

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JANUARY TERM 2004

THE CITY OF HOLLYWOOD, a municipal
corporation,

Appellant,

v.

GARY HAKANSON,

Appellee.

CASE NO. 4D02-4674

Opinion filed February 4, 2004

Appeal from the Circuit Court for the
Seventeenth Judicial Circuit, Broward County;
John A. Miller, Judge; L.T. Case No.01-12729
(07).

Daniel L. Abbott, City Attorney, and Robert M.
Oldershaw, Hollywood, for appellant.

No appearance for appellee.

STONE, J.

Gary Hakanson, former risk manager for the
city of Hollywood, obtained a declaratory
judgment against the city. The judgment
established that Frank Yamout, president of the
Hollywood civil service board, to which Hakanson
filed an appeal after his employment was
terminated, had received an undisclosed ex-parte
communication which triggered a presumption of
prejudice pursuant to section 286.0115, Florida
Statutes. We reverse.

Section 286.0115, Florida Statutes, requires
public officials to disclose ex-parte
communications in order to assure an adverse
party the opportunity to confront, respond, and

rebut any such disclosures so as to prevent any
appearance of impropriety.

The alleged ex-parte communication involved
statements made during a public meeting of the city
commission, attended by both Yamout and
Hakanson, a few months after Hakanson's
termination as risk manager. At that meeting, the
assistant city manager, Ken Fields, discussing the
city's options for self-insurance plans and the cost
increases of the present plan, remarked that the
former risk manager, who had managed the plan,
was asked to analyze and determine the reasons for
the cost increases, but failed to do so.

Subsequently, at a preliminary civil service board
hearing regarding Hakanson's appeal, Hakanson's
attorney asked the board members if any of them
were "biased towards the case as a result of any
newspaper, radio and/or t.v. coverage." Yamout
answered in the negative.

We conclude that it was error to deny the city's
motion for directed verdict because the comments,
made at a city commission meeting open to the
general public, did not constitute an offending ex-
parte communication simply because a civil service
board member was in the audience. See generally
Citizens of the State of Florida v. Wilson, 569 So.
2d 1268 (Fla. 1990). Therefore, section 286.0115
is not implicated.

We additionally note that even if the incident was
deemed an ex-parte communication, section
286.0115 requires that disclosure of the offending
communication must be made by the public official
either before or during the meeting at which final
action is taken. Here, final action was not taken at
the board meeting.

Therefore, we reverse and remand for entry of
judgment in favor of the city.

KLEIN and HAZOURI, JJ., concur.

***NOT FINAL UNTIL DISPOSITION OF ANY TIMELY
FILED MOTION FOR REHEARING.***