that to happen.
- Looking at the last Report the conclusions and recommendation made of how to evaluate programs is straight forward in terms of setting up an evaluation process. A decision has to be made of who is going to be responsible for it.
- Setting up a structure for new programs to get assessed against all that exists to make sure it is not a duplication or overlap, and it fit with where the State wants to go. She was hoping that DECD could play a centralized role and it seems to be envisioned by their statute, although OPEGA had found it had never fully been implemented in that manner. The LCRED Committee, in conjunction with that, would be a funnel for vetting, similar to the way any bill that has a confidentiality provisions would go to the Judiciary Committee for an extra review, this would require some process where people would have to recognize in the budget that it contains information to be forwarded to the LCRED Committee.

The Committee asked the Director to draft the legislation for their review.

Rep. Lovejoy thought it appropriate for the GOC to charge DECD with the requirement that they develop major substantive rules regarding what will be collected for information and what will constitute a reason to take someone out of a program. He suggested charging DECD with developing policies going forward for what companies need to do to qualify and to stay in the tax program. Sen. McCormick noted different legislative committees have jurisdiction over the tax incentive programs so would have to make sure that each committee received the appropriate information. Director Ashcroft said that is a problem because there is more than one committee of jurisdiction and more than one State agency. DECD does not have jurisdiction over all the programs.

Sen. Sullivan said years before at the time tax incentive programs were being created, legislative committees argued over their committee's jurisdiction of programs. She would agree to meet with other committees, but would like the GOC to put together the legislation and have the committees come before the GOC to discuss. Rep. Fossil agreed with Sen. Sullivan. Chair Katz said Director Ashcroft would be developing a bill for the GOC's review.

#### • **Outline of Proposed GOC Legislation Regarding Quasi-Governmental Agencies**

Director Ashcroft wanted to review with the GOC their intentions regarding legislation for quasi-governmental agencies before she drafted the language for the bill to make sure the concepts the Committee wanted included were accurate. The following are areas she thought the members had discussed including in the bill:



- Competitive procurement.
- Sponsorships, donations and memberships.
- Travel and meal expenses.
- Hiring of lobbyists.
- Board terms and possibly board responsibilities.

The GOC discussed whether boards should be evaluated, and if so, what that evaluation should involve. Director Ashcroft said when OPEGA reviewed information for MTA's Board they found most boards of the quasi-governmental agencies are accountable to the Legislature, in particular, to the policy committee of jurisdiction. If the committees of jurisdiction knew what questions to ask, they could walk through that process with a board. The GOC asked Director Ashcroft to check with national organizations on what they have developed.

In the section of the length of terms for board members, Director Ashcroft had left that blank and asked the GOC what their thoughts were. Chair Katz recommended leaving it blank for now because they will want to hear from the agencies themselves, gather the input first and then decide what the numbers should be. He also recommended that a dollar threshold for sole source procurement be left blank for now as well.

Sen. Sullivan, Sen. Craven, and Rep. Lovejoy thought sponsorships and donations were appropriate in some situations and should be allowed and Chairs Katz and Burns did not.

Director Ashcroft said she would need time to work on the draft legislation because each quasi has its own enabling statute and she is not aware of a place in statute that just deals with quasies.

## **REPORT FROM OPEGA DIRECTOR**

### **• Project Status Report**

Director Ashcroft summarized the status of OPEGA's projects in progress.

- Maine Green Energy Alliance;
- Health Care Services in the Correctional System;
- Child Development Services;
- Cost Per Prisoner;
- BETR, BETE and TIF.

During the highlights of the Health Care Services in the Correctional System, Chair Katz thought DOC was about to draft an RFP going forward and asked if that was still their plan. Director Ashcroft said they are, but there were other issues that were brought up by OPEGA's consultant who did the review, and she wanted to nail down root causes for those issues so she could make sure that DOC was going to take the appropriate action. She thinks they are already working on that.

