Sunshine Law, quasi-judicial body

Number: AGO 73-264

Date: October 06, 2011

Subject:
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RE: SUNSHINE LAW—ACTION BY QUASI-JUDICIAL BODY—APPLICABILITY

To: James Halley Ruby, Special Counsel, Personnel Board of the City of Miami Beach, Miami Beach

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

May the members of the personnel board, which is a quasi-judicial body, vote by secret ballot, in the case trial of an employee, following an open and public session and deliberation?

SUMMARY:

Following the deliberations and at the open and public session, the members of a personnel board, a quasi-judicial body, should not cast their individual votes either for or against the employee being tried by secret written ballot.

Section 286.011(1), F. S., the Sunshine Law, reads as follows:

"All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting."

The case of Bassett v. Braddock, 262 So.2d 425 (Fla. 1972), decided by the Florida Supreme Court, was concerned in part with a situation wherein a school board voted on the election of the chairman and vice-chairman first by secret ballot but afterwards voted publicly during an open meeting. The court held that "[i]n this particular instance, any initial violation by secret written ballot was cured and rendered 'sunshine bright' by the corrective, open, public vote which followed." *Bassett* at 428. Thus, it would seem possible to affirm a vote taken by secret ballot at a subsequent public meeting. However, it should be noted that in AGO 072-326, which discussed *Bassett*, I said:

"I do not think the Supreme Court intended in *Bassett* to condone such action as a regular practice. Although the initial ballot can be rendered valid by a subsequent public affirmation, the initial misconduct is not thereby excused. In cases where the initial violation was done knowingly

and intentionally, it is my opinion that the members participating would still be subject to prosecution for violation of the criminal provisions of the Sunshine Law."

It may also be noted that s. 286.012, F. S., requires that at any meeting "at which an official decision, ruling, or other official act is to be taken or adopted . . . a vote *shall be recorded* or counted for each such member present . . . ." (Emphasis supplied.)

The question of whether quasi-judicial bodies are governed by the Sunshine Law was decided by the Florida Supreme Court in Canney v. Board of Public Instruction of Alachua County, 278 So.2d 160 (Fla. 1973). In this case, the court said:

"The obvious intent of the *Government in the Sunshine Law, supra,* was to cover any gathering of some of the members of a public board where those members discuss some matters on which foreseeable official action will be taken by the board. The statute, having been enacted for the public benefit, should be interpreted most favorably to the public. *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).

There is no question as to legislative intent, as the arguments made in this case were also made in the Legislature and rejected. The Sunshine Law, Chapter 67-356, originated with Senate Bill 9 in the 1967 Legislature. When the House considered the bill, it adopted an amendment which read, 'This act shall not apply to hearings involving individuals charged with violations of laws or regulations respecting employment.' I Journal of the House of Representatives 959 (June 5, 1967). This amendment was not accepted by the Senate and the bill was ultimately passed without such an amendment. This decision conforms with this intent.

'Quasi Judicial' has been broadly defined as follows: 'A term applied to the action, discretion, etc., of public administrative officers, who are required to investigate facts, or ascertain the existence of facts, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature.' Black's Law Dictionary (Fourth Edition, p. 1411).

The characterization of a decisional-making [sic] process by a School Board as 'quasi-judicial' does not make the body into a judicial body. A county school board should not be authorized to avoid the Government in the Sunshine Law by making its own determination that an act is quasi-judicial. Secret meetings would be prevalent. The correct understanding of the terminology 'quasi-judicial' means only that the School Board is acting under certain constitutional strictures which have been enforced upon all administrative boards and not that the School Board has become a part of the judicial branch. To hold otherwise would be to combine the legislative and judicial functions in one body clearly contrary to the separation of powers doctrine. The judiciary should not encroach upon the Legislature's right to require that the activities of the School Board be conducted in the 'sunshine.'"

Therefore, the fact that a board or commission is a quasi-judicial body or is acting in such capacity does not remove it from the cover of the Sunshine Law.