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FILE NO. S-959

**OFFICERS:**  
**Liability for Slanderous**  
**Statements Made at Open**  
**Meetings**

Honorable Louis F. Pignatelli  
State's Attorney  
Whiteside County  
Courthouse  
Morrison, Illinois 61720

Dear Mr. Pignatelli:

This responds to the request of your predecessor for an opinion as to whether statements regarding a particular employee, made at school board meetings by board members, administrators whose function it is to participate in the evaluation process, and members of the general public in attendance at the meeting, are privileged statements and if so, whether such privilege is an absolute or qualified privilege.

The question arises in connection with school board meetings concerned with the evaluation of individual teachers

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and administrators for the purposes of retaining a teacher who is about to go on tenure and of fixing the compensation of a teacher who is already on tenure. Under "AN ACT in relation to meetings" (Ill. Rev. Stat. 1973, ch. 102, pars. 41 to 46), such meetings must be public meetings unless the board is considering information regarding the dismissal of the teacher or a complaint lodged against a teacher. (See opinion No. S-726.) A full and candid discussion of the work of the individual employee is necessary if the board is to have the information with which to do its job. Some statements made during such discussions may, if untrue, be slanderous and actionable unless such statements are either absolutely or conditionally privileged.

A privileged statement or communication is one which, except for the occasion on which or the circumstances under which it is made, might be defamatory and actionable. There are two kinds of privileged communications, those which are absolutely privileged and those which are conditionally privileged. Communications absolutely privileged have been defined by the Appellate Court in Larson v. Doner, 32 Ill. App. 2d at 471-473, as:

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"\* \* \* [T]hose so much to the public interest that the informer should speak out his mind fully and fearlessly so that all actions in respect of words thus spoken are absolutely forbidden, even though it be alleged that the words were spoken falsely, knowingly and with express malice. \* \* \*"

Communications conditionally privileged have been defined by the Appellate Court in Judge v. Rockford Memorial Hospital, 17 Ill. App. 2d 365 at 376, as follows:

"\* \* \* Where circumstances exist, or are reasonably believed by the defendant to exist, from which he has an interest or duty, or in good faith believes he has an interest or duty, to make a certain communication to another person having a corresponding interest or duty, and the defendant is so situated that he believes, in the discharge of his interest or duty or in the interests of society, that he should make the communication, and if he makes the communication in good faith, under those circumstances, believing the communication to be true, even though it may not be true, then the communication is qualifiedly or conditionally privileged, even though the defendant's interest or duty be not necessarily a legal one but only moral or social and imperfect in character: 33 Am. Jur., p. 124; 33 Ill. L. and P., pp. 390-391. The essential elements are: good faith by the defendant, an interest or duty to be upheld, a statement limited in its scope to that purpose, a proper occasion, and publication in a proper manner and to proper parties only: 33 Am. Jur. p. 125; 33 Ill. L. and P., p. 391. In the absence of actual malice, a communication may be qualifiedly privileged, if the other essential elements are present, even though it is not true, and even though it charges a crime, but a communication loses its character as privileged and is actionable upon proof of actual malice: 3 Am. Jur., p. 126; 33 Ill. L. and P., p. 392. Both the person by whom and the person to whom the communication is made must have an interest or duty in respect of the matter in order to render it a qualifiedly or conditionally privileged

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communication: 33 Am. Jur., p. 127."

This definition was quoted with approval in Zeinfeld v. Hayes Freight Lines Inc., 41 Ill. 2d 345.

School board members and administrators are under a duty to evaluate teacher performance and to make recommendations regarding retention and salaries. See sections 10-20.7, 10-21.1, 10-21.4, 10-21.4a and 24-1 of the Illinois School Code. (Ill. Rev. Stat. 1973, ch. 122, pars. 10-20.7, 10-21.1, 10-21.4, 10-21.4a and 24-1.) In Donner v. Francis, 255 Ill. App. 409, the court stated in regard to communications made between public officials pertaining to their duties, as follows:

"\* \* \* All communications, either verbal or written, passing between public officials pertaining to their duties and in the conduct of public business are of necessity absolutely privileged and such matters cannot be made the basis of recovery in a suit at law. Spalding v. Vilas, 161 U.S. 483; McDavitt v. Bover, 169 Ill. 475; Young v. Lindstrom, 115 Ill. App. 239; Haskell v. Perkins, 165 Ill. App. 144. \* \* \*

This rule must prevail in the instant case whether the action charges conspiracy or slander or libel. The acts complained of were done by the defendants acting in an official capacity, in what may be called a quasijudicial capacity. The duty to act was imposed upon them by law and they should not be subjected to vexatious litigation because of such acts; otherwise official independence would be entirely swept away.

\* \* \*

In McLaughlin v. Tilendis, 115 Ill. App. 2d 148, the Appellate Court specifically held that a communication made by

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a school superintendent to the Board of Education regarding the qualifications of a teacher, was absolutely privileged. I, therefore, am of the opinion that statements made by school board members and school administrators under a duty to evaluate teachers, are absolutely privileged communications.

You also inquire as to statements made by members of the public at such meetings. Neither you nor I are under any duty to advise members of the general public in this regard, and I give no opinion on the question. However, it is the general rule that statements made in good faith, without malice, to the proper officials, are conditionally privileged. In Ambrosius v. O'Farrell, 119 Ill. App. 265, it was held that a petition signed by several citizens and submitted to the city council, stating that the police magistrate was "guilty of the most brazen malfeasance" was a conditionally privileged statement. The court stated as follows:

\* \* \* The defendants and other petitioners were acting within their legal right and privilege in this way to address the city council concerning the official conduct of the plaintiff, to state grievances as citizens and to ask redress. In so doing, if they act in good faith without malice or ill-will toward the person of the official complained of, and in the belief that the charges made are founded on fact, they may not be held to liability in damages even though the charge is that of a crime

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and may not be proved. They may not be required to justify or maintain the truth of the charges as required in the publication of defamatory writing when no privilege exists. On the other hand the law will not permit this salutary right and privilege of citizens to petition the ruler for a redress of grievances to be used as a pretext and screen by the malicious and evil-disposed in order to traduce and defame the character and reputation of another. Under the issues made by the pleadings in this case, the petition and its publication being under a qualified privilege, the burden was upon the plaintiff to prove actual malice in the defendants, that is, that the purpose and motive of the defendants was to injure the plaintiff. Presumably the defendants acted in good faith, without malice, for the public good. \* \* \* There is no conflict of authority in this State as to the rule. Besides, it is founded in reason. If the citizen with just cause of complaint may not question the conduct of officials, and the administration of public affairs, in a respectful way by petition to the proper authority, without being subject to an action of damage for libel unless he is prepared with witnesses to prove the truth of statements which are made the foundation of his complaint, a wholesome restraint upon official corruption, extravagance, and mal-administration, would be removed and the public would suffer.  
\* \* \*

See also Flannery v. Allyn, 47 Ill. App. 2d 308, where a letter written by a private citizen to the chief of police, charging one of the men of the police force with bribery, was considered privileged and also 136 A.L.R. 549 as to statements made about

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applicants for teaching positions.

Very truly yours,

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