



# Maryland Municipal Attorneys Association

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

MINUTES FOR February 10, 2022 MEETING

APPROVED MAY 12, 2022

The Thursday, February 10, 2022 MMAA meeting was held virtually, using “Zoom,” for what is the eighth virtual meeting. The meeting convened at Noon. At that time, Lynn Board, MMAA President, called the meeting to order me and welcomed everyone.

1. Minutes of the prior meeting on October 28, 2021 were moved and seconded for approval, and unanimously approved.
2. Todd Pounds, MMAA Vice-President, reported on behalf of Treasurer Jason DeLoach (who was in court) that that MMAA has a balance of \$6,304 in its account currently.
3. President Lynn Board said we are anticipating our next meeting will be on May 12 at Fisherman’s Inn, hopefully in person, and asked for any suggestions for meeting topics. She noted nominations of officers for next year are coming up in March, and will be voted on in May, and noted she will be finishing third year and isn’t interested in a fourth year. She then asked Deputy Attorney General Carolyn Quattrocki to speak to members about the national opioid settlement and Maryland’s subdivision agreement.
4. Deputy Attorney General Carolyn Quattrocki introduced Assistant Attorney Generals Bill Bruhn and Brian Edmunds, and spoke on the national opioid settlement and state’s agreement as well. She first thanked MML and municipalities for their help in drafting the subdivision agreement. She said this agreement includes litigation involving 3 major distributors and manufacturer Johnson and Johnson. The total national dollars will read 26 billion in the aggregate, to be divided among states and subdivisions. She said 2 billion will be excluded for attorney’s fees, and the rest will be distributed over an 18 year timeframe; the first 9 years will include the distributors and Johnson & Johnson, and the last 9 years will include only the distributors. She said that state shares were based on population and opioid impact metrics, and Maryland’s maximum share from the 3 distributors is 401 million, with another \$91 million from manufacturer Johnson & Johnson, for a total of 492 million, or about 11% of the national abatement amount. The settlements each set forth injunctive relief against the 4 defendants, such that the 3 distributors will have to monitor and report suspicious hoarders, to prevent having millions of prescriptions distributed to the same location, and Johnson & Johnson will stop selling opioids.

She noted all 4 defendants wanted resolution and to encourage as much participation by states and subdivisions as possible. Ms. Quattrocki noted that state was in the litigation from beginning, and Bill Gruhn said that Attorney General Frosh was involved personally in getting the settlement result. She reported Maryland’s participation rate as of 1/26 is 90.8 percent participation by population statewide, but that Baltimore City and public schools did not join. As to the division of funds, Ms. Quattrocki reported that the default allocation between state and subdivisions was 50-50 but states could enter different agreements to alter that, and Maryland will get about 30% of total funds and local subdivisions overall will get 70%. Of that overall amount, she said the agreement requires that 85% be spent on future opioid abatement, and reported that the all of state’s will be spent on future abatement. She further noted that Exhibit A participants – local governments who were parties to the litigation – will all receive 25% direct payments and the balance will be allocated through an automatic grant program administered by Maryland Health Department for subdivision applications, which she explained will require applications but considered a pass-through for the allocated amount for each subdivision. Like the state, Exhibit A participants can use up to 15% for past abatement programs and 85% for future abatement.

Ms. Quattrocki stated that local jurisdictions need to establish a local abatement fund by March 22, 2022. While the Attorney General's office will defer to local processes to determine what specifically is needed, local governments are being asked to establish, by ordinance or resolution, a separate fund to receive these settlement funds, from which expenditures can be tracked. The need is related to the overall settlement requirement that all funds must be spent on permitted uses, such as the 85% future abatement requirement. The recommendation is to establish a separate fund, rather than a separate budget line-item, which ensures long-term tracking of all expenditures from the fund receiving the opioid payments. The concern is that this is an 18-year agreement, and that the defendants could try to claw back funds not spent according to those permitted uses.

