



OFFICE OF THE COUNTY ATTORNEY

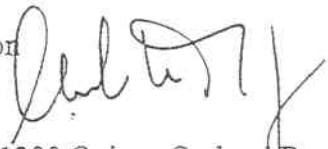
Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

May 3, 2000

TO: Michael Subin, President
County Council

FROM: Charles W. Thompson
County Attorney 

RE: Security Deposit for 1300 Quince Orchard Boulevard

You have expressed concern over a provision in a proposed lease for the Emergency Communications Center that would require the County to post a security deposit. The security deposit would be paid to the landlord to cover the landlord's losses in the event the Council does not appropriate funds to pay the rent in a future year.

Charter Section 311 prohibits a county employee from entering into an agreement obligating the expenditure of County funds in excess of the available unencumbered appropriation covering the County's financial obligations under that agreement. This provision is consistent with a state law that provides that a county employee must not make any contract or pay any sum of money not previously appropriated and remaining unexpended.¹

Charter Section 311 presents a considerable hurdle when the County desires to enter into a multi-year contract or lease. The problem is usually solved by inserting a clause in the lease that provides the County with an option to terminate the lease—without cost—if the Council fails to appropriate funds to cover rent in any subsequent year of the lease. Some landlords are willing to accept this risk. But where the landlord is required to expend considerable sums of money at the beginning of the lease, landlords have asked for "buy out" clauses in the agreement. Of course, the "buy out" clause must be funded when the County enters into the lease to satisfy the requirements of Charter Section 311.

The means of funding these "buy out" promises may vary. The deposit arrangement negotiated with the landlord for 1300 Quince Orchard Boulevard is one solution. Another solution might be to ask the landlord to purchase insurance to cover the landlord's loss in the

¹See Md. Code Ann., Art. 31, Section 3

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event the County must terminate the lease on the grounds of non-appropriation of funds. The downside of this solution, of course, is that the landlord will invariably pass the premium cost of the insurance onto the county.

Ultimately, the resolution of who pays for the risk of the Council not appropriating funds in a multi-year lease centers on who has the greater bargaining leverage.

I trust you will find that this memorandum is responsive to your inquiry. If I can provide you with further information, please let me know.

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