Chair Burns said that the report back from DOC to the GOC had a big gap. He does not think he received the information he had anticipated receiving regarding the culture at the Prison and the prison system at large. He didn't know if there was more information to come, but he was uneasy about that. He does not think the GOC has accomplished the goal it set out regarding DOC. Sen. Craven agreed. She asked whether the jails are going to be partnering with Corrections System to buy health care. Director Ashcroft said she did not ask that question, but will. Chair Burns said there is a new Board of Corrections make-up and that should be one of the topics – what has been done in coordinating between the jails.

Director Ashcroft suggested that the GOC draft questions they want DOC to answer for their next report back. The Committee members agreed with the Director's suggestion.

- **NLPES Impact Award for OPEGA's Emergency Communications in Kennebec County Report**

Director Ashcroft reported that OPEGA submitted and was awarded NLPES Impact Award on the Emergency Communications in Kennebec County Report.

- **Attendance at NLPES Fall Professional Development Conference**

Director Ashcroft said the above award would be presented at the National Legislative Program Evaluation Society, (NLPES) fall conference in Denver, Colorado. It is the only conference that NLPES has and OPEGA, for budgetary reasons, has not sent staff for the last two years, but since OPEGA's small out-of-state budget stayed in the last budget approval process, she would like to send two or three OPEGA staff to the conference. She said OPEGA has applied for a \$750 incentive and hopes to get that money to help with expenses.

- **Update on OPEGA Analyst Recruitment**

Maura Pillsbury will start with OPEGA on August 1<sup>st</sup>. She is from Cambridge, Massachusetts and had three years of employment with the Government Accountability Office at the Federal level and for the last two years has been employed as an analyst at Abt Associates.

## **SCHEDULE NEXT COMMITTEE MEETING**

The next GOC meeting was scheduled for Tuesday, August 16, 2011 at 9:00 a.m.

## **ADJOURNMENT**

The Government Oversight Committee meeting was adjourned at 2:37 p.m. (Motion by Rep. Fossel, second by Chair Burns, unanimous).

## Summary of OPEGA Research on Sale of State Property to Maine State Prison Warden

July 19, 2011

### Background

Part FF of LD 1671, the Supplemental Budget for FY10 and FY11, passed by the 124<sup>th</sup> Legislature called for the Commissioner of Administrative and Financial Services (DAFS) to identify \$1.5 million in proceeds from the sale or lease of state-owned properties to be deposited as undedicated revenue to the General Fund no later than June 30, 2011. The property at Ship Street Circle in Thomaston was among those identified as already authorized for sale by the Legislature that could be sold to meet this requirement. The Legislative Resolve that authorized the sale of this property in 2000 makes the Commissioner of DAFS responsible for having the current market value of the property determined by an independent appraiser and setting the purchase price and terms and conditions of any sale. The Resolve describes the various means by which the Commissioner may accomplish a sale, but does not appear to require that the property be publicly marketed.

The Ship Street Circle property is one parcel on Route 1 in Thomaston with three houses on it. Maine State Prison Warden Patricia Barnhart has been living in one of the residences since she became employed with the State in December 2009. A second residence has been periodically used by the Department of Corrections for temporary housing for new trainees at the Prison. The third residence appears to have serious maintenance issues and is not useable. The Town of Thomaston property records show the parcel as being 4.16 acres with a tax assessment value of \$512,263.

DAFS had an independent appraisal of the property done in 2006 by Amidon Appraisal Company. The appraisal report shows the parcel as being 5.03 acres and notes that the property has been valued under “extraordinary assumptions” as defined by the Uniform Standards of Professional Appraisal Practice. The extraordinary assumption being that the Ship Circle property can be subdivided into a minimum of three residential lots. The appraised value is \$430,000. In 2009, DAFS obtained an Opinion of Value from the Boulos Company. The Boulos report notes that the property must be subdivided in order to sell the houses individually. It shows the acreage as 4.16 and gives the value of the property as \$220,471. It is unclear whether the Opinion of Value was based on the same assumptions as the independent Appraisal.

In early September 2010, Warden Patricia Barnhart was informed by DOC Deputy Commissioner Denise Lord that the property at Ship Street Circle was to be sold. The Warden inquired about the possibility of purchasing the home she was living in, a question that Deputy Commissioner Lord passed on to Chip Gavin, the Director of DAFS Bureau of General Services (BGS). Deputy Commissioner Lord noted that she was not sure if there were any prohibitions or concerns with this and she would leave it to Director Gavin’s decision.

