



# Maryland Municipal Attorneys Association

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

MINUTES FOR FEBRUARY 11, 2021 MEETING

APPROVED MAY 6, 2021

The Thursday, February 11, 2021 MMAA meeting was held virtually, using “Zoom,” for the fourth virtual meeting. The meeting convened at Noon and Lynn Board, President, called the meeting to order at that time and welcomed everyone.

1. Minutes of the November 12, 2020 virtual meeting were unanimously approved, on motion by Jason DeLoach which was seconded by Fred Sussman.
2. Jason DeLoach, Treasurer, gave a summary of our account balance and said MMAA had about \$3,200, which was a rough estimate as the bank had not yet provided the most up to date accounting, and that our revenue was only based on dues from last year. Lynn noted we had no costs due to the virtual format.
3. Scott Hancock, MML Executive Director, thanked municipal attorneys for their help to municipalities during the pandemic and said it could not have been accomplished without such help. He specifically thanked Lynn Board, President, for her assistance; also thanked Elissa Levan, the MML Board Rep, for her help. He also thanked Skip Cornbrooks for his assistance as the MMAA liaison to the MML Legislative Committee, especially in an unusual legislative session due to the pandemic. Lynn asked him for any update as to plans for the Summer Conference; Scott said it is a cloudy crystal ball, but shared everyone’s sentiments to try to get together in person, but said it must be done safely. At this point, the Board has decided to propose an in person and virtual event separately, but the in person event would be limited to 500 persons, and will open registration in late March or early April, allowing only one or two persons from each municipalities. He said this is planning as of today, which can change with other changes in the pandemic. The virtual event would, he said, be two weeks later and be more inclusive for all members to participate. He said the plans will be updated as they have more information closer to the event.
4. Lynn noted the MML survey from the magazine resulted in a request to MMAA to produce an article after our quarterly meetings, and Frank explained the main focus would be on topics presented. Lynn also noted nominations for officers would be sought in early March with elections at our May meeting, tentatively set for May 6, and likely to be held virtually. She noted that if anyone has interest in a topic being presented, to let us know. Lynn also noted that as to the Summer Conference, there would not be availability for a membership meeting; Lynn asked if there would be interest in any in person meeting at the Conference. One attorney noted she would hope to be there in person and asked for arrangements for a meeting, and Lynn noted we would further discuss the possibilities in May, and will also determine if it is possible to conduct the meeting both virtually and in person.
5. Lynn introduced MMAA’s speaker, Karen Kruger, who assists the Maryland Chiefs and Sheriffs Association with the police reform legislation this year and will give us an update on those bills. Karen started by saying it is nice to be among friends, as there is a sense of hostility among some on the police reform issue, and in some ways has been very disheartening. Much legislation is very draconian, calling even for criminal penalties for officers failing to stop excessive force or even public shaming lists in some cases. She said the focus is truly, at least by some, on disempowering police altogether. She said the Chief’s Association is trying not to oppose everything and to support some bills with amendments, to try to have some influence in how the bills will be drafted, rather than just opposing and not having a “seat at the table.”

She noted there is a big push to repeal the LEOBR (Law Enforcement Officers Bill of Rights) or repeal and replace it, and said there are so many specifics that it can be difficult to summarize. She said the Chiefs and Sheriffs have easy access to all of the bills, and the Legal Advisors Committee (part of the Chiefs and Sheriffs Association) is also monitoring the bills. A major concern, she noted, is that many bills are imposing severe restrictions as to when an officer can act, and can be difficult to understand by anyone. She said legislation will impact all police agencies, will cause the need for substantial training, and may limit the ability to act. She also asked if anyone had particular questions.

One question was whether any consensus was forming as to which proposals would be enacted. She said there are numerous bills, but two omnibus bills; House Bill 670 is a comprehensive reform bill which she says has many difficult parts, 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 is supporting Senate Bill 237, which would increase training, impose some restrictions, create a duty to intervene and reporting requirements, and restrict choke holds, which would be a reasonable alternative. She said the Senate Judicial Proceedings Committee Chairman Smith said they would try to pull all the bills and parts with support together in one.

Another question raised concerns with bills that should be amended, but individual municipalities don't want to have to conduct those negotiations, so asked how municipalities can assist the Chiefs and Sheriff's Association and MML. Karen said she might be the best conduit for any input or assistance. She said it is important for municipal officials and Chiefs to communicate directly with elected officials, including Senators and Delegates, as they often do not have the background on how legislation will affect day-to-day police operations. She said there are so many bills that in some cases they don't have the time to read all of the bills. She said that disempowering police will result in empowering criminals, and if the public were aware of that, many of these bills would not be so strongly supported.

