



# Maryland Municipal Attorneys' Association

## Quarterly Newsletter – Summer 2015

John Barr, President; Suellen Ferguson, Vice President; John Shay, Secretary; Jason DeLoach, Treasurer

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### Newsletter Suggestions

This quarterly newsletter (now in its second year) highlights key legal issues and updates. If you have ideas for upcoming issues, let editor Frank Johnson know: [fjohnson@gaitthersburgmd.gov](mailto:fjohnson@gaitthersburgmd.gov). And please share this with anyone who may want to join MMAA. Most town and city attorneys in Maryland are members, and it's a good way to share information. Annual dues are \$50, and the newsletter is available at no additional cost, so send Frank an email if you're interested.

### Maryland Attorney General's Office on Public Information Act Changes

At the May 21 meeting, Adam Snyder, Chief Counsel, Opinions and Advice for the Maryland Attorney General, gave MMAA an overview of upcoming Public Information Act changes, noting three main areas. One is a new Public Information Act Board, limited to requestor complaints for fees of \$350 or more which are claimed excessive, for which the Board can order fee reduction. Second is the creation of an Ombudsman within the AG's office, who cannot issue orders but will have broad jurisdiction to work with parties to resolve disputes, and may consider complaints from anyone.

Third, Chief Counsel Snyder noted other changes, including the need to respond in 10 days if the response will take any longer, with an estimated response time and cost delineation. Local governments must also post contact information for at least one person to handle all requests, though this can be broken down by department or agency. And we must identify any document available on demand. The AG's Office will also be reporting to the General Assembly on PIA requests, and we should send that information to: [pia.custodians@oag.state.maryland.gov](mailto:pia.custodians@oag.state.maryland.gov). Overall, Mr. Snyder's advice was not to hold off on any PIA response and use the Ombudsman for unreasonable requests.

### Spring MMAA Meeting Presentation On Police Body-Worn Cameras

Karen Kruger, a partner at Funk and Bolton, PA, spoke at MMAA's April 1 meeting on police body-worn cameras, a key issue given the recent police misconduct claims. Karen, counsel for the Police Chiefs and Sheriffs Association, explained that body-worn cameras can be unreliable and the video coverage can be difficult to follow. She noted that the biggest issue can be the cost of preserving the data; because cameras are recording for many police officers, the data takes up large amounts of space, and each video must be reviewed to redact mandated private information, such as that involving juveniles or medical information.

As Karen predicted, the General Assembly passed legislation on police body-worn cameras. Police Departments currently using the cameras can continue, but SB 628 requires the Maryland Police Training Commission to produce standards for wearing such cameras, and for recording (or not recording), on or before January 1, 2016.

The bill also provides five basic standards under which body-worn cameras will be permissible – where (1) the officer is wearing a uniform or is wearing a badge; (2) makes a “good faith” effort to conform to Public Safety Act for recording video and oral communication (the section creating the MPTC report on the standards); (3) the officer is a party to the oral communication; (4) the officer notifies the individual of the recording “as soon as practicable,” unless it is “unsafe, impractical or impossible” to do; and (5) the oral interception is made only as part of the video recording.

Local police departments will have to await the MPTC standards. It should be noted that LGIT has provided some initial funding, and these cameras are currently being used by several municipal police departments, without horror stories to date.



## Supreme Court Rules That Counties and Municipalities Must Provide New Income Tax Credits

Local governments may face significant income tax revenue reductions after the Supreme Court's decision in *Comptroller of Maryland v. Wynne*, No. 13-485 (May 18, 2015) (2015 LEXIS 3404). The Court found Maryland's local income tax process to be unconstitutional, violating the "dormant Commerce Clause," because credits for income earned out of state are not offered for the local government portion, even as such credits are offered for the state income tax portion.

Maryland's income tax includes the state tax calculation under Md. Tax-General Code Ann., §10-105(a). Next is the county income tax, up to 3.2% as set by the county per Md. Tax-General Code Ann., §10-106(a). Under Md. Tax-General Code Ann., §2-607, municipalities receive 17% of the County income tax revenues from their residents. Maryland residents receive a state tax credit for tax paid to another state, but no credit for the county portion. The Supreme Court found this imposes double taxes on Maryland residents earning out of state income. Because that could discourage earning out of state income, the majority found this violated the dormant Commerce Clause.

Credits must now be granted against the local income tax, reducing revenues for counties and municipalities in 7 states which did not do so, including Maryland, New York, Indiana, and Pennsylvania. And residents earning such income can file adjusted returns, seeking credits as far back as 2012; credits back to 2006 may also be sought if they preserved an original claim for the denied credit. The Comptroller is putting in place a system to pay the refunds through a specific refund account; and local governments will either repay or have quarterly tax distributions reduced. This was not a surprising outcome, and some counties have put reserve funds in place; others will seek tax increases. Municipalities will also face revenue losses, but will have limited options – including property tax increases or budget reductions.

## Report on MMAA Meetings: Officer Elections and Annual Dues

At the April 1 MMAA meeting, members voted to accept officer nominations for 2015-16, starting with the new MML Board of Directors: President, John Barr; Vice-President, Brynja Booth; Treasurer, Jason DeLoach, and Secretary, Frank Johnson. Also, Elissa Levan is willing to continue as MMAA rep on the MML Board of Directors, and Lynn Board wishes to continue on the MML Legislative Committee. At the May 21, 2015 meeting, those nominees and MML appointments were all unanimously approved. Members at the April meeting also voted to re-establish, for FY 2015-2016, the \$50 annual dues that were in effect until a few years ago. These will be billed after July 1.

## 2015 General Assembly Update

Two key bills passed by the General Assembly include one clarifying that local legislative bodies can amend master plans recommended by the Planning Commission, but must hold a public hearing before doing so. A second includes changes to the Local Government Tort Claims Act, increasing the caps from \$200,000 and \$500,000 to \$400,000 and \$800,000; also, the notice allowance is doubled, from 180 days to one year. Tim Ainsworth of LGIT estimates the cost of such changes will be about a 5% increase in costs for municipalities self-ensured through LGIT. He also noted that a bill which would have granted attorney's fees for any constitutional claim in which any damages are awarded would have resulted in even more significant costs, but did not pass.

## MMAA Meeting at MML Convention

The MMAA will meet on Monday, June 22 at the MML Annual Convention, from Noon to 1:30 PM in Room 210 at the Convention Center; please be sure to bring your own lunch. The agenda will include additional member discussion on the impact of the Maryland General Assembly session.. We will also have a roundtable for members to share key concerns and unique situations members have faced over the last year. We can also consider topics and speakers for upcoming meetings.