

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

JULY TERM 2004

LEE ELLEN DASCOTT,

Appellant,

v.

PALM BEACH COUNTY, FLORIDA, a
political subdivision of the State of Florida,

Appellee.

CASE NO. 4D03-1427

Opinion filed July 28, 2004

Appeal from the Circuit Court for the Fifteenth
Judicial Circuit, Palm Beach County; Arthur G.
Roble, Judge; L.T. Case No. CA 02-13289 AG.

Frederick W. Ford, West Palm Beach, for
appellant.

Paul F. King, West Palm Beach, for appellee.

Jonathan D. Kane, Jr., Jonathan D. Kane, III
and To Harris of Cobb & Cole, Daytona Beach,
for Amicus Curiae First Amendment Foundation.

ON MOTION FOR REHEARING

WARNER, J.

Contrary to its statements in the trial court, the County complains on rehearing that there are disputed issues of material fact and that our opinion weighs the evidence. It points to the affidavits filed by the department head and its employees which state that after the panel hearing, when appellant and her attorney were instructed to leave the room, no vote was taken and the department head alone made the decision to terminate appellant. We do not dispute that was

the case. But all the affidavits state that advice was given on the issue to terminate, and there is no dispute that the decision to terminate was made during that closed meeting.

Because it is undisputed that the staff gave advice on the ultimate decision to terminate appellant during the closed-door session, whether or not the staff members voted on the termination decision, we conclude that the closing of the deliberations is a violation of section 286.011(1), Florida Statutes (2002). These undisputed facts distinguish this case from *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985), and *Bennett v. Warden*, 333 So. 2d 97 (Fla. 2d DCA 1976), where meetings were for fact-finding only, and no decisions were made.

Further, *Knox v. District School Board of Brevard*, 821 So. 2d 311 (Fla. 5th DCA 2002), is also distinguishable. In that case, an advisory panel was established by an area school superintendent to review applications of candidates for a school principal position. Their recommendations were made to the district superintendent who then nominated one candidate to the school board for the position. Because the advisory panel exercised no decision-making authority, and all of the applications were sent to the district superintendent, the court found that the Sunshine Act did not apply to its meetings. *See id.* at 314-15. In contrast, the panel in this case was established by the Board of County Commissioners through its personnel regulations, and the County Administrator delegated his decision-making authority to the department head who convened the panel to deliberate on the decision to terminate.

The County suggests that the effect of this decision is far reaching. However, we believe that it is limited to its particular facts. Here, the County enacted in its administrative code a Merit System governing its employees, including their termination from employment. It provided for a

pre-termination hearing, which included the ultimate decision-maker and designated staff, at which appellant was allowed to be present and contest her termination. Immediately after the hearing, the panel went into a closed-door session during which the ultimate decision to terminate appellant was made. If the County is suggesting that panels meeting on whether to terminate employees are not subject to section 286.011, we rejected that position in *City of Sunrise v. News & Sun-Sentinel Co.*, 542 So. 2d 1354 (Fla. 4th DCA 1989). On the other hand, if the County is suggesting that no evaluation and advice on the decision to terminate was given to the ultimate decision-maker at the time of his decision, then there was no need for a closed-door deliberation.

As so limited to the particular facts of this case, we do not agree that this decision has the effect of bringing within the ambit of the Sunshine Act all consultations with staff made by government decision-makers. Therefore, we decline to certify a question of great public importance as requested by the County.

GROSS and HAZOURI, JJ., concur.