

**COMMONWEALTH COURT REAFFIRMS HIGH PUBLIC OFFICIAL IMMUNITY  
FOR BOROUGH COUNCIL MEMBERS IN DEFAMATION SUIT**

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In Osiris Enterprises v. Borough of Whitehall, 877 A.2d 560 (Pa. Commw. 2005), the Commonwealth Court held that members of the Whitehall Borough Council enjoyed high public official immunity from a construction company's defamation and economic interference claims.

The claims arose from various comments made by the Council members at public meetings in support of the Borough's repeated decision not to award the Plaintiff construction company various public works contracts, even though it was the lowest qualified bidder.<sup>1</sup> In all, Borough Council rejected bids from Plaintiff for three (3) different construction projects, even though Plaintiff was the lowest bidder, and unanimously passed a motion declaring Plaintiff a "non-responsible" bidder. Plaintiff sued the Borough Council members, alleging defamation and economic interference. The Borough Council members countered that they were immune to this type of suit.

The doctrine of absolute immunity for high public officials in Pennsylvania:

is unlimited and exempts a high public official from all civil suits for damages arising out of false defamatory statements or actions motivated by malice, provided the statements are made or the actions are taken in the course of the official's duties or powers and within the scope of his authority[.]

Lindner v. Mollan, 544 Pa. 487, 490, 677 A.2d 1194 (1996) (quoting Matson v. Margiotti, 371 Pa. 188, 88 A.2d 892 (1952)). The purpose of absolute immunity is not only to protect the official from the expense and publicity of a law suit, but to protect "society's interest in the unfettered discharge of public business and in full public knowledge of the facts and conduct of such business." Montgomery v. City of Philadelphia, 392 Pa. 178, 182, 140 A.2d 100, 102 (1958). In furtherance of this protection, courts have routinely upheld this immunity in order to "remove any inhibition which might deprive the public of the best service of its officers." Id.

In order to determine whether the Whitehall Borough Council members were immune from this suit, the Court considered (a) whether borough council members qualify as "high public officials," and (b) whether the behavior in question was part of the course of their official duties. Because the duties conferred upon borough council members necessitate the exercise of both legislative and policy-making powers, the Commonwealth Court has held that persons in that position have the status of high public officials. Hall v. Kiger, 795 A.2d 497 (Pa. Commw. 2002). Regarding whether the council members' behavior was in pursuit of their official duties, the Court reasoned:

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<sup>1</sup> The Pennsylvania competitive bidding statute, 53 Pa. C.S. § 5614, requires that public contracts be awarded to the lowest responsible bidder.

Because the candid discussion and determination of the “non-responsibility” of bidding contractors is clearly part of the performance of a Borough Council Member’s official duties, Defendants’ actions fall within the scope of absolute privilege rendering Defendants absolutely immune from civil suits claiming damages in regard to those actions.

Osiris Enterprises, 877 A.2d at 567. The Court found as determinative the facts that the Council Members declared Plaintiff a non-responsible bidder during the course of a Borough Council meeting that was open to the public, and that Council is responsible for awarding contracts in the best interests of the Borough and its residents.

Regarding defamation, the Court considered the following factors in deciding whether the members’ statements were closely related to their legitimate duties: (a) the formality of the forum in which the words were spoken; and (b) the relationship of the legitimate subject of governmental concern to the Plaintiff. As mentioned, because these statements were made in an open public meeting, while dealing with the awarding of a public works project, they fell squarely within the Council Members’ immunity from defamation suit. Because the Whitehall Borough Council Members were public officials acting in furtherance of the Borough’s interest when they declared Plaintiff a “non-responsible” bidder and rejected its bids, they were absolutely immune from any lawsuits in connection with their official actions.