

**5 Official Opinions of the Compliance Board 10 (2006)**

**EXCEPTIONS PERMITTING CLOSED SESSIONS –  
PROPERTY ACQUISITION – DISCUSSION BY COUNTY  
COMMISSIONERS OF POTENTIAL SITES FOR BRANCH  
LIBRARY AND LEASING COSTS, HELD TO BE WITHIN  
THE EXCEPTION**

March 13, 2006

*Mr. Craig O'Donnell*  
*Kent County News*

The Open Meetings Compliance Board has considered your complaint that the County Commissioners of Kent County violated the Open Meetings Act by closing a meeting on February 7, 2006, without a proper basis under the Act. For the reasons stated below, the Compliance Board finds that there was no violation.

**I**

**Complaint and Response**

This complaint concerns the scope of the Act's exception that allows a public body to meet in closed session in order to "consider the acquisition of real property for a public purpose and matters related directly thereto." §10-508(a)(3).<sup>1</sup> There is agreement that the County Commissioners held a closed meeting on February 7, 2006; that the topic of discussion was potential sites for a new branch library in Galena and the leasing costs of these sites; and that the basis for the closing cited by the County Commissioners was §10-508(a)(3). The disagreement is over whether the exception could be applied under these circumstances.

According to the complaint, Kent County itself is not purchasing property, but instead simply is concerned about the budgetary impact of the library system's decision. Because the County supports the library system's budget, it has an interest in keeping the costs of the proposed branch library as low as possible. This interest, the complaint suggested, "does not involve negotiating strategy and price," the Commissioners' stated reason for closing the meeting under §10-508(a)(3). As the complaint put it, "a policy decision concerning a library location and its costs should be aired in open session."

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<sup>1</sup> Unless otherwise indicated, all statutory references in this opinion are to the State Government Article, Annotated Code of Maryland.

In a timely response on behalf of the County Commissioners, Susanne Hayman, the Kent County Administrator, denied that the Act had been violated during the closed session discussion of the branch library site. As background, the response described three meetings in which the topic of the Galena library arose. The first was an open meeting on January 3, 2006, at which the County Commissioners heard a proposal by the Kent County Public Library, seeking more than \$117,000 in County funds to establish the new branch library. The County Commissioners indicated that this sum of money was too great, and the discussion ended with a consensus that the matter would be explored further.

After the January meeting, one of the County Commissioners worked with the Library Director to refine the proposal. As the response put it, “an item of particular concern was to find a suitable location at an affordable rent.” Then, during an open session on February 7, the Commissioner reported on recently received e-mail from the Library Director. The response summarized what happened next:

The County Commissioners closed the meeting to telephone [the Library Director] to discuss the selection of a suitable site for the Galena branch. A telephone conversation (in which [the Director] and all three Commissioners participated) contained a discussion of three different properties owned by three different parties. The potential costs associated with each site were discussed, as well as each property’s advantages and disadvantages. At the conclusion of the conversation, the County Commissioners authorized [the Director] to begin negotiations for a leasehold interest in one of the properties, at a specified cost and for a specified term.<sup>2</sup>

The response went on to observe that “the County Commissioners anticipated they would be signing the lease for the new library branch, given past and current practices of the County in regard to other agencies funded by the County. There was no express understanding or discussion on this issue, however.” The “past and current practices” referred to include the lease by the County of property for both the library system and several other self-managed agencies for which the County has funding responsibilities.<sup>3</sup>

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<sup>2</sup> This summary of the closed session was confirmed by the closed-session minutes, which were provided by the County Commissioners to the Compliance Board in confidence. §10-502.5(c)(2)(iii).

<sup>3</sup> “Kent County owns the land and improvements that house the current Kent County Public Library in Chestertown. The County Commissioners are the designated

## II

### Analysis

Although the exceptions that allow closed meetings under the Act are to be “strictly construed in favor of open meetings,” §10-508(c), a strict construction nevertheless must accord the statutory language a reasonable interpretation. “[S]trict construction’ is in no way violated if the words of a statute are given their full meaning.” *McKeon v. State*, 211 Md. 437, 444 (1956) (citation omitted).

The term “acquisition” is not, as suggested by the complaint, limited to the purchase of real property. A legal dictionary defines “acquisition” as “gaining of possession or control over something.” *Black’s Law Dictionary* 25 (8<sup>th</sup> ed. 2004). The definition in a general dictionary is to the same effect. *Random House Dictionary of the English Language* 18 (2<sup>nd</sup> ed. 1987). These definitions are broad enough to encompass a leasehold interest in property. In addition, the Maryland Court of Appeals, construing the term “acquires” in the context of a contract, rejected the argument that it is synonymous with “purchases”; instead, the Court held that “acquires” connotes any legal form of ownership, including a leasehold interest. *Weinberg v. Baltimore & Annapolis Railroad Co.*, 200 Md. 160, 167 (1952). *See also* §6.5-101(b)(1) (in a statute related to review of certain business transactions, defining “acquisition” to include both a sale and a lease).

Hence, we conclude that the discussion by the County Commissioners of a potential lease of real property for a public library is a discussion of “the acquisition of real property,” within the meaning of §10-508(a)(3). Obviously, the cost of a lease is a “matter directly related” to this form of acquisition of real property.

The complaint suggested that the Commissioners’ invoking of §10-508(a)(3) was improper under one of our prior opinions, Compliance Board Opinion 97-8 (1 *Official Opinions of the Open Meetings Compliance Board* 233 (1997)). In that opinion, we held that a municipal public body could not justifiably invoke §10-508(a)(3) to close a discussion about potential town funding of a portion of school construction costs. The context of that opinion, however, was a law that precluded a municipality from acquiring any interest in the real property used for a public school. By contrast, no law imposes a comparable restriction on county participation in a form of ownership of real property used for a public library. Indeed, Kent County already owns one such library property. *See generally* §23-405(f)(3) of the Education Article (board of library trustees may “recommend to the county governing body the acquisition, use, or conveyance of property, for any purpose valid under [the county public libraries] subtitle”).

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lessees of the offices of several agencies that are not governed or supervised by the County, but which the County is obligated to fund. These include the Kent County Health Department, the Upper Shore Regional Council, and the Kent County Election Board.”

**III**

**Conclusion**

In summary, the Open Meetings Compliance Board concludes that the County Commissioners of Kent County justifiably invoked §10-508(a)(3) of the Act in closing the meeting on February 7, 2006. There was no violation in this regard.

OPEN MEETINGS COMPLIANCE BOARD

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