Ms. Quattrocki noted that non-Exhibit A municipalities will also have funding available, not through direct payments but from a grant process handled by the Health Department. She said the funding for these discretionary grants, which MML worked to establish, will come out of the state's 30% share.

The speakers reported that state legislation will also be needed to implement the state subdivision agreement, as the state's opioid restitution fund statute needs to be amended to require the governor to appropriate funds in accord with the state's subdivision agreement. Questions were raised about HB 794, which has been filed to address the opioid fund, and Ms. Quattrocki said the Attorney General's office has asked him to introduce a different bill in substitution. As to further steps regarding the litigation and payments, the Attorney General has notified distributors that they were proceeding with the settlement and with execution of the consent agreement, the first direct payments should be issued in early April to the State, with distribution to local governments depending on passage and the effective date of the legislation authorizing those payments from the opioid fund. Ms. Quattrocki said the payments will come both from the settlement involving the 3 distributors and Johnson and Johnson; the second distributor state payment is scheduled for July 15, and thereafter on that date annually. For Johnson and Johnson, the date will be July 2, with payments twice a year she says to the state. She said specific amounts are not yet known but will be roughly equal, with more being paid during the first 9 years as that period includes payments from Johnson & Johnson. There were also questions about litigation involving other defendants, such as Purdue, which are also pending and could lead to additional state and subdivision settlements.

5. Lynn then turned it over to Angelica Bailey, Director of Government Relations for MML. She noted the General Assembly session has continued virtually due to COVID, but the Senate is planning to start in-person hearings in mid-February. As to the opioid settlement, she said there was much work between MML and MACo, and thanked Elissa Levan and Lynn Board for their help. Angelica reported that redistricting will be a key issue during this session, but noted a broad bill offering constitutional rights to the environment has been filed, which is HB 596 and cross-filed as SB 783. She said it provides a core right to a stable climate and clean air and water, provides the state's resources are a common property and that no one can harm that by action or inaction. She notes last year's bill also established individual standing for lawsuits, but said the bill filed this year does not, but does specify the fundamental right to healthful and sustainable environment which can't be infringed, and that the state must protect the environment for everyone's benefit. She said MML has opposed the bill, noting concerns with litigation and the difficulty determining responsibility or the extent of liability, potentially against individual homeowners, and that there is also some concern the bill could slow down zoning, rezoning and planning processes. Several bills were noted which are being watched or anticipated for filing, such as HB 235, which would eliminate the Administrative Function exemption from the Open Meetings Act, a bill lowering the threshold for the state, counties and municipalities as well to allow recalls if 25% of those voting in the last election sign the petition. An MML priority, to allow municipalities to create their own police oversight boards to avoid coming under the county provisions, as in current law, has not been introduced though MML is asking for support. Justin Fiore, MML Manager, Government Relations, noted a House bill requiring meeting minutes to be emailed to requestors within a few days has been introduced; he noted it started at a 2-business-day requirement and was changed to a 5-business-day requirement, but says the bill would amend the Open Meetings Act provisions on minutes rather than the Public Information Act, and that it will be opposed as written.

A senate bill would, for Charter amendments, remove the newspaper publication requirement in place of a direct mailing or personal delivery of notice to each resident, but it is not clear the bill will pass, and as it does not allow electronic notice, may have limited impact even if it does pass.

6. Lynn asked for updates from IMLA, County and State Bar Association representatives. Elissa Levan is the State IMLA Chair and urged persons to join, noting IMLA provides information useful to large and small municipalities. Frank Johnson noted the MSBA State and Local Government Section will have a February 25 “lunch and learn” on religious exemptions to vaccination requirements and is planning a Spring Law Institute. Tom Yeager for the County Attorneys noted the annual joint meetings are popular and urged that they continue, as is planned.

With nothing further for the good of the order, Lynn adjourned the meeting at 1:10 p.m.

Frank Johnson, Secretary