



Maryland Municipal Attorneys Association

Lynn Board, Acting President; Frank Johnson, Secretary; Jason DeLoach, Treasurer

MINUTES FOR JUNE 24, 2019 MEETING

APPROVED OCTOBER 17, 2019

The Monday, June 24, 2019 MMAA meeting was held at the MML Summer Convention, in Room 210 at the Convention Center in Ocean City, Maryland. Lynn Board, Acting President and President-Elect, called the meeting to order and welcomed everyone at about 12:30 p.m., after giving members a chance to have lunch. She welcomed everyone and asked everyone to introduce themselves.

1. Lynn noted we would go slightly out of order to allow MML President-Elect Ryan Spiegel to present changes recently approved by the MML Board of Directors to the MML Litigation Participation (Amicus Brief) policy, which he took a lead role in drafting. He first noted that municipalities had raised concerns that the existing policy was a bit stale, in establishing a long procedure to appoint a review committee and require a Board vote; even when, as we are seeing increasingly over the last few years, MML is only being asked to sign onto or add our name to existing briefs. In that case the Board of Directors felt it was unnecessary to go through the entire process, which could also make it difficult to meet deadlines if, for example, a request for our support for an existing brief was made a short time before the filing deadline. Ryan explained that the main changes separate out a request which simply involves signing on to an existing brief from a request requiring MML to write its own Amicus Brief. Under Section D of the new policy, the two scenarios are separated. The old process remains in place, requiring full Board review and a Review Panel, when MML is asked to write its own Amicus Brief. The new process, at subsection (d)(1), simply allows the Executive Committee to agree to sign on to an existing brief. The Executive Committee is empowered to seek counsel, but the important change is that they can also make a relatively quick decision. Considerations are similar to what is already in place, i.e. with the same focus on a broad impact on members rather than a specialized impact or no impact at all. Ryan noted a few smaller changes on process as well, to ensure that procedurally the panel appointed to review a request for an Amicus Brief would have the power to establish its rules of procedure to allow expeditious review. The new rules also specify the naming of a review panel chair and provided some rules as to when a requesting municipality can make a request and engage in discussion and argument with the Board and the Panel as they decide on that request. Ryan also noted that new Section (i) at the end makes clear that the Board of Directors can hire outside counsel within the line item in the MML Budget. Additionally, he said Section (k) is new and allows approval of a member municipality to sign onto MML's amicus brief but allows the imposition of a reasonable fee on that municipality to share the costs incurred in drafting the brief. Overall, Ryan concluded that he believes we will have more opportunities to simply sign on to existing briefs rather than draft our own, saving funds and allowing MML to be more nimble and responsive when those issues come up. In discussion, Ryan explained that the Board of Directors is empowered to have MMAA attorneys serve as part of the review panel, but isn't required to involve MMAA. He did note that the rule calls for a list of attorneys willing to serve on such panels, and suggested that MMAA should adopt a listing of interested attorneys to handle such cases if it doesn't have one in place. In the discussion Ryan also noted no significant change to the fee structure; Subsection (g)(2) does specify that review panel members can be compensated with an overall cap of \$2500 overall, but also that review can be handled on a pro bono basis. He finally noted that Subsection (J) covers the actual cost for the Amicus Brief, capping that also at \$10,000.

2. Minutes from the May 9, 2019 meeting were unanimously approved, on a motion by Tom Yeager which was seconded by Jason DeLoach.

3. Jason De Loach, Treasurer, reported that \$1,368 remains in the MMAA account today (to be reduced by any costs to MML for today's lunch and meeting room) but that this will increase as he will be sending dues statements out for this year in the next few weeks.

4. MML Legislative Representative Elliot Schaefer noted that Legislative Action Requests (LARs) are due to MML. Candace Donoho, MML's Government Relations Director, noted there has been little legislative action to convene the small cell/5G task force. She noted that could be because cities and towns are working with providers and providers are reaching out to everyone; she expressed some hope that will be effective and eliminate the need for prohibitive state legislation. She notes we were the only state with state legislation proposed after the FCC Order, and that also may have made a difference. Lynn notes that as to FCC Cable franchising, FCC proposing to allow providers to deduct all "costs" from their franchise fees, including provision of any required PEG channels, which could reduce franchise revenues. She said the FCC is taking that up at their August meeting potentially. She also reported that the small cell lawsuit is consolidated in 9th Circuit and has also been consolidated with Montgomery County lawsuit based on FCC's not updating their RF standards. As to upcoming legislative issues, Candace noted concerns with data security could be raised again, and Sen. Kagan, who put in a bill last year, has already said she's putting in a similar bill in 2020. Thus, she emphasized municipalities need to have data security in mind, especially given the issues in Baltimore City. Candace also noted she has been told to expect another effort to go after artificial turf, and that MML will try to moderate that. She urges municipalities to consider more environmentally friendly options as that could be the focus of the legislation..

5. Chip McLeod: State Chair for IMLA, noted the value of IMLA membership, including the national annual conference and legislative meeting in D.C. each year. He said it can be helpful to expand the circle and share stories nationwide with a broader range of attorneys. Jason and Lynn said they have found IMLA very helpful and Chip notes Maryland has a strong membership.

6. Lynn gave an update on Sunday's MML Department meeting, which was for officers of all MML Departments, which apparently started last year. She said MML now has a handbook of expectations and a guide as to how to run Departments. She noted that last May Scott Hancock put out a memo saying all Departments are independent and discussed that at the meeting yesterday. Thus, for liability, costs and insurance Departments do not come under MML at all and there are questions whether we need to incorporate, become a 501(c)(3) or start to pay taxes. She said she wants a subcommittee to make recommendations; said will reach out to seek volunteers. In response to questions as to why this was raised, Candace says it came about because some Chapters, which are seen as separate, were audited, and it was thought that Departments should be separate as well. A question was raised whether MML would need to approve our bylaws if we are truly independent, and it was noted that Chapters now may only have to notify MML. It was also noted the Mayor's Association is separate as well.

7. For upcoming meetings, Lynn noted the County Attorneys are interested in a joint fall meeting this year as we did last year, and members supported taking part with no objections. As to possible topics to suggest, options raised included Opioid litigation, the impact of marijuana laws on zoning, land use and employees as well, MS4 permitting, data security and collective bargaining if there's an interest. As to collective bargaining, Lynn noted some local officials don't know they must first change their local charters to authorize collective bargaining, and Candace noted the issue is often raised at the General Assembly level, and may be coming back this year.

Lynn thanked members for attending, and with no further issues for the good of the order, the meeting was adjourned at 1:10 p.m.

Frank Johnson, Secretary