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LIBEL AND SLANDER - ABSOLUTE PRIVILEGE - INTERGOVERNMENTAL COMMUNICATIONS

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LIBEL AND SLANDER — ABSOLUTE PRIVILEGE — INTERGOVERNMENTAL COMMUNICATIONS—Plaintiff's petition to the common council for a masseur's license was referred to the Department of Health. In making their recommendations, defendants, who were connected with the department, submitted the contents of a report, from the department's files, which contained allegedly libelous statements. *Held*, defendants' communication to the common council was absolutely privileged. *Powers v. Vaughn*, 312 Mich. 297, 20 N.W. (2d) 196 (1945).

The doctrine of absolute privilege in case of heads of executive departments of the government when engaged in the discharge of the duties imposed upon

them by law was established by the Supreme Court of the United States in *Spalding v. Vilas*.[1] Since then, this doctrine has been extended, among federal government officials, to all communications made by an inferior officer to a superior, in the fulfillment of his legal duties.[2] The state courts are divided on the question whether communications made by a minor public official in the discharge of his duties are absolutely or qualifiedly privileged.[3] The court in the principal case decided in favor of an absolute privilege where the communication was from the Department of Health to the city council, although it was admitted that the result here would have been the same had the communication been merely qualifiedly privileged.[4] Since absolute immunity has usually been confined to situations where there is an obvious policy in favor of permitting complete freedom of expression, irrespective of defendant's motives,[5] it would seem that a qualified privilege is all that the present situation requires. However, Michigan continues to follow the view laid down in earlier cases where the court granted absolute privilege to proceedings of municipal councils,[6] and to relevant communications made by public officials to such bodies.[7]

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[1] 161 U.S. 483, 16 S. Ct. 631 (1896) (Postmaster General). The rationale for this conclusion is as follows: "The public welfare is so far dependent upon a reasonable latitude of discretion in the exercise of functions of high executive offices that the incumbents thereof may not be hindered by the possibility of a civil action for defamation in connection therewith." 3 TORTS RESTATEMENT, § 591 (1938).

[2] De Arnaud v. Ainsworth, 24 App. D.C. 167 (1904); Farr v. Valentine, 38 App. D.C. 413 (1912). See also 28 MICH. L. REV. 347 (1930).

[3] Absolute privilege: Trebilcock v. Anderson, 117 Mich. 39, 75 N.W. 129 (1898) (mayor's written message to common council); Haskell v. Perkins, 165 Ill. App. 144 (1911) (architect for Board of Education to Building and Grounds Committee of Board of Education). Qualified privilege: Raymond v. Croll, 233 Mich. 268, 206 N.W. 556 (1925) (report of state budget director); Greenwood v. Cobbey, 26 Neb. 449, 42 N.W. 413 (1889) (mayor's communication to city council); Peeples v. State, 179 Misc. 272, 38 N.Y.S. (2d) 690 (1942) (state examiner's report). See 132 A.L.R. 1340 (1941); 40 MICH. L. REV. 919 (1942).

[4] "If the circumstances relied on as showing malice are as consistent with its nonexistence as with its existence, the plaintiff has not overcome the presumption of good faith, and there is nothing for the jury." Raymond v. Croll, 233 Mich. 268 at 276, 206 N.W. 556 (1925). Members of the department of health are qualifiedly privileged when acting in their official capacity. Irion v. Knapp, 132 La. 60, 60 S. 719 (1913).

[5] NEWELL, SLANDER AND LIBEL, 4th ed., § 351, p. 388 (1924): "Cases of absolute privilege are not numerous, and the courts refuse to extend their number. They are divided into three classes: (1) Proceedings of legislative bodies; (2) Judicial proceedings; and (3) Communications by military and naval officers." PROSSER, TORTS, § 94 (1941).

[6] Wachsmuth v. Merchants' Nat. Bank, 96 Mich. 426, 56 N.W. 9 (1893); Bolton v. Walker, 197 Mich. 699, 164 N.W. 420 (1917).

[7] Trebilcock v. Anderson, 117 Mich. 39, 75 N.W. 129 (1898).