



Maryland Municipal Attorneys Association

Quarterly Newsletter – Summer 2021

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

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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 has an archive of past newsletters. Send any changes or suggestions to Frank Johnson at frank.johnson@gaithersburgmd.gov.

A Busy Virtual Spring Meeting – Updates on the FCC and the Public Information Act

President Lynn Board started our May 6, 2021 virtual meeting by noting that MMAA members voted, through the electronic platform, to re-elect both our current officers through FY 22, and our MML committee representatives – Elissa Levan for the Board of Directors, and E.J. (Skip) Cornbrooks on the Legislative Committee.

The FCC and Small Cells. Gerry Lederer, partner with Best, Best and Krieger, gave an update on the FCC and small cells, cable franchises and federal legislation. He spoke of three key circuit court appeals, including a decision in the 9th Circuit involving small cell approvals. That court decision upheld the FCC, but did specify that local governments do not have to treat small cell providers in rights of way in the same way as utilities, such as electric and gas, which is an important distinction. Gerry noted local governments are seeking *certiorari* from the Supreme Court on this decision. On a second appeal to the 6th Circuit concerning cable-in-kind obligations, such as public, educational and government (PEG) channels, Gerry said oral arguments were recently conducted, and a decision is soon expected, but the judges, in their questioning, seemed to question pre-empting local authority over provider services unrelated to cable. On a

third appeal, concerning co-locations and concealment requirements, he said the FCC agreed to postpone argument to allow them to re-examine this order. Gerry advised municipalities to review local codes to ensure that both concealment and permission of the local government is required.

He noted that other FCC actions concern broadband funding, where \$10 billion is available for connectivity. He said many states, including Maryland, have also created broadband funds. Gerry said the federal funds are subsidy funding for eligible households. Future funding may also be available for outside expansion through schools and libraries, and he said that general revenue sharing provided to local governments directly (or to small municipalities via the state) as part of the American Rescue Plan could be used for this purpose.

The Public Information Act. Sara Klemm, Assistant Attorney General, represents the Public Information Ombudsman and the Public Information Act Compliance Board. She discussed two General Assembly bills that make major changes.

Senate Bill 178 removes the confidentiality of certain personnel records, now requiring a finding that the public interest requires withholding police misconduct files. House Bill 183 changes overall PIA enforcement by the Ombudsman and the Compliance Board. The bill, which she said will take effect in July of 2022, will allow either the person requesting or the custodian to take their complaint to the Ombudsman for resolution, who will have 90 days to resolve it, or, if not resolved, can then go the Board. Sara said the Board will now hear disputes on fees, denials, redaction, failure to respond, or a custodian request to find the PIA request as frivolous. The Board will have authority to require inspection or a response. While the Board would not review the fee waiver, the Board can require, for an improper delay, waiver of all or part of a fee, and can require a response to the request, as well.



MMAA Created and Organized on September 21, 1972 in Annapolis

Jim Peck, MML's Research Specialist, recently sent our President a copy of the 1972 MML Resolution by the general membership, designating MMAA as part of the MML on October 21, 1972, as a "full active department." The Resolution included an attachment stating that MMAA was "[a] vital new municipal association" which "was formally organized . . . at a meeting in Annapolis through the encouragement of Maryland Municipal League Executive Director Peter Harkins and the City and Town Administrators Department of the League." The report said the new organization "provides an excellent opportunity for the municipal attorney," the community he or she represents, and the MML.

The City and Town Administrator President noted the key benefits to adding MMAA as part of MML:

- A strong new support group for MML members;
- Professional and technical assistance to the MML Board and MML staff;
- Encouraging less active communities to take a larger role in the MML;
- An increase in MML membership and program participation, as the document noted MMAA "has the potential of approximately 100 members;"
- A new source of information exchange;
- Participation on legislative and special study committees;
- Expansion of the Annual Conference program with special sessions.

While our membership is closer to 60 than 100, MMAA has, thanks to its leadership and members, largely fulfilled the expectations from 1972. MMAA has thus offered assistance and has served as a key source of information for MML. We've heard many compliments directed towards our liaisons, Elissa Levan for the Board of Directors and Skip Cornbrooks for the Legislative Committee, for their assistance, and MMAA members have both assisted with appellate Amicus Brief requests as well as provided legal updates and other trainings at

MML conferences. We'll look forward to celebrating 50 years of service next year!

An Update on MML Priorities in the 2021 General Assembly

At our May 6 virtual meeting, Angelica Bailey, the MML Director of Government Relations, and Bill Jorch, the MML Manager of Government Relations and Research, offered a quick update on the General Assembly session and MML's priorities. Bill said two bills passed to expand broadband, one creating some new funding to assist municipalities seeking to expand the broadband reach. He noted this will not impact or restrict the existing rural broadband fund in any way. Another bill creates cost sharing incentives, allowing providers to coordinate work in rights of ways, through coordinating multiple installations at the same time. He noted it is up to the municipality to alert other providers of cost-sharing chances for such multiple installations.

Angelica noted that while a Highway User Revenue bill sought by MML did not pass this year, restored funding is in place until 2024, and MML plans to focus on that again next year. Finally, as to police reform, Angelica noted MML focused on proposals to increase government liability caps for police activity. These caps were raised from \$400,000 per incident to \$800,000, but she noted the increase will be limited to intentional constitutional violations, which LGIT has reported will have a less dramatic impact than was otherwise feared. Finally, she noted that police body camera usage was mandated for County police departments, but cautioned this could be easily changed to impact municipalities and very well might be changed in the future.

Virtual Summer MMAA Meeting Planned for Thursday, July 15

MML has just lifted the earlier imposed attendance limits for the MML Convention in Ocean City. and we know several members were already planning to attend. Even so, to ensure more members can participate, the MMAA Executive Board has decided to arrange for what may be its last virtual meeting, on Thursday, July 15, at noon, so that everyone has a chance to participate. The topic and speaker are TBA, but please save the date!