



Maryland Municipal Attorneys Association

Quarterly Newsletter – Winter 2020/2021

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

Virtual Joint Meeting with County Attorneys: Suggestions for Virtual Oral Arguments

Given the ongoing COVID-19 pandemic, we held a virtual fall meeting on November 12, which was also the third annual joint meeting with the Maryland Association of Counties (MACo) County Civil Attorneys. Judges Brynja Booth and Joseph Getty from the Court of Appeals joined us. They first discussed elements of holding virtual arguments.

Judge Booth noted some challenges in the “virtual” environment, and Judge Getty said it’s a world of “up close and personal” in many ways. He noted that it might be some time before in person settings, even with spreading everyone out, will work. Judge Getty said the Court of Appeals has found that the Zoom format works well. He noted that because masks aren’t needed, it allows for more direct engagement between the bench and the arguing attorneys. He said that so far, the Court has not experienced any technical issues.

Judge Getty noted two main oral argument approaches – either using a head shot and just showing your argument, or a more formal podium, allowing attorneys to stand as if they are arguing in person before the court. For the podium to work, however, Judge Getty noted a separate microphone was needed. Overall, Judge Getty also warned that we should be aware of any background, as some

colors can clash. He advised recording a “mock argument” video to make sure the lighting is good, the camera angle works, and the image is in focus. Judge Booth also noted that it’s useful to have a cellphone or alternative in place just in case the computer malfunctions.

MML Legislative Update and Introduction of Angelica Bailey, new MML Director of Government Relations

At the November 12 virtual meeting, Justin Fiore, MML’s Manager of Government Relations, introduced Angelica Bailey, the new Director of Government Relations, the role from which Candace Donoho recently retired. Bill Jorch, MML’s Manager of Government Relations and Research, spoke on MML’s priorities, including eliminating the HUR funding sunset in 2024. He noted a second priority was to retain local authority for right of way placement of technology infrastructure, including small cell but also broadband and landline installations as well. Justin noted another initiative: looking at climate change more holistically and broadly.

New COVID-19 Rules for Largely Virtual Maryland General Assembly

The Maryland State Senate and House of Delegates have issued new “Reopening Guidelines,” which will limit public attendance, encourage staff telework, require social distancing and face coverings, and provide virtual committee hearings, which will be livestreamed. Written committee testimony will be permitted by online upload and restricted online testimony through the MGA website. For floor operations, virtual meetings will be allowed for the Senate, depending on whether stage 1, 2 or 3 is in effect (depending on the stage of COVID-19). The House plans in-person floor meetings, but in two separate rooms to allow proper spacing. More details are available on the MGA website.



Court of Appeals Judges Booth and Getty Discuss Key Court Decisions

At the virtual meeting on November 12, Judges Brynja Booth and Joseph Getty from the Court of Appeals presented nine recent cases involving county and municipal issues. This article will note the main case holdings; more detail is available on the meeting summary on MMAA's webpage.

1. *70-80 Properties v. RALE*. Judge Booth noted this has limited application, as it involved a Frederick County ethics violation regarding a controversial development, the approval for which was ultimately reversed after the election of new county officials. The Court concluded the new County Council had the right to use a *de novo* hearing after the ethics issue was raised as to the prior development approval, and Judge Booth noted the Court did not adopt or apply zoning estoppel based on lack of reliance on zoning approval.

2. *7222 Ambassador Road v. National Center on Institutions and Alternatives*. This case found that an LLC that failed to file an annual report to satisfy the requirements to remain a registered LLC with the State Department of Assessments and Taxation, forfeited the right to do business, including making court filings on the LLC's behalf.

3. *Baltimore City Police v. Potts/Estate of William James*. Judge Booth explained that after careful review of the facts, the Court found that the police were acting within the scope of their employment and the judgment was payable by the City.

4. *Wynne v. Controller*. Judge Getty noted this was a challenge to the General Assembly's budget powers in changing the interest due on tax refunds. He said the Court concluded that the rate reduction was not a violation of the commerce clause.

5. *Estate of Jeffrey Blair v. Austin*. Judge Booth noted this was an excessive force police case, involving a few seconds of a video recording showing the officer firing four shots very suddenly. Judge Booth and Judge Getty dissented but the majority found that the evidence allowed the jury to decide that excessive force occurred. Judge Getty noted

concern with the potential to lose focus on the officer in the situation and not later by hindsight or Monday-morning quarterbacking

6. *Joseph Stracke v. Estate of Kerry Butler*. Judge Getty said this case involved a fact-based review of a jury decision finding Baltimore City medics grossly negligent, and it was another 4-3 Court decision. He said the Court ultimately found the paramedics were not grossly negligent in making an error in judgment, and thus not acting with wanton or reckless disregard in following required protocols.

7. *Maryland Reclamation Associates Case*. Judge Booth noted it was a longstanding case involving a proposed rubble landfill, going back to 1989 and involving multiple appeals after initial approval, zoning changes and variance denials. She said this final case involved a takings claim asserting vested rights, arguing the county's actions interfered with reasonable expectations. She said the Court upheld a Court of Special Appeals jury verdict reversal based on failure to exhaust administrative remedies, finding this claim should have been raised as part of their first claims, years before, and not held back.

8. *Mayor and City Council of Baltimore v. Prime Realty*. Judge Getty said the issue was a challenge to substituted service for a receivership for real property. The resident agent had moved to Montgomery County with a post office box, but SDAT does not accept post office boxes and rejected the change. He said the Court found substituted service was valid and that Baltimore City made sufficient efforts to locate Prime Realty.

9. *Pizza di Joey and Madame BBQ v. Baltimore City*. Judge Booth noted this was challenging a 300-foot distance requirement between a vendor and a brick and mortar restaurant. The Circuit Court held the 300-foot rule did not violate substantive due process but struck the ordinance *sua sponte*, finding it vague. The Court of Special Appeals reversed and upheld the ordinance, finding it rationally related to a legitimate government interest and that the statute was not vague (and also that the Circuit Court should not have made the *sua sponte* finding the ordinance was vague).