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Defamation Claims Against Public Officials

Introduction

It is important for all of us, and especially for our elected and appointed public officials, to be aware of the parameters of defamation (libel and slander) claims in Maryland. Many public officials seemingly believe that their positions insulate them from defamation claims in our courts. While this conclusion is true in part, there are no absolutes. The following information is designed to assist elected and appointed public officials in understanding the potential for liability arising from public and private statements, both written and verbal. The information set forth below is not intended as a substitute for legal advice. Please consult with your legal counsel for further advice.

The Meaning of Defamation in Maryland

Under Maryland law, a defamatory statement is one that “tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person.” *Batson v. Shiflett*, 325 Md. 684, 722-23 (1992).

Statutory Protection for County and Municipal Legislators

Maryland law has long precluded civil or criminal actions against “a city or town councilman, county commissioner, county councilman, or similar official by whatever name known, for words spoken at a meeting of the council or board of commissioners or at a meeting of a committee or subcommittee thereof.” MD. CODE ANN. CTS. & JUD. PROC. § 5-501 (1998). With this statute in mind, it is “beyond dispute that municipal [and county] legislators enjoy the protection of immunity when acting in the sphere of legitimate legislative activity.” *Montgomery County v. Schooley*, 97 Md. App. 107, 115 (1993) (quoting *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719, 731-32 (1980)). In *Manders v. Brown*, 101 Md. App. 191, 205 (1994), the Court of Special Appeals explained that:

[t]he purpose of this immunity is to insure that the legislative function may be performed independently without fear of outside interference To preserve legislative independence, we have concluded that ‘legislators engaged “in the sphere of legitimate legislative activity” . . . should be protected not only from the consequences of litigation’s results but also from the burden of defending themselves.’



Sponsoring Organizations



Under the “functional approach” test utilized by Maryland’s courts for determining what is and what is not legislative activity, the scope of immunity is determined in light of the functions and duties of municipal officials. *See Manders; Mandel v. O’Hara*, 320 Md. 103 (1990). Under this approach, if the conduct engaged in by a municipal or county official can be characterized as “legislative,” the actor is absolutely immune from any liability or suit emanating from that action. *Id.* *See Walker v. D’Alesandro*, 212 Md. 163, 173 (1957) (municipal officials are entitled to absolute immunity for those acts taken “within the actual field of the . . . powers or duties as [a local government official] or so closely related thereto as to be entitled to an absolute privilege.”).

When Statutory Protection From Defamation Suits May Be Lost

In one telling instance, our Court of Appeals held that a county councilwoman could be sued for defamation since the statements attributed to her were beyond the scope of employment of a local elected legislative official. In *Ennis v. Crenca*, 322 Md. 285 (1991), the facts established that a county councilwoman directed a friend to contact the news media and accuse plaintiff of offering her a bribe at a luncheon meeting that preceded the council’s vote on a high-profile development project. The councilwoman later gave an interview with a reporter from a local newspaper in which she accused the plaintiff of offering to pay her outstanding campaign debt in exchange for voting against the proposed development project. The plaintiff sued, seeking money damages based on libel and slander.

Although the circuit court decided in favor of the elected official, the Court of Appeals reversed. It did so on the grounds that the councilwoman’s conduct was not in furtherance of the county’s business nor incidental to it, but, instead, was in furtherance of her own interests. Thus, the local legislator could be deemed to have acted beyond the scope of her employment. Specifically, the Court said that, “[u]nder the allegations of the complaint, the councilwoman’s conduct appears to have been a political act undertaken for her own benefit. It is difficult to understand how [the councilwoman] could have been fulfilling her duties as a local legislator, or in any way furthering [the county’s] business, by publicly accusing [plaintiff] of offering her money to pay campaign debts in order to influence her vote on a controversial development proposal when the defamatory conduct took place 76 days after the alleged bribe and long after the council’s vote.” *Id.* at 293.

Conclusion

In light of *Ennis*, a number of observations can be made. First, although Maryland’s Local Government Tort Claims Act was enacted to protect local government employees from excessive litigation, it was not enacted to shield local elected officials from actions involving tortious acts or omissions committed while engaging in personal ventures such as electioneering, campaigning or fund raising meetings to pay off campaign debts. Second, as the Supreme Court has observed, “[n]o man ought to have a right to defame others under colour of a performance of the duties of his office It is neither within the scope of his duty, nor in furtherance of public rights, or public policy.” (quoting 2 J. Story, *Commentaries on the Constitution* § 863 at 329 (1833)); *Cheatum v. Wehle*, 5 N.Y.2d 585,

593-94, 186 N.Y.S.2d 606, 612, 159 N.E.2d 166, 171 (1959) (in holding that defamatory remarks made by the appointed head of the State Conservation Commission during an after-dinner speech to a group of citizens were not privileged, the court stated that “[t]he speech made by Commissioner Wehle . . . was not greatly different from a speech of a member of the Legislature speaking to his constituents, explaining his votes or berating some of his colleagues which enjoys no privilege outside the legislative halls”). Third, although *Ennis* does not stand for the proposition that elected officials will always be acting beyond the scope of their employment when communicating with the media, suit may be allowed if the case involves an allegedly false and defamatory statement to the press, made by an elected official for the official’s own purposes.

If you have questions concerning this issue, please contact John Breads, Jr., Senior Attorney at 1-800-673-8231.

This bulletin is intended to be merely informational and is not intended to be used as the basis for any compliance with federal, state, or local laws, regulations or rules, nor is it intended to substitute for the advice of legal counsel.