



Maryland Municipal Attorneys Association

Lynn Board President; Todd Pounds, Vice President; Frank Johnson, Secretary; Jason DeLoach, Treasurer

MINUTES FOR FEBRUARY 6, 2020 MEETING

APPROVED MAY 7, 2020

The Thursday, February 6, 2020 MMAA meeting was held at Carrol's Creek Café, 410 Severn Avenue in Annapolis. Lynn Board, President, called the meeting to order at about 12:10 p.m., welcomed everyone, and asked those attending to briefly introduce themselves.

1. Minutes of the October 17, 2019 meeting were unanimously approved, on motion by Karen Ruff which was seconded by Tom Yeager.
2. Treasurer, Jason DeLoach reported \$3,489 in the MMAA account, which will be reduced by the cost of today's lunch. He also indicated he would recommending keeping the \$50.00 annual dues in place, for billing in July.
3. In brief Municipal Attorney Association updates, Lynn noted the next MMAA meeting would be scheduled for Thursday, May 7, 2020 at Fisherman's Inn at Kent Islands, as in past years, and that the meeting would include officer elections and a tentative plan for a presentation on case law updates, depending on speaker availability.
4. Debra Daniels, MMAA's representative to the MML Legislative Committee and Justin Fiore, MML's Manager of Government Relations, made a brief presentation. Justin noted that the key MML priority was highway user revenues. He noted MML is supporting a bill this year to remove the sunset on HUR's restoration, restore the full amount, add a lockbox to prevent the diversion from happening again and tie it to Consumer Price Index annually so it increases with cost increases. Justin also noted that MML supported a strategic initiative to increase revenue sources as we are overly dependent on the property taxes, and flexibility is very limited. Local revenue is critical for 21st century, he said, and noted MML and staff are seeking opportunities during the session to highlight the issue. He also noted changes in transportation revenue also changing with cars using less gasoline. Justin also highlighted that community parks and playgrounds faced a proposal to divert the \$2.5 million from POS that municipalities rely on, and made it clear MML is opposing that effort by highlighting that this is the municipal funding for program open space. He also reported that small cell initiatives, a problem for the last three years, will probably not be a key problem this year. He noted that a study group last year didn't proceed, largely based on the fact that so many local governments have, as urged by MML and others, moved forward to put rules in place, and he thanked MMAA President Lynn Board for her support in this multi-year effort as well. He indicated no bill had been filed this year, so far. Finally, Justin reported that while a bill last year to mandate compliance with Federal security standards for internet was defeated, a new bill has been filed, but appears to exclude municipalities this year, unless a municipality contracts with a third party (such as by contract) for internet security, in which case the contractor would have to abide by the standards.

Debra Daniels, MMAA's Legislative Committee representative, focused on the 7 or 8 Public Information Act bills which have been filed so far. She said that two, HB 502 and 401, are key. She reported that HB 502 was in response to the PIA report issued by ombudsman and compliance board in 2019. Their list of recommendations included numerous changes, increasing the burdens on local government. For this bill, she said that MML has requested amendments and noted she and others will be attending hearings next week. Debra reported that some requirements and changes are significant, including proactive disclosure, putting almost everything online, plus extensive reporting requirements. Other changes would add even more burden for staff to respond to PIA requests. She noted the proposal would also expand Board jurisdiction as it now only covers fees over \$300 now and there is no "final action" or decision authority. The PIA report had also found the Ombudsman is not as effective because

there is no enforcement authority. The proposal; is that the Board hear all disputes and all goes through Ombudsman first, with deadlines throughout the process (90 days for Ombudsman decision, 45 days to appeal to the Board). Debra also said that the Board would have authority to bar someone from repetitive asking, upon request. Among other sanctions, she said the proposal would eliminate the ability to charge a fee if the municipality does not meet deadlines. Another bill would shorten the timeframe for a response. She noted that in support of that idea, it was reported that 37 states have timelines which are less than 30 days — but when specifics are reviewed, in fact most deadlines are based on a “reasonable amount of time” to respond, rather than a strict deadline. She said that shortening the timeframe to 10 days would put a huge burden on all local governments. Debra indicated many are hoping they will be able to work with the sponsor and committees to reduce requirements to reflect the reality of the impact on local governments. She also asked for as many as possible to help with hearing on Tuesday on the bill shortening the 30 day timeline to 10 days. Debra reported that another PIA bill going to hearing on Wednesday, HB 401, overlaps a bit; defines public interest for fee waiver very broadly and makes them mandatory; MML opposes this bill, she said.

5. Lynn introduced Ann MacNeille and April Ishak to speak about the Open Meetings Act, the Compliance Board, and the recent Talbot County decision which imposed restrictions on certain uses of email by public bodies. Ann is the Assistant Attorney General who serves as counsel to the Board, and April, an MMAA member, serves as the Chair. April first noted that the Board is seeking no major bills in General Assembly and welcomed the opportunity to speak with MMAA members. She also noted information is available on the Attorney General’s website, including the PIA Manual and sample forms. She said the Talbot County case, decided in July 2019, was very fact specific. While she understands concern with that decision, she emphasized there were several facts leading the Board to their conclusion regarding email communications. For example, she noted that a in response to a simultaneous PIA request the County had withheld information based on the argument the emails were deliberation, which she concluded in many ways conceded the Open Meetings point. She said the record included a long string of emails, many reply all, and that the actual issue was clearly one of public interest – deciding whether to take a position on legislation rather than an administrative issue not subject to the Open Meetings Act. She also noted that in many other similar issues the County Council had historically held an open meeting. In terms of options, she noted one on one communications were less of a concern, deferring to staff could be an option, and in an emergency that a telephone conference could be held as an open meeting. An audience member questioned a decision involving the municipality of Greensboro shortly after Talbot County, which was found not to violate the Open Meetings Act. April said the emails in the Greensboro case were not reply-all and there was no deliberation or collaboration as in Talbot County. It was suggested that one key step is to avoid “reply all” emails.

Ann MacNeille noted that also sees a potential problem in responding remotely as all members, who are not in the same room, may not have the same facts or the same document without changes. In response to a question on texting, she noted that if the text is personal, it’s not an Open Meetings issue, but if it’s on a public issue it could be deliberation, and the next question might be whether a quorum is involved. In response to a question on public body members attending a meeting together, she said no problem was posed if there was no deliberation, such as members only attending to hear the group’s issues, but said a violation could be demonstrated if the meeting became a forum and discussion among board members on public business. It was noted that some local governments, such as Carroll County, report when individual County Commissioners attend meetings, but Ann pointed out this does not constitute a public invitation to those meetings. Finally Ann said that local staff can brief councilmembers one on one as long as they do not act as a conduit, collecting votes or effectively conducting deliberations. She finally highlighted two key issues that often lead to violations: first, members who are not in their regular meeting place and time, and second, when members are told there is a “rush.”

Lynn thanked the presenters and everyone for attending, and with no further issues for the good of the order, the meeting was thus adjourned at 1:50 p.m.

Frank Johnson, Secretary