In mid-September, DAFS signed a contract with CBRE/The Boulos Company for assistance in marketing and selling a slate of State properties including the Ship Street Circle property. Boulos was apparently the successful bidder on an RFP that DAFS had issued for this service. Director Gavin made the assigned Boulos representatives (Jon Leahy and Chris Paszyc) aware of Warden Barnhart’s potential interest in purchasing the house she was living in, and in October they began exploring this interest with her. Negotiations involving Warden Barnhart, the Boulos representatives, Director Gavin and Bill Leet, BGS Director of Leased Space continued from October through March 2011. Those negotiations involved offers and counter-offers on the price and terms and conditions of the Purchase and Sale Agreement, which included the Warden leasing one of the residences back to DOC for \$1 a year. The sale of the property was never publicly marketed, nor does it appear there was any public notice of the sale advertised.

Director Gavin left State employment in early February 2011 when the last details of the terms and conditions on the Purchase and Sale Agreement and related Lease Agreement were being finalized. The sale and related matters became the responsibility of Director Leet. One of the open items was a request by the Warden that the Lease Agreement include a requirement for DOC to continue providing the landscape maintenance, snow removal and trash removal for all of the Ship Street Circle property, not just the house DOC was going lease, for the period of

the lease. An email in the records provided by BGS indicate that Director Leet was exploring whether there were legal or other issues with this with the Attorney General's office.

In March 2011, the new DAFS Commissioner Sawin Millett appointed Betty Lamoreau, BGS's Director of the Division of Purchases, to serve as the Acting Director of the Bureau of General Services. Director Lamoreau signed the final Purchase and Sale Agreement on the Ship Street Circle properties on March 29, 2011 and Warden Barnhart signed it on April 4, 2011. The agreement was for a purchase price of \$175,000 with a leaseback of one residence to the Department of Corrections for \$1 per year for four years. In consideration of the lease rate, DOC was to provide landscape maintenance, snow removal and trash removal at all three residences for the period of the lease. The closing on the sale was June 9, 2011. The Release Deed was conveyed to Patricia Barnhart and Sheehan Gallagher. The Lease Agreement was between those individuals and the State of Maine, DAFS Bureau of General Services on behalf of the Department of Corrections.

A detailed timeline of the events and communications surrounding the sale, as gleaned from the records provided by the Bureau of General Services, is attached.

#### **Issues Noted by OPEGA**

- No independent appraisal of property was re-done in preparation for sale in 2010.
- Property was not publicly marketed despite the marketing plan in Boulos proposal.
- Sales price appears low in relation to potential total value of the property.
- Public perception issues associated with this sale and the final terms and conditions of the lease agreement apparently not well considered even by seasoned State government officials.

#### **Actions Taken by State since July 1, 2011**

- Attorney General stated that Contract for Sale, Release Deed and Lease and Memorandum of Lease are void under the terms of Title 17, section 3104 and encouraged parties to unwind the transaction. (see attached)
- Governor LePage issued Executive Order 18 FY11/12 suspending all pending real estate sales and ordering DAFS to establish internal policy guidance for sales of state-owned real estate. (see attached)
- Commissioner of DAFS has drafted the internal policy guidance and procedures for sales of real estate. (see attached)

#### **Additional Information or Explanations Might Be Obtained from:**

- Ellen Schneider, Former Acting Commissioner of Department of Administrative and Financial Services
- Chip Gavin, Former Director of the Bureau of General Services - DAFS
- Bill Leet, Director of Leased Space – BGS
- Denise Lord – Former Deputy Commissioner of the Department of Corrections
- Patricia Barnhart – Warden of the Maine State Prison
- Jon Leahy – Boulos
- Chris Paszyc – Boulos

**Timeline of Events and Communications Pertaining to the Sale  
of Land and Buildings 22, 26 and 30 Ship Street Circle in Thomaston**

