

PUBLIC RECORDS & MEETINGS

Public Records & Meetings: Sunshine Law

Dascott v. Palm Beach County,
877 So. 2d 8 (Fla. 4th Dist. App. 2004)

A public board or committee that has been delegated decision-making authority by public official(s) is subject to the Government in the Sunshine Act (Sunshine Act). The board's function, rather than its composition or stated intent, governs the applicability of the Sunshine Act.

FACTS AND PROCEDURAL HISTORY

Lee Ellen Dascott, a senior secretary in the Palm Beach County Department of Community Services, was brought before the County's Grievance Committee in 1998 for a hearing on alleged violations of the County Merit System Rules. Following the 1998 unpublicized hearing, the deliberation of which excluded Dascott, the Committee recommended a three-day suspension. In 2002, Dascott was charged with a second violation of the County Merit System Rules. This time, she was terminated by her department head following the proceedings of a pre-termination conference panel. Prior to her termination, Dascott received a pre-termination conference notice, indicating that the panel would consist of her department head, the Personnel Director, and the Director of the Office of Equal Opportunity. The notice stated, in part, "If the *joint decision* of the conference panel is to uphold your discharge, you still retain the right to appeal . . . If you are not discharged, you will be informed as to any alternate action *agreed on by the panel.*" *Dascott*, 877 So. 2d at 9 (emphasis in original).

The Palm Beach County Charter assigns the County Administrator the sole authority to terminate county employees. The Charter also requires the Board of County Commissioners to establish a merit-based personnel system, including guidelines for pre-termination conferences. According to the County's administrative code, "the purpose of the [pre-termination] conference is to hear the employee's side of the charges to protect the employee from erroneous or arbitrary adverse action." *Id.* at 11 (quoting

County Merit Sys. Rules § 7.05 A.1). The code indicates that the department head has the authority to decide whether to terminate the employee after evidence has been presented to the panel.

During Dascott's pre-termination conference, the panel questioned Dascott. Her attorney, in turn, questioned Dascott's supervisor and another witness. Following the questioning, the panel excused Dascott and her attorney and conducted its deliberations in private. Pursuant to the county regulations, Dascott's department head issued the final decision to terminate her employment.

Dascott subsequently filed a complaint for declaratory judgment and injunctive relief, claiming that the panel's deliberations were subject to the Sunshine Act, which requires public notice of, and public access to, the proceedings. Dascott also claimed that the 1998 proceedings of the County's Grievance Committee were subject to the Sunshine Act. Both Dascott and the County filed motions for summary judgment. Supporting the County's motion for summary judgment were three affidavits from County staff indicating that (1) the County Administrator had the sole authority to terminate employees and delegated this authority to the department head, (2) that the input of the other members of the pre-termination panel was simply advisory in nature, and (3) that a vote was not taken among the panel members on whether to terminate Dascott. The circuit court ruled in favor of the County, finding the Sunshine Act inapplicable to personnel matters because the authority to terminate vests solely in the County Administrator. The court also found that the Sunshine Act was inapplicable to the 2002 pre-termination conference and the 1998 Grievance Committee hearing because the panel members were not public officials. On appeal, the Fourth District Court agreed with Dascott, reversed the trial court's summary judgment order, and remanded the case for further proceedings.

ANALYSIS

The Sunshine Act requires "[a]ll meetings of any board or commission of [any public body], except as otherwise provided in the Constitution, at which official acts are to be taken[,] . . . be open to the public at all times." Fla. Stat. § 286.011(1) (2002). The central issue in this case is whether the pre-termination panel is a "board" or "commission" within the meaning of the Act. The Florida Supreme Court has held that the application of the Sun-

shine Act depends upon functions performed by the board, not the composition of the board. *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983). Delegation of the decision-making authority of public officials to a committee will subject the committee to the Sunshine Act even if no public official serves on the committee. Committees that serve in a purely "fact-finding" capacity are not subject to the Sunshine Act. *Dascott*, 877 So. 2d at 12 (citing *Wood*, 934 So. 2d at 940).

The Fourth District Court reversed the final summary judgment order and remanded the matter for further proceedings. It concluded that the 1998 Grievance Committee was subject to the Sunshine Act because the Committee held the final authority to uphold, deny, or modify any grievance related to the County's merit system—clearly a decision-making function. The court also found that the 2002 pre-termination panel constituted a "board" or "committee" for the purposes of the Sunshine Act. It held that, although the County Administrator held the final authority to hire and fire County staff, he had delegated that authority to the County's department heads. In this case, Dascott's department head elected to share his authority with the other members of the panel. The court recognized that the county regulations did not specifically delegate decision-making authority to the panel as a whole, but despite the intent of the Board of County Commissioners, Dascott's department head utilized the panel as a decision-making body. The letter to Dascott noticing the hearing clearly indicated that the panel would jointly rule on her termination recommendation. Additionally, the court reconciled the conflict between the language in the letter to Dascott and the affidavits that characterized the panel's role as advisory, by electing not to draw a distinction between the terms "advice" and "recommendations." The court found that the 2002 pre-termination panel, even if it were characterized as advisory in nature, assisted in determining whether to terminate Dascott.

SIGNIFICANCE

Dascott provides guidance on the application of the Sunshine Act. Practitioners should take notice that the nature of a board or committee's actions determines the applicability of the Act. The Fourth District Court held that the actual functioning of the board is more important than both the scope of authority stated

in the enabling legislation, and whether the board is comprised of public officials or public employees. The Fourth District Court, responding to the County's Motion for Rehearing, emphasized that its ruling applied to a narrowly defined set of facts and opined that this decision would not be far-reaching in application.

RESEARCH REFERENCES

- 2 Fla. Jur. 2d *Administrative Law* §§ 37, 38 (Westlaw database updated Feb. 2005).
- 12A Fla. Jur. 2d *Counties and Municipal Corporations* §§ 174, 190 (Westlaw database updated Feb. 2005).

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