One attorney asked whether certain parts, such as public information, could be detached from excessive force liability and LEOBR repeal or reform, given the confusion with the huge number of issues being tackled all at once. Karen said that there is interest in leadership in passing a large, comprehensive bill that they hope will correct all the problems, and said there is a strong hope for an easy way out – which she acknowledged isn't realistic. One question was the Governor's opinion on these concerns, and Karen said the Governor is being very stand-offish at this point, not directly opposing bills, and she noted in part that there are sufficient votes to override almost any veto the Governor issues. Karen said being passive won't win the day and encouraged everyone to update their elected officials and Chiefs, and to encourage them to contact their Senators and Delegates.

Another attorney questioned the likelihood of changes to LEOBR, and Karen said it's unlikely it will be completely repealed as that would force each jurisdiction to adopt its own procedures. She said it's likely that Senate Bill 627 will be one key guideline, originally drafted by the ACLU and largely agreed to by the Chiefs, as it does provide a workable framework. But she said others have opposed the bill, noting the need to allow officers to present an effective defense. Investigative tools were also taken out, and she said they are hoping to add those back in. She also said the LEOBR would be changed in title to something like the Police Accountability and Discipline Act. She also said it will likely 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.

Another question concerned police oversight boards. Karen said she was very cautious of them, and said they could create more bureaucracy, but said there is a big push for allowing more direct citizen involvement in policing standards. She noted it can create another government agency and a bureaucratic drain on municipalities, and a key question to many of these good ideas is how they can be effectively implemented. She also noted that at many stages citizens don't want to get so directly involved.

One attorney was concerned about police interacting with those suffering mental disabilities; Karen said there are proposals for more training, but said the problem can be that such persons can be violent. She said that de-escalation and monitoring may not always be possible, as some persons with mental disabilities can't respond or react appropriately and may pose a danger to others. She said some bills would not allow force to be used if a person is only a danger to him or herself. She said the problem is that discretion and judgment is not being allowed, and that prevents police officers from being able to offer an effective response in many cases. Karen said there is also a growing expectation that the police become mental health experts, which may also not be realistic.

Another question concerned the potential imposition of personal liability for officers, and what insurance officers could obtain. Karen said it is not clear to her what is likely to be passed but said there is not, to her knowledge, any insurance available for such coverage. Karen said House Bill 1049 covers the personal liability issue, and Angelina Bailey noted that MML would be testifying on that bill. It was also noted that "moonlighting" insurance is available, but Karen said that would also depend on whether the immunity provisions remain in the law.

One attorney noted that enhanced training could create greater sensitivity on the part of officers, such as for mental health issues. Karen said they already receive training, but there is strong push to create "implicit bias" training, and trainings focused on the mental health of officers rather than citizens. She noted that training mandates can add costs while taking officers off the street, and said many are not focused on helping the officer to do the best job for the community, which should be the main focus. Karen did agree that enhanced training could be helpful.

6. Lynn asked MML and our liaison, Skip Cornbrooks, to focus on MML priorities and state legislative updates. Skip thanked MML staff in their preparation for the Legislative Committee in such a difficult year. Angelica Bailey, MML's Director of Government Relations, began with an introduction on how the General Assembly is operating this year. Angelica said all testimony in both chambers is virtual only, and that everyone is aware of the safety concerns. Links are available on the General Assembly website for the committees, and those testifying must create an account which allows written testimony as well. She also noted they are requiring signing up and providing written testimony two to three days before the hearing, which is in some cases almost impossible without a clear final version of bill text.

On the major issues MML and the Legislative Committee are facing, she said police reform, education and the budget are all important, and the General Assembly is also planning to override vetoes. She said MML is focused on Highway User Revenues and is asking that the 2024 sunset be removed, to preserve HUR funding, and a return to full funding rather than the current 85%. She said there is hope but also much concern with any budgetary costs.

One question was raised on the constitutional amendment, allowing standing for any resident against local governments for any environmental harm. Angelica noted that it would be complicated and costly, and there is much opposition, but it is difficult to predict whether the bill will proceed this year as the General Assembly is focused on trying to address climate change. She said she did not expect this bill would be favored, but Justin Fiore, MML's Manager of Government Relations, noted there is a large push among advocates to create more standing rights such as included in this bill.

Lynn reminded persons that the Open Meetings Act manual has been updated by the Attorney General's office, and noted our tentative next meeting for May 6. One attorney noted that the Open Meetings Compliance Board found an Economic Development corporation a public body, even as membership includes only private persons. It was noted the Opioid litigation is moving to settlement and will impact jurisdictions which aren't plaintiffs, and that the State is negotiating as a party without input from such jurisdictions.

With nothing further for the good of the order, Lynn adjourned the meeting at 1:05 p.m.

Frank Johnson, Secretary