**April 2010**

- 4/13/10 - Jennifer Merrow, BGS, sends List of Properties and Legislative Resolves authorizing their sale to Bill Leet, Director of Leased Space, DAFS, noting that sale of these properties would benefit the General Fund pursuant to Part FF.
  - Legislative Resolve 1999 Chapter 114 authorized sale of this property. Section 6 Purchase price. Resolved *“That the commissioner shall have the current market value of the state property determined by an independent appraiser. The commissioner may list the property for sale or lease with private real estate brokers at its appraised value and negotiate sales or leases, solicit bids, sell directly to purchasers or enter directly into leases with tenants. The commissioner may reject any offers. The commissioner shall establish the rent or purchase price and the terms of lease or sale. If the commissioner elects to solicit bids, the commissioner shall publish notices of sale sufficient to advertise the property.”*  
The repeal date on this resolve was originally August 11, 2005 and was extended via subsequent resolves in 2005 and 2010 to August 11, 2015.

**August 2010**

- 8/27/10 - J. Merrow sends May, 2006 Independent Appraisal by Amidon Appraisal Company and January, 2009 CBRE/The Boulos Company Opinion of Value and Disposition Strategy to Boulos Company, cc'd to Bill Leet.
  - 2006 Appraised Value \$430,000
  - Town Assessed Value \$512,263
  - 2009 Boulos Opinion of Value \$220,471
  - Amidon's appraisal notes that it has valued the property under “extraordinary assumptions” as defined by the Uniform Standards of Professional Appraisal Practice. The extraordinary assumption being that the Ship Circle property can be subdivided into a minimum of three residential lots. Boulos Opinion of Value report notes that the property must be subdivided in order to sell houses individually. The Appraisal and the Opinion of Value have differing acreage for this property. It is unclear whether the Opinion of Value was based on the same assumptions as the Appraisal.

**September 2010**

- 9/2/10 - Denise Lord, Deputy Commissioner Department of Corrections, email to Chip Gavin, Director Bureau of General Services, informing him that she has let the Commissioner and Warden Barnhart know of the pending sale of the Ship Street Circle properties. She writes *“The warden asked if there was possibility that she might purchase the house she is living in currently.....Is it possible that BGS would consider this? Not sure if there are any prohibitions or concerns about this and will respect your decision.”* The Deputy Commissioner also raises a concern regarding the loss of temporary housing for newly hired staff.
- 9/7/10 – Chip Gavin email to Chris Paszyc, Boulos Co. informing him of potential buyer for one of Ship Circle Street residential properties and asking if selling to current occupant at appraised fair market value is a reasonable approach in current market.
- 9/7/10 – Chris Paszyc responds it is reasonable and encourages pursuing any and all buyers in this market.
- 9/29/10 Contract between DAFS and CBRE/The Boulos Company to market and sell a number of State owned properties including Ship Street Circle parcel in Thomaston is approved. Sale price in contract for Ship Street Circle properties is listed as \$300,000. Contract includes detailed advertising and marketing plan including appropriate public notifications.

**October – November 2010**

- Emails between Jon Leahy and Chris Paszyc at Boulos and Warden Barnhart sharing town assessor records, tax map, and comparable sales indicate parties are exploring the Warden's interest in the property and she is assessing her financial situation. DOC Deputy Commissioner Lord is cc: on the initial email from Boulos to Warden Barnhart.

**December 2010**

- 12/8/10 – Warden Barnhart email to Jon Leahy, Boulos, justifying purchase price she offered for the Ship Street properties. Key points are that properties on Main Street sold for approximately 39% of the appraised value given in the 2006 Amidon appraisal report, current condition of Ship Street Circle properties, and proximity of power station, active train tracks and hobo camp down by the river.
- 12/8/10 – Jon Leahy email to Bill Leet and Chip Gavin notifying them of Warden Barnhart's \$150,000 offer with her rationale.
- 12/13/10 – J. Leahy email suggests counter offers to C. Gavin and B. Leet with and without DOC leasing for \$1/year one building for three years. Recommended counter offer with lease is \$200,000 and without is \$275,000.
- 12/17/10 – Emails between Jon Leahy and Chip Gavin indicate Warden has countered at \$175,000 with 3 year lease of \$1/yr for building DOC is currently in and Chip is going to pass that on for consideration.
- 12/29/10 – Emails between C. Gavin and J. Leahy. C. Gavin is requesting Boulos opinion of value for the Ship Street properties and sales information on Thomaston Main Street properties. Leahy provides the Boulos 2009 opinion of value of \$220,471 for Ship Street and adds information on Main Street buildings having sold for 41% of 2006 appraised value after being on the market for 9 months. He also provides Thomaston's current assessed value of Ship Street Circle properties of \$504,659.

