



## GOVERNMENT LAW SECTION

### STATE BAR OF MICHIGAN GOVERNMENT LAW SECTION MEETING MINUTES

January 9, 2021

Monthly Meeting by Zoom

**CALL TO ORDER:** A Zoom conference meeting of the Government Law Section was called to order by Chair, Catherine Mullhaupt on January 9, 2021 at 10:00 am.

1. **Attendance and Excused Absences:**

**Present:** Bluhm, Fales, Fisher, Forbush, Forsyth, Joppich, Kolb, Mills, Mithani, Mullhaupt, Nettleton, Rosati, So, Stremers, Tamm, Walling, Watza

**Absent:** McGee, Sluggett, Williams, Zeits

**Motion to Excuse Absences:** Fisher      **Support:** Nettleton  
**Council approved by unanimous vote.**

2. **Approval of Agenda:**

**Motion to Approve Agenda:** Bluhm      **Support:** Watza  
**Council approved by unanimous vote.**

3. **Approval of December 5, 2020 Minutes:**

**Motion to Approve Minutes:** Fisher      **Support:** Joppich  
**Council approved by unanimous vote.**

4. **Treasurer's Report:**

Forbush received the State Bar's end-of-year report, which was circulated to Council for review with the agenda. Forbush stated that we do not have any new expenses over the last month.

5. **Seminars and Meetings:**

a. **2021 Virtual Winter Seminar – Friday, February 12, 2021**

Mullhaupt informed Council that we will circulate emails to the membership about the Winter Seminar on January 11 and February 1, announcing the topics and encouraging registration. Council agreed to self-administer a survey following the seminar. Mullhaupt will develop the survey.

Council discussed and agreed upon the following potential speakers and topics for the Winter Seminar: Andrew Brisbo from the State of Michigan Marijuana Regulatory Agency to provide a 15-20 minute state law update regarding marijuana licensing and regulations and to answer any questions from the audience; Anne McLaughlin (Rosati Schultz) and/or Lauren Trible-Laucht (Traverse City City Attorney) to present for 45 minutes on zoning and other regulatory issues for caregiver grow operations, with a 15-minute Q&A session; and a panel of speakers consisting of Mark Wyckoff, Catherine Kaufman (Bauckham Sparks), and a speaker from Fahey Schultz to discuss for 45 minutes how municipalities can address initiative petitions

and referendums that attempt to force communities to adopt marijuana licensing provisions, followed by a 15-minute Q&A session.

Mullhaupt will contact Brisbo, Wyckoff and Kaufman. Mills will identify a speaker from Fahey Schultz. Rosati will contact McLaughlin. And, Forsyth will contact Trible-Laucht.

Kolb, Bluhm and Rosati volunteered to share hosting duties throughout the Winter Seminar if necessary.

Council agreed to host the seminar from 9 am – 12 pm on February 12, 2021. The seminar will end with a wrap-up Q&A session and will be followed by a Council meeting from 12-1 pm. Council agreed to market the seminar with the title “Cutting Through the Haze.”

**Motion to Hold Winter Seminar from 9 am – 12pm EST on Friday, February 12, 2021 via**

**Zoom:** Forsyth

**Support:** Nettleton

**Council approved by unanimous vote.**

**b. MAMA/GLS Summer Educational Conference.**

**i. 2021 MAMA/GLS Summer Educational Conference (June 18-19, 2021)**

**ii. 2022 MAMA/GLS Summer Educational Conference (June 24-25, 2022)**

Mullhaupt noted that while MAMA/GLS will be holding a summer conference, it is likely that it will be virtual. The planning committee will decide whether the conference will be in person or virtual in the next month or two. Members raised the possibility of holding a blended conference (i.e., both in-person and virtual) either this summer, or as something to consider for future summer conferences.

**6. New Business:**

**a. Michigan Department of Treasury Invitation for GLS to Appoint Representative to Local Government Advisory Team|**

MDOT has invited GLS to appoint a representative to MDOT’s local government advisory team. Mullhaupt believes that the team provides advice and counsel regarding certain accounting and financing issues and procedures that affect municipalities. Mullhaupt will investigate further and report back to Council with additional information regarding the team’s duties and responsibilities so that Council can make an informed recommendation about the best person to appoint.

**b. Regulating Unlicensed Marijuana Growers in Residential Neighborhoods**

Stremers asked for guidance on how to handle unlicensed marijuana growth in residential areas of a community. Recommendations included revising zoning ordinances in light of *DeRuiter* to address the location of caregiver growth operations, code enforcement, requiring additional permits, adopting ordinances that regulate caregiver groves and address safety concerns (including odor), working with DTE to address electrical load issues, working with licensed growers to better regulate caregiver growth operations, and working with the state legislature to adopt laws to provide further guidance in this area.

**c. Certified Question in *AFT Michigan v Project Veritas***

The Michigan Supreme Court is considering whether to certify for review the issue of whether Michigan’s recording statute, MCL 750.539c, prohibits one party to a conversation from recording the conversation absent the consent of all participants. Recently, the Eastern District of Michigan ruled that the statute does prohibit parties to a conversation from recording the conversation without consent of all parties, which is

contrary to a 2-1 holding by the Michigan Court of Appeals in 1982 in *Sullivan v. Gray*. Fisher raised concerns about a Supreme Court decision that would reverse *Sullivan* and the potential criminal sanctions tied to violations of the recording statutes and how those would affect municipalities who may have been engaging in the one-way recording of conversations. Council agreed to monitor the matter and to wait until the Supreme Court rules on whether to certify the question before deciding whether to accept any request to participate as amicus curiae.

**7. Old Business:**

Mullhaupt reported that Jennifer Hatter is available to present State Bar marketing-related information at a Council meeting. Mills will ask Hatter to present at the March 2021 meeting.

**8. Committees:**

a. **Amicus Committee:**

So and Watza raised the possibility of submitting an amicus brief in support of the Village of L'Anse in connection with an application for leave to appeal a recent Court of Appeals decision holding that cities and villages have the right and discretion to grant or deny utility franchises for any non-discriminatory reason. If MML submits an amicus brief at the application stage, Council will consider whether to join the amicus brief at that time.

Fisher and Joppich noted that MML will join GLS' amicus brief in *Township of Fraser v Haney* and will assume a share of the \$10,000 NTE costs.

b. **Briefly Committee:**

A new issue of *Briefly* was circulated earlier in the week.

c. **Social Media Committee:**

d. **Membership Committee:**

Mullhaupt is planning to initiate a joint meeting of the Social Media and Membership Committees, likely in the first quarter of 2021.

**9. Correspondence:**

None.

**10. Council comments:**

Forsyth inquired whether Council has considered the implications of PA 256 of 2020, which amends the Michigan General Property Tax Act to address the holdings in *Rafaeli v Oakland County*. Rosati referred Forsyth to her colleague, Stephanie Morita.

**Council adjourned the meeting at 11:21 am.**

Minutes taken by Mithani