

1977 WL 46017 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 24, 1977

**IN Re: Whether the Comments of a Legislator Regarding the Character and Fitness of an Employee of the General Assembly are Properly Within the “course of his employment” within the meaning of §1-234.**

\*1 Mr. McLeod

Section 1-234 of the 1962 Code of Laws of South Carolina, as amended, requires the Attorney General, upon request, to defend all public officers and employees in any action arising out of “any act done or omitted in good faith in the course of his employment”. This memorandum will attempt to determine whether or not a statement by a Legislator about the character and fitness of an employee of the General Assembly is an “act done or omitted in good faith in the course of his employment” so as to require representation by the Attorney General.

The available pertinent authority exists in the form of cases involving libel and slander suits against public officers. The trend in most of these cases is for the court to rule in favor of the public officer if the particular communication in question was made in the proper performance or within the scope of the officer's official duties. A sampling of these cases will reveal the types of communication that have been found to be within the course of employment.

[Barr v. Matteo, 360 U. S. 564 \(1959\)](#). Publication by Director of Office of Rent Stabilization of reasons for discharge of two public employees, held within scope of official duties.

[Hauser v. Urchisin, 231 So. 2d 6 \(Fla. 1970\)](#). Statement made by a city councilman to a reporter that a city prosecutor whose job had been abolished lacked respect for truth, held within scope of official duties because made to explain why the office was abolished.

[Matson v. Margiotti, 371 Pa. 188, 88 A. 2d 892 \(1952\)](#). Delivery to the press of an attorney general's letter to a district attorney containing statements about an assistant attorney general's alleged communistic activities, held within scope of official duties.

[Duffy v. Kipers, 26 App. Div. 2d 127, 271 NYS 2d 338 \(1966\)](#). Statement by town supervisor that deputy town clerk was a thief, held within scope of official duties.

See also Anno. [Libel and Slander: Public Officer's Privilege as to Statements Made in Connection With Hiring and Discharge, 26 ALR 3d 492](#); Anno. [Libel and Slander: Employer's Privilege as to Communications to News Media Concerning Employees, 52 ALR 3d 739](#).

The rule that may be gleaned from the above-cited cases and annotations is that statements made by public officers to protect the public interest or on matters of public concern are within the scope of the officer's official duties. Since the character, fitness and qualifications of a public employee are matters of public interest and concern, and in light of the employer-employee relationship that exists between Legislators and employees of the General Assembly, it would appear to follow that a Legislator's comments on the fitness of an employee are within the “course of his employment” within the meaning of §1-234.

\*2 J. C. Coleman (Bruce Poore)

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