



Maryland Municipal Attorneys Association

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

MINUTES FOR OCTOBER 17, 2019 MEETING

APPROVED FEBRUARY 6, 2020

The Thursday, October 17, 2019 MMAA meeting was held at Chiapparelli's Restaurant on South High Street in Little Italy in Baltimore, Maryland. Lynn Board, President, called the meeting to order at 12:15 p.m. and noted this was the second and now annual joint city-county attorney meeting and noted that Tom Yeager, MACo County Civil Attorneys President, was slightly delayed but would also be present. She welcomed everyone, and asked everyone attending to briefly introduce themselves..

1. Minutes of the November 8, 2018 meeting were unanimously approved, on motion by John Barr which was seconded by Ron Bolt. Lynn also noted the next MMAA meeting would probably be scheduled for Thursday, February 6, 2019 and that state legislative issues are always a key issue.
2. Because Treasurer, Jason DeLoach was not able to attend due to a court appearance conflict, the Treasurer's report was waived.
3. In brief Municipal Attorney Association updates, Lynn noted that Elliott Schaefer, our liaison to the MML Legislative Committee, has moved to Denver, Colorado, where he will serve in the Denver's City Attorney's Office. This means the MMAA has a vacancy for the MML Legislative Committee representative. She asked anyone with an interest (or question about serving) to check with her, and said that the MMAA Executive Board will make a decision, per the bylaws, on filling the position by recommendation to the MML President before the first day of the General Assembly, which will also be the date of the next MML Legislative Committee meeting. In other updates, Lynn reported that a Task Force for pro bono attorneys has been created for local government attorneys. She explained it is understood that we may be limited by our day jobs, and so the Task Force is looking at how that can be accomplished. She said she is on the Task Force and that the Chair of the Task Force is Robert Anbinder who is an attorney for Baltimore City. She noted they will be reaching out to get creative ideas for pro bono service opportunities for local government attorneys. Lynn also reported that the University of Baltimore, with the Schaefer Center for Public Policy wants to develop public attorney training with a focus on state, county, municipal and local attorneys. She asked everyone to watch for a survey to get feedback on training everyone would be interested in, and reactions we might have to options for future training, such online, in person, etc.
4. After lunch was served, Bill Jorch, MML's Manager of Government Relations and Research, reported on legislative priorities adopted at the MML Fall Conference earlier this week. He noted this includes restoration of Highway User Revenue funding, as the 2018 bill only provided increased funding through FY 2024; the intent would be to prevent going back to the minimal funding and extend or eliminate that sunset while working on possible increases in the funding level as well. Bill also noted that Les Knapp, Legal and Policy Counsel for MACo, would report for the counties later in the meeting, including a focus on the challenge of Kirwan education funding and how that could absorb any other funding needs. As to other MML priorities, Bill noted they include retention of authority over installation of small cell infrastructure in rights of way and that everyone should be watching the General Assembly for introductions of any bills in that regard. Bill reported there is an upcoming meeting with industry representatives with the Senate Finance Committee chair, Dolores Kelly. He also said the 5-year annexation rule (allowing counties to prohibit any increase in density for annexed properties for up to 5 years) is raising concerns and that at this point municipalities will try to work with counties on a one on one basis. Bill finally warned that there is an expectation that the attorney fee shifting bill (for constitutional claims) would likely be introduced again, and also expects another push to adopt comparative negligence.

Les Knapp for MACo noted that MACo is limited to four key initiatives by its bylaws. Their first priority is school funding (and making sure any Kirwan funding goes to local government). He notes many expect a push to legalize cannabis and that there is strong progress for school construction; apparently HB 1 will be the key school construction bill. MACo will push for any funding or assistance to help counties. He reported that an additional MACo priority will be to try to repeal the implied pre-emption doctrine, as the Court of Special Appeals found that concept eliminated local control for solar siting but not for Montgomery County's pesticide control legislation. MACo wants to eliminate implied pre-emption, requiring an express intent to pre-empt local laws on legislative subject matter areas. As to other matters, Les warned that the push for school funding by the Kirwan Commission could swallow all other available funding, noting the price tag is estimated at 2.8 billion and counties such as Prince George's are already saying they can't afford it. He also noted some advocates are seeking to eliminate local zoning control over residential development by eliminating any single family zoning, requiring all zoning to be limited to multi-family zoning. Les finally reported that local advocates have found that new General Assembly members more progressive and that they are facing new leadership in the House, combined with some concern in the Senate as to Senate President Miller's status, ongoing health and intentions going forward. He also reported that despite some years of positive revenues, there is a report that the structural deficit is returning, which could reach \$1.5 billion by 2024. Les said this means we're still at the state level spending more than we're taking in over time, and warned that Kirwan funding could amplify this, not to mention the possibility of a future recession.

4. Lynn introduced Jonathan Novak from the Fears, Nachawati firm in Dallas, Texas which is handling part of the opioid litigation for local governments, including 19 in Maryland as one of the most active states. He also formerly served in the U.S. Department of Justice's Drug Enforcement Administration. Jonathan reported that there are roughly 2500 cases on opioid claims in Federal multi district cases, with another 500 in other state systems meaning a total of at least 3,000 cases are now active. He said if all counties and municipalities counted, there would be approximately 30,000 potential plaintiffs. In this regard, he noted that while settlements of much of the high profile litigation is being highlighted, such settlement can't happen if the defendant has no peace of mind as to additional liability. He noted some trials will be happening next week. Jonathan told us that this crisis started when people were injured or otherwise went to doctors and doctors were told opioids are safe and not addictive. Thus average prescriptions in 2008 for opioids was for 30 days. As it turns out, there is a 35% addiction rate for use of opioids for 30 days. Addicted patients usually try to get more and shift over to Heroin when they can't, which often results in fatalities. He said that manufacturers encouraged doctors to write prescriptions; distributors made sure the drugs were shipped to them. And when everyone knew there was a problem with addictions, they should not have persisted, but did anyway. That has led to the litigation and he said they are indeed winning cases based on that. Pharmacies may be the largest pool of benefits received, and he reported that they largely could have prevented the harm, but did not. He said manufacturers don't always have the same resources and were not always directly involved in distribution, which is where many of the problems have arisen. He said much litigation involves local governments trying to get the money back for the extra costs they've paid due to the crisis, but some state attorney generals are working to eliminate any local reimbursements – fortunately, he noted, Maryland's attorney general is not taking that approach. He said that as to class action notices which are going out to local governments, each has the option to choose to opt out or stay in the class action. He said those staying in would receive benefits, and that as much as 25% more in reimbursement may be provided for local government who took action. His advice is that local governments not take action to opt out of the class action cases. He concluded that everyone could end up settling with manufacturer and distributors over time; but does not expect all to settle, and said litigation is and will be going on. He said his firm is still taking new clients and advised local governments not to opt out but to stay in the litigation.

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 2:15 p.m.

Frank Johnson, Secretary