



# Maryland Municipal Attorneys' Association

## Quarterly Newsletter – Fall 2014

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### Newsletter Suggestions & Ideas

Our quarterly newsletter highlights key legal issues, including court decisions and legislation, and updates members on association. If you have ideas for upcoming issues, let editor Frank Johnson know: [fjohnson@gaitthersburgmd.gov](mailto:fjohnson@gaitthersburgmd.gov).

We welcome new members! Most town and city attorneys in Maryland are members, so it's a good opportunity to share information and collaborate. Members receive this newsletter, which includes updates and other news. There's no cost to join right now, and annual dues are certainly affordable this year - \$0! (see the article on page 2).

### The "Community Caretaker" Warrant Exception

Warrants are usually required before any police search, as the Supreme Court recently emphasized in *Riley v. California*, 2014 U.S. Lexis 4497, as to data searches from cellphones. But warrant requirements are not absolute, such as when police have reason to believe evidence will be destroyed, a crime is in progress, or a person consents. Another exception is the "community caretaker" doctrine, based on the public service aspect of police work, which the Maryland Court of Appeals recognized in *Wilson v. State*, 409 Md. 415 (2009).

The doctrine allows the police to react in emergencies without first seeking a warrant. These include traffic safety, helping with immediate harm such as a medical emergency, or assisting to protect public safety with immediate assistance. It is limited, requiring that no more action be taken than is necessary; whether any less intrusive steps could have been taken is a key issue. Also, such assistance must stop when it is no longer needed.

The question on appeal is often the scrutiny courts will apply in reviewing the need for the police action. The Supreme Court has held that an

"objectively reasonable basis" to believe emergency help is needed should be sufficient, and courts should not extensively second-guess that decision. *Michigan v. Fisher*, 558 U.S. 45, 49 (2009). But the Maryland Court of Appeals in *Wilson* implied courts should carefully scrutinize whether a less intrusive alternative would have worked. *Wilson*, 409 Md. at 442-43. The Court of Appeals has granted certiorari in a case addressing the traffic safety warrant exception under the community caretaker doctrine. See *Dehn Motors Sales LLC v. Schultz*, 212 Md. App. 374, 380, 392 (2011); *cert granted* 2013 Md. LEXIS 744 (Oct. 18, 2013), While other issues (such as local government tort-claims notice requirements) are included, the Court may issue further guidance on how it will review emergency actions.

### MMAA Website Updates

You'll find the MMAA's website on the MML site, [www.mdmunicipal.org](http://www.mdmunicipal.org), under "About MML," "Departments," then "Municipal Attorneys." With help from Paula Chase-Hyman at MML, our page includes current officers, bylaws and our members, noting the municipalities each serves. Contact info (emails and phone numbers) is available on request. We also list designated representatives for all municipalities. There is a page for the newsletter, and we can also include meeting notices, agendas, and any attachments. And the MMAA welcome page allows questions, ideas or suggestions with a "click" to the web manager.

### MMAA Member Stephen Kehoe Appointed to Talbot Circuit Court

The Governor has appointed Stephen Kehoe, Attorney for Centerville and Trappe, to the Talbot County Circuit Court. He is a partner at Ewing, Dietz, Fountain & Kehoe, PA, and also serves on the Public Defender's Board of Trustees. Congratulations to Judge Kehoe!



## **MML Legislative Committee Recommends Legislative Priorities**

The MML Legislative Committee has met to consider Legislative Action Requests (LARs) municipalities submitted this June. N. Lynn Board, MMAA's liaison, reports the Committee recommends that MML adopt three priorities.

First is to restore Highway User Funding, slashed in 2009 during the recession. MML has supported this in past years. Second is to address the 2010 Ethics mandate for expanded public disclosures by local elected officials. The Legislative Committee recommends that MML support legislation to limit these disclosures to more accurately reflect the powers and duties of municipal officials. Third is to support legislation to clarify that town and city councils can amend or remand Master Plan recommendations from their Planning Commissions, as discussed in the next article. These will be considered and decided by MML members at the Fall Conference in September.

## **ALS Ice Bucket Challenge**

The "Ice Bucket Challenge" promotes awareness of amyotrophic lateral sclerosis (ALS), also known as Lou Gehrig's disease. It has helped raise over \$1 million for research, and MMAA Member Elissa Levan reports that the Town of Chesapeake Beach Council undertook the ALS Ice Bucket Challenge. She participated, which gave her the chance to nominate others. And she then nominated all of us – the entire Association. Since then, Gaithersburg's Mayor, legal staff and other staff have also participated, raising \$350.00 for ALS.

The challenge involves (i) having ice water dumped on our heads and donating \$10 to ALS research (then we can nominate others), or (ii) declining and instead donating \$100. We can't verify compliance, of course, but the Ice Bucket Challenge is much in the news; President Obama opted to pay \$100 after a challenge from Ethel Kennedy, widow of the late Senator Robert F. Kennedy. Perhaps with this highlight, we'll all feel obligated! Please contact Elissa (or Lynn or Frank) if there are any questions.

## **Land Use Article Revision Discussed at MML Convention**

The work of the Revisory Committee, which redrafted Article 66B into the Land Use Article, was discussed at the MML Convention in June. The apparent goal was to follow what Article 66B already provided. But the Committee had a concern with final legislative approval of master plans following a Planning Commission recommendation.

The Revisory Committee noted that Land Use Article § 3-205(d) could be interpreted to allow only legislative rejection or acceptance, with no remand or modification. The Committee also noted that this could create several practical problems, including gridlock or drawn-out processes in which master plans are rejected, and the Planning Commission has to hold new public hearings.

But the Land Use Article specifies the legislative body has final approval authority, and a Planning Commission makes only a recommendation. As such, many municipalities have interpreted this to allow remands or amendments. The Revisory Committee suggested the General Assembly address the issue, and the Attorney General may be issuing an opinion after requests from Mt. Airy in 2011 and Rockville this year. Finally, the MML Legislative Committee has voted to recommend that MML support legislation to clarify that town and city councils have authority to amend Master Plan recommendations.

## **MMAA Dues Update; Watch for News of Fall MMAA Meeting**

At the Summer meeting, the MMAA decided not to charge annual dues this year. Dues had been set at \$50, but expenses for the last year were very limited. And there is no membership fee for those who want to join, so MMAA is certainly affordable!

The MMAA always holds a Fall meeting, usually in Annapolis, allowing members to reconnect and hear a presentation. It's currently in the planning stages, so watch your email (and the MMAA website) for an update!