

1981

Administrative Law

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Recommended Citation

Helen Clark, *Administrative Law*, 30 Cath. U. L. Rev. 712 (1981).
Available at: <http://scholarship.law.edu/lawreview/vol30/iss4/10>

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ADMINISTRATIVE LAW

I. ADMINISTRATIVE PRACTITIONERS

In *Brown v. District of Columbia Board of Zoning Adjustment*,¹ the District of Columbia Court of Appeals held that the Board of Zoning Adjustment (BZA) has the authority and obligation to assure adherence to professional standards of conduct by attorneys practicing before it, even in the absence of specific rules governing those who practice before it. The court added that the American Bar Association's Code of Professional Responsibility should guide the Board in these circumstances. Here the issue was one of attorney conflict of interest.

At a hearing for a special exception to increase the number of off-street parking spaces at Westbridge, a proposed residential and commercial complex, the petitioner moved that applicant's counsel, the firm of Wilkes and Artis, be disqualified. The petitioner objected because two members of the firm had earlier participated in a related matter opposing the applicant while serving in the District of Columbia's office of Corporation Counsel. The Chairman of the BZA denied petitioner's request to disqualify Wilkes and Artis on the ground that the BZA was not a proper forum to raise this alleged violation.

The Court of Appeals rejected the Chairman's conclusion, stating that BZA has not only the authority, but also the responsibility, to regulate practice before it. The case was therefore remanded with instructions that, if either ex-government attorney was found to have violated the "revolving door" rule by appearing in a matter on which he previously worked while employed by the government, he should be disqualified from appearing in the matter before the Zoning Board.

II. ADMINISTRATIVE ORDER—PUBLICATION

The District of Columbia Court of Appeals, in *People's Counsel of the District of Columbia v. Public Service Commission*,² determined that "publication" of a Public Service Commission (PSC) order occurs when the PSC releases the full written text of its order, and not when it recites its decision at a "sunshine" hearing.

1. 413 A.2d 1276 (D.C. 1980).

2. 414 A.2d 520 (D.C. 1980) (per curiam).

Potomac Electric Power Company (Pepco) filed an application for a rate increase with the PSC. After oral argument on Pepco's application, the Commission held a "sunshine hearing" on June 29, 1979, to announce its final decision. On July 18, 1979, the PSC released a printed copy of its final order. On August 17, the petitioner filed an application for reconsideration of the Commission's decision. Pepco moved to have the application dismissed for late filing.

To preserve a right of appeal, a party must apply for reconsideration within thirty days after "publication" of a final PSC order.³ The word "publication" had never been defined by PSC rules nor addressed specifically in previous cases. The court reasoned that publication occurred upon the release of the written text of the final order rather than at the sunshine hearing. In the release, the PSC elaborated fully on its reasoning in support of the order. On the other hand, at the hearing, the PSC had merely expressed its views. The application for reconsideration, filed within thirty days of release of the text, therefore, was timely filed.

III. BASIS OF ADMINISTRATIVE DECISION—SPECIAL EXCEPTIONS

The District of Columbia Court of Appeals, in *Washington Ethical Society v. District of Columbia Board of Zoning Adjustment*,⁴ overturned the Board's refusal to grant a special exception for increased enrollment at Washington Ethical Society School, a private school. To receive such an exception under District of Columbia law,⁵ a private school must establish that it will not become "objectionable" to adjacent property because of noise and traffic, and that ample parking places exist for the additional students. According to the court, the Board's finding that an additional fifteen students would make the school "objectionable" was inadequate and not supported by the record.⁶ Thus it remanded the case, instructing the Zoning Board to grant the application if the applicant could make the necessary showing under the applicable law on special exceptions.

IV. ADMINISTRATIVE OFFICER—AUTHORITY TO REVOKE RECUSAL

In *Morrison v. District of Columbia Board of Zoning Adjustment*,⁷ the District of Columbia Court of Appeals affirmed the Board's decision to

3. D.C. CODE § 43-704 (1973).

4. 421 A.2d 14 (D.C. 1980).

5. D.C. Zoning Regulation § 3101.42 (1980).

6. D.C. CODE § 1-1509(e) (Supp. V 1978).

7. 422 A.2d 347 (D.C. 1980).

grant a variance to permit respondent's construction of an office building. The Chairman of the Zoning Board had initially recused himself from the case because he was a private attorney in an unrelated case opposing one of the partners of the applicant for the variance. Subsequently, he revoked his recusal and considered the variance request because the other litigation had been resolved.

The petitioners contended that, although the reason for his recusal had been removed, the Chairman had no authority to revoke his recusal and participate in the case. The court did not agree, finding that such a change in circumstances may justify a revocation, provided that the record contains sufficient evidence of the change in circumstances to guard against prejudice, bias, or interest on the part of a member of the administrative agency.

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