



Maryland Municipal Attorneys Association

Quarterly Newsletter – Spring 2021

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

Volume 7, Issue 4

March 2021

Maryland Municipal Attorneys Association Updates

This quarterly newsletter provides brief updates on key state and federal legal issues affecting Maryland municipalities. Our webpage (under “Departments” on the Maryland Municipal League (MML) website), provides more detail on the MMAA and our meetings, and it has an archive of past newsletters. Send any changes or suggestions to Frank Johnson at frank.johnson@gaithersburgmd.gov.

General Assembly Considering Multiple Police Reform Bills

At our virtual Winter zoom meeting on February 11, Karen Kruger, who assists the Maryland Chiefs and Sheriffs’ Associations with the police reform legislation this year, provided an update on the numerous bills facing the General Assembly that address the broad issue of police reform. She noted there are numerous proposals tackling a large number of issues all at once, and some proposals are extreme, focusing more on disempowering police officers than offering workable reforms. She said the Chiefs Association recognizes the need for reform, and is working to support legislation, suggesting amendments where needed, which may also give them some influence in how the bills will be drafted.

Karen noted there is a big push to repeal (and most likely replace) the Law Enforcement Officers Bill of Rights, which Maryland was one of the first to adopt in 1974. She also said the LEOBR would be changed in title to something similar to the “Police Accountability and Discipline Act.” In the goal for a more comprehensive solution, Karen also said any bills passed are likely to be passed as emergency legislation, which could be effective July 1, 2021, and would have a major impact on police departments, with little time to prepare.

A major concern, she noted, is that many bills are imposing restrictions on the actions a police officer

can take, but it’s important that the restrictions be understandable – because otherwise, a police officer may not know what steps they can take in an immediate encounter. Overall, Karen said legislation is very likely to pass that will impact all police agencies, cause the need for substantial training, and may limit the ability to act.

Karen reported that among key bills is House Bill 670, which the Chiefs and Sheriffs are supporting with amendments. On the Senate side, Senator Jill Carter is taking the lead on two bills – Senate Bill 627, which would replace LEOBR, and Senate Bill 626, which would affect excessive force. Senator West has introduced another bill, Senate Bill 237, which would increase training, impose some restrictions, create a duty to intervene, impose additional reporting requirements, and restrict choke holds. This bill is seen by many as a viable alternative, Karen said, but noted that the Senate Judicial Proceedings Committee Chairman said they would try to pull all the bills and parts with support together in one.

One attorney noted that enhanced training could create greater sensitivity on the part of officers, such as for mental health issues. Karen said officers do receive substantial training currently, and she noted proposals to add more requirements, including “implicit bias” training, and trainings focused on the mental health of officers rather than citizens. She also noted that training can be helpful but there is a balance, as mandates add costs while taking officers off the street.

Karen said it is important for municipal officials and Chiefs to communicate directly with elected officials, including their Senators and Delegates, as General Assembly members often do not have the complete background on how legislation will affect day to day police operations in specific municipalities.



New Open Meetings Act Manual on Attorney General Website

Ann MacNeille, Assistant Attorney General, who has served as counsel to the Open Meetings Compliance Board, announced in February that the Open Meetings Act manual has been updated for the first time in several years. It's available on the Attorney General's website under Open Meetings. Ann also announced that she is retiring from state service. She is known by many as the co-presenter of Open Meetings trainings statewide. She also made presentations to MMAA, most recently last February in Annapolis, just weeks before the pandemic shutdown. She will be missed.

Vaccinations Can Be Required to Protect Public Health and Safety

In the midst of the current pandemic, many employers, including local governments, may question whether they can require employees to take vaccinations, once they are available. Generally, given the public health concerns, the answer is yes – with the exception of those who may not be able to take the vaccine due to a disability, or those objecting based on a religious belief.

Past epidemics have included smallpox in New England in 1901. Vaccines were available, and the Board of Health for the City of Cambridge, Massachusetts required vaccines for all residents. They did so based on a Massachusetts law specifying vaccines could be required when the local government found it necessary to protect public health. The City pursued criminal charges against those refusing the vaccine.

The case reached the U.S. Supreme Court, in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), which, in a 7 to 2 decision, upheld the vaccine requirement. The Court found that when the vaccine requirement was imposed, "smallpox . . . was prevalent to some extent in the city of Cambridge, and the disease was increasing." 197 U.S. at 27. The Court stated that to allow vaccines to be mandated based on public health and safety was not "an unusual, nor an unreasonable or arbitrary requirement." *Id.* Indeed, the Court concluded that "a community has the right to protect itself against an epidemic of

disease which threatens the safety of its members." *Id.* As the Second Circuit noted in *Phillips v. City of New York*, 775 F.3d 538, 542 (2d Cir. 2015), this decision "settled that it is within the police power of a state to provide for compulsory vaccination," citing *Zucht v. King*, 260 U.S. 174, 176 (1922).

Largely based on that longstanding authority, the U.S. Equal Employment Opportunity Commission in 2009 specified that employers could require employees to take vaccinations, and that guidance has been updated for the COVID-19 pandemic. The two key exceptions are (i) under the Americans with Disabilities Act, "reasonable accommodations" must be provided for employees who have medical conditions preventing them from safely taking the vaccine, and (ii) persons can refuse to take the vaccine based on a "sincerely held religious belief."

Either exception would, as noted, require a "reasonable accommodation," to the extent such an adjustment in the employee's work setting is possible. This could involve, for example, the same adjustments in day to day work activity as a physical disability, could require a person to continue to work virtually, from home, or not allow them to directly contact the public or other employees.

At this point, few employers are mandating the vaccine. Those for COVID-19 are still only available to those in high-risk employment, but more availability is expected. Further, employers can generally require reporting of any exposure or COVID-19 symptoms. And it may be that a mandate isn't needed, as almost all employees will take advantage of vaccines as they become available. It is, however, well established that vaccines can be required if based on a documented need to protect public health (with the exceptions noted above).

Virtual MMAA Meeting Planned for Thursday, May 6

Mark your calendars – the MMAA is planning its fifth virtual "Zoom" meeting on Thursday, May 6, in place of its normal Spring meeting at the Fisherman's Inn at Kent Narrows. A topic and speakers will be announced, and we will also conduct elections of officers and liaisons to the MML Legislative Committee and Board of Directors.