**January 2011**

- 1/6/11 – Emails between J. Leahy and Warden Barnhart indicating State has counter-offered at \$175,000 with a 4 year lease to DOC for \$1/yr.
- 1/18/11 – Email from J. Leahy to C. Gavin and Jane Surran Pyne indicating Warden has agreed to counter-offer and requesting J. Pyne assistance in drafting the Purchase and Sale Agreement with the leaseback language included.
- 1/18/11 – B. Leet asks C. Paszyc where negotiations are with Ship Street Circle property as he has spoken with Bill Bird of Thomaston who is interested in purchasing. As negotiations are close to being finalized, he had referred him to C. Paszyc.
- 1/19/11 – J. Leahy informs C. Gavin, B. Leet and C. Paszyc that he had spoken with B. Bird. Mr. Bird heard about property selling at Thomaston Town Hall. He was told they were in basic agreement with a prospective buyer and he accepted that response.

**January – March 2011**

Negotiations continue for purchase and lease back of one building to DOC. Final purchase price of \$175,000 with the Warden leasing back to DOC 30 Ship Street Circle for four years at \$1/year, snow removal, trash removal and landscape maintenance for entire parcel to be responsibility of DOC. Lease agreement prepared by Jane Surran Pyne, Esq. for State. Of note:

- 1/31/11 – Email from J. Leahy to B. Leet with cc: to C. Gavin and J. Pyne forwarding several comments and questions from Warden on proposed transaction. One question Warden has is whether it would be possible to continue having lawn/plowing/trash for the properties handled by State's prisoner work program.
- 2/3/11 – J. Leahy checks in with C. Gavin on responses to Warden's comments and questions. C. Gavin informs him that this matter and all sales transactions are now in B. Leet's hands.
- 3/9/11 – B. Leet informs J. Leahy that Corrections and BGS are OK with revised contract, he has been trying to get answer from AG's office on whether it is appropriate and legal for Corrections to continue providing snow and trash removal and landscape maintenance on all properties.
- 3/14/11 – Betty Lamoreau is copied on email from B. Leet to J. Pyne requesting a few minor changes to the Purchase and Sale Agreement including to make it clear that Corrections will provide landscape maintenance, snow removal and trash removal for all properties "in exchange" for a lease rate of \$1 annually.
- 3/29/11 – Purchase & Sale Agreement signed by Betty Lamoreau, Acting Director BGS.

**April 2011**

- 4/4/11 – J. Pyne informs J. Leahy, cc's to B. Lamoreau, B. Leet, and J. Merrow at BGS and C. Paszyc at Boulos that B. Lamoreau has signed P&S.
- 4/4/11 – Warden Barnhart signs P&S.

**May - June 2011**

- Final release deed, lease agreement and lease memorandum prepared.
- 6/9/11 – Closing. State receives check in the amount of \$163,994.41
- 6/24/11 – Lease amended to ensure it remains in effect even if a portion or entire property is transferred or sold, but provision for DOC to provide ground maintenance would become null and void.
- 6/30/11 – Summary of sale process from C. Paszyc to B. Leet. He says the asking price had it gone to market would have been \$221,000, but this was before they found out DOC had to stay and had no money to pay a lease. Also states that assessed values bear no relation to actual market value and this is typical of government owned property on municipal tax rolls. Attached summary from J. Leahy states that leasing back to DOC would have made property difficult to sell. Warden Barnhart was willing to lease back and it took some time to work through detailed lease back negotiation.
- 6/30/11 – Initial news story on sale and Warden Barnhart's 7 unit subdivision proposal to the Town of Thomaston.