



Maryland Municipal Attorneys Association

Quarterly Newsletter – Summer 2019

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

Volume 6, Issue 1

June 2019

Maryland Municipal Attorney Association News and Updates

In this quarterly newsletter, we give brief updates on legal issues affecting Maryland municipalities. Feel free to share, especially with those who may want to join MMAA. Our webpage is on the Maryland Municipal League (MML) website (under “Departments”), and provides more information on MMAA, meetings and newsletters. Send any changes or suggestions to Frank Johnson via email at frank.johnson@gaitHERsburgmd.gov.

Congratulations to New Court of Appeals Judge Brynja Booth!

Our spring lunch meeting on May 9 at Fisherman’s Inn at Kent Narrows served as both an ending and celebration of a new chapter in public service. As we all know, Brynja Booth, Town Attorney for Trappe, Federalsburg, Oxford, Queenstown, Goldsboro, and Greensboro, and MMAA President since 2016, was appointed by Governor Hogan to the Court of Appeals and confirmed by the Maryland Senate in March. Her official term of service began on April 18, 2019, and at the meeting on May 9 she formally acknowledged stepping down as an MMAA member and President. Members celebrated her service with a recognition award, noting her years of service to MMAA and MML and her role as a municipal attorney in the statewide training events she has led. While MMAA will lose one of its most active members, the state and municipalities will benefit from her local government background and true understanding of how municipalities work – and indeed how much work they do. Congratulations, Judge Booth!

An Update on Key Court Decisions by Judge Christopher Kehoe

Judge Booth invited Court of Special Appeals Judge Christopher Kehoe to speak at our

May 9 meeting. Judge Kehoe has served on the bench since 2009; he previously served more than 25 years as the Town of Easton’s attorney.

Judge Kehoe provided a listing of cases he found interesting from the local government point of view, and highlighted details for us. He first noted the case holding in *Wilfredo Rosales v. State of Maryland* (No. 6, Sept. Term 2018; 2019 WL 1648618), in which the Court of Appeals held that the 30-day appeal deadline is no longer a jurisdictional time limit but a deadline subject to waiver by the court or based on actions of the parties. He noted the decision effectively highlighted a longstanding error of interpretation in considering the 30-day appeal deadline as jurisdictional, suggesting the change may be one of the more significant changes the Court of Appeals has made.

He also noted the Court of Appeals decision in *Town of Forest Heights v. MNCPPC* (No. 21, Sept. Term 2018, 2019 WL 1496157), in which MML also participated as Amicus and in which the Court found that a change in assessment of properties in the 1970s did not, based on legislative research, also mean a change in the annexation consent requirement or that owners of public or nontaxable land were now to be included in the 25% consent requirement.

Judge Kehoe also told us that in *Johnson v. Francis* (239 Md. App. 530 (2018)), punitive damages were allowed in extreme claims under the Local Government Tort Claims Act. Finally, while in *Washington County v. Perennial Solar* (239 Md. App. 380 (2018)), Judge Kehoe said the Court found pre-emption, the Court of Special Appeals did not do so recently in *Montgomery County v. Complete Lawn Care* (No. 1203, Sept. Term 2017, 2019 WL 1950756), in which no pre-emption of federal or state law was found to allow the County’s pesticide control legislation to take effect.



General Assembly Update for 2019 and Looking Forward to 2020

At our spring meeting, we received an update on the 2019 General Assembly session from Eliot Schaefer, MMAA's representative on the MML Legislative Committee, and from Justin Fiore, MML's Director of Government Relations and Bill Jorch, MML's Manager of Government Relations and Research. Any legislative presentation reflects the reality that bills, which in some cases don't make it out of committee – or fail to win approval by the House and Senate by *sine die* – often come back in the next session.

Thus, while a proposal to amend the Maryland Constitution to add environmental rights as subject to enforcement at all levels by litigation didn't make it through the General Assembly, it has attracted interest from those advocating for strong environmental protections. The bill filed this year was extremely broad and would have expanded standing for almost anyone to sue local governments. It never made it to floor of either house in 2019, as it received an unfavorable vote in the House Judiciary Committee. But, Justin noted it and others of a similar nature may return next year.

Similarly, Bill noted that data privacy was an issue that arose late in the session. A bill was proposed to impose strict federal standards for data privacy on all government entities, regardless of cost. Currently, the law requires protection, but under reasonable rather than rigid standards to protect privacy. This gives each entity some flexibility and takes into account available funding. While this bill failed this year, many expect it will come back next year. MML's summer convention will include a workshop on data privacy.

The attorneys' fee shifting bill for constitutional claims was introduced again. The proposal ignored local government concerns, but failed again. As with other legislation, Bill warned that most expect to see the same bill next year. A bill that would have allowed broad disclosure of personnel records also failed. In this case, the intent was not to release personnel records for all staff, but to target police personnel records protected under Maryland

law. In the face of opposition, the bill failed, but the same or a similar version is likely to be filed again. Similarly, Anton's law, a bill allowing a person to receive information related to any police complaint filed against a police officer, passed the House but died in Senate. Because this legislation had a level of consensus, with police support, the bill will probably come back next year.

Lastly, as to small cells and local autonomy over zoning and rights of ways, which was MML's priority, a summer study was passed instead of the industry bill (or MML's proposal). Bill noted that word has not been received for task force meetings, but underscored that no matter the outcome, legislation is likely to be filed next year. Bill especially noted municipalities need to be ready to address these applications, and thus to have rules and laws in place to be ready when the providers come forward with application sites, thus eliminating the practical need for statewide legislation to establish those rules.

Lynn Board also warned members that the FCC is now starting discussion on some pre-emption of zoning authority on private property, in addition to limiting authority to control rights of way, but no formal initial action has yet been taken.

Summer Meeting in Ocean City at MML Summer Convention

Plan on attending MMAA's luncheon at the Summer Convention on Monday, June 24. We will be in the same 2nd floor room as in past years, and will have a discussion on the recent update to MML's Amicus Brief approval process. This is of special interest to MMAA as we're always part of the discussion when a municipality facing an appeal asks MML to take part as a "friend of the court." Such a request requires an MMAA review and recommendation to the MML Board of Directors. In the most recent request, *Forest Heights v. MNCPPC et al.* before the Court of Special Appeals, MMAA President Booth and Secretary Johnson drafted the MML Amicus brief. We'll also plan, as in past years, to have an informal roundtable and update on any pressing issues or cases we're facing that might be of interest to everyone.