

## Procedural Due Process

In order to protect persons from the unjustified deprivation of life, liberty or property by the government,<sup>1</sup> there must be some method by which they can contest the means by which the government proposes to deprive them of protected interests; i.e., they must be afforded procedural due process. Questions may arise concerning the adequacy of the procedures provided to contest the deprivation of a protected interest. While the exact procedures appropriate to one set of facts may not be required under differing circumstances,<sup>2</sup> there are certain fundamental or basic aspects of procedural due process that should be considered:

- (1) **Notice.** Sufficient notice should be given in order to apprise interested parties of the pendency of the action, afford them an opportunity to present their objections, and enable them to determine what is being proposed and what must be done to protect their interests.
- (2) **Hearing.** Individuals cannot be deprived of property or liberty interest unless they are provided some form of hearing in which they will have the opportunity to be heard.
- (3) **Impartiality.** In order to provide procedural due process to an individual who may be subject to a deprivation of his or her interests, it is important not only that a hearing be provided, but also that the tribunal or decision maker not be predisposed against the individual. An impartial decision maker is considered to be essential.
- (4) **Counsel.** An individual should be permitted to be represented and assisted by counsel, although it is not necessarily required that counsel be provided to one unable to afford his own. Generally speaking, an indigent has an absolute right to appointed counsel only where he may lose his physical liberty if he loses the adjudication.
- (5) **Evidence.** Especially in cases where a decision rests on questions of fact, it may be necessary to provide an individual with not only the ability to confront and cross-examine adverse witnesses, but also the opportunity for discovery, i.e., investigation and accumulating evidence, in order to give him or her a chance to show that the facts upon which the proposed deprivation is based are untrue.

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<sup>1</sup> This protection is guaranteed by the Fifth Amendment to the United States Constitution and is made applicable to states and therefore, by implication, to its political subdivisions through the Fourteenth Amendment. In Article I, Sections 1, 9, and 11 of the Pennsylvania Constitution, there are due process guarantees similar to those in the United States Constitution. See *Katruska v. Bethlehem Center Sch. Dist.*, 767 A.2d 1051, 1056 (Pa. 2000), quoting *Lyness v. State Board of Medicine*, 605 A.2d 1204, 1207 (Pa. 1992).

<sup>2</sup> For example, a student subject to discipline by a school district is constitutionally due far less procedural protection than an applicant for a subdivision or a criminal defendant being tried for a capital crime.

- (6) **Decision.** Although a full opinion or formal findings of fact and conclusions of law may not be required, the tribunal should provide the reasons for its decision and indicate the evidence upon which it was based.

With regard to procedural due process and municipal government, Pennsylvania has adopted the Local Agency Law,<sup>3</sup> which, among other things, is intended to provide for procedural due process and for appeals from an adjudication in municipal adjudications, in situations where a statute has not provided a separate procedure.

*Illustration:* Among the categories of cases in which a municipality may be faced with procedural due process challenges are those involving dismissals of certain public employees. Many public employees in Pennsylvania are employees at-will and are subject to summary dismissal for a good reason, a bad reason or no reason at all. In some cases, however, legislatively, certain public employees have “tenure” in their employment as an integral part of a comprehensive governmental employment scheme. In Pennsylvania, “tenure” in public employment may be said to exist if the public employee has a claim to employment that precludes summary dismissal. If a public employee is not an employee at-will and cannot be dismissed summarily, then it may be said that a “property right” exists in the employment, and the employee may not be deprived of that “property” without constitutionally sufficient procedural protections.<sup>4</sup>

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<sup>3</sup> 2 Pa.C.S. §§ 105, 551-555, 751-754.

<sup>4</sup> See *Werner v. Zazyczny*, 681 A.2d 1331 (Pa. 1996).