

1983

**Joella A. Spruell, For Herself And All Other Vernal City Taxpayers Similarly Situated v. Sam Snyder, Mayor, John Stagg, Gene Anfinson, Jack Seitz, Karl Migliori, Greg Hawkins, City Councilmen Of Vernal City, Dixie B. Hacking, City Recorder Of Vernal City, And Western Surety Co : Respondent's Brief**

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IN THE SUPREME COURT

OF THE STATE OF UTAH

----- :  
JOELLA A. SPRUELL, for herself and :  
all other Vernal City Taxpayers :  
similarly situated, :  
: :  
: :

Plaintiffs, :  
: :

vs. :  
: :

No. 18980  
: :  
: :

SAM SNYDER, Mayor, JOHN STAGG,  
GENE ANFINSON, JACK SEITZ,  
KARL MIGLIORI, GREG HAWKINS,  
City Councilmen of Vernal :  
City, DIXIE B. HACKING, :  
City Recorder of Vernal City, :  
and WESTERN SURETY CO., :  
: :

Defendants. :  
: :  
-----

RESPONDENTS' BRIEF

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FILED

MAY 18 1983

18980

Clk's, Supreme Court, Utah

IN THE SUPREME COURT

OF THE STATE OF UTAH

JUDITH A. SPENCER, for herself and  
all other Vernal City taxpayers  
similarly situated,

Plaintiffs,

vs.

SAM SNYDER, Mayor, JOHN STAGG,  
GENE ANFINSON, JACK SEITZ,  
KARL MIGLIORI, GREG HAWKINS,  
City Councilmen of Vernal  
City, DIXIE B. HACKING,  
City Recorder of Vernal City,  
and WESTERN SURETY CO.,

Defendants.

No. 18980

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### STATEMENT OF THE CASE

Carol Newman, a resident of Vernal, Utah, is not a member of the Vernal City Police Department. She has not been paid to bring a defamation suit against the Vernal City Police and its officers.

### STATEMENT OF FACTS IN THE LOWER COURT

On December 9, 1980, judgment in the District Court. Summary judgment was granted in favor of the Respondents herein.

### STATEMENT OF RELIEF SOUGHT ON APPEAL

Respondents seek to affirm the judgment of the lower Court sustained and upheld.

### STATEMENT OF FACTS

On December 9, 1980, members of the Vernal City Police Department and the Garfield County Sheriff's office arrested Carol Newman (herein Newman) at her residence pursuant to a lawfully issued Warrant of Arrest. Subsequent to her arrest, Newman made various public accusations concerning officers' misconduct during the arrest. Newman claimed that during the arrest four or five officers attempted to rape her. Stories appeared in both the Desert News and the Salt Lake Tribune wherein Newman accused the arresting officers of sexually assaulting her during the arrest. Because the accusations involved acts that were criminal, official investigation was commenced by the Vernal City Police Department and, at the request of Vernal City, by the Salt Lake County Sheriff's Department. Neither investigation produced any evidence of improper action by the arresting officers.

The nature of the accusations and the wide distribution of the statements through the media caused the morale in the Vernal City Police Department to decrease, trust, deteriorate. The relationship between the Vernal City Police Department and the public also deteriorated and the general public's trust and confidence in the officers. Newman's public accusations, which indicated Newman's intent to sue Vernal City, caused Vernal City, in dealing with its attorney and the attorney representing the Vernal City Council, the Vernal City Council deter-

mined that the best interests of the city would be served by bringing legal action. Subsequent to that time, a defamation action was brought in behalf of Vernal City and the officers involved. Vernal City paid attorney's fees of \$1,875.00 in connection with the lawsuit. Mayor Samuel Snyder, by Affidavit filed in this matter, indicated that the filing of the action increased the morale of the Vernal City Police Department.

ARGUMENT

POINT ONE

RESPONDENTS HAVE NOT VIOLATED THE PROVISIONS OF THE OPEN MEETING LAWS OF THE STATE OF UTAH AS CONTAINED IN TITLE 52, CHAPTER 4, UTAH CODE ANNOTATED (1953 AS AMENDED) CONCERNING CLOSED PUBLIC MEETING:

Appellants in their Brief make several allegations that the Vernal City Council violated the provisions of Title 52, Chapter 4, Utah Code Annotated (1953 as amended). In making such claims, Appellants rely on the Defendants' Answers to Plaintiff's First Set of Interrogatories wherein it was stated that the Vernal City Council met in executive session on December 23, 1980, to discuss the lawsuit against Carol Newman, (at pages 1 and 2). Although the Council indicated its support for the police officers involved, no formal action was taken by the Council at that time, (page 2). Subsequent to that time, on February 5, 1981, a contract between attorney Lynn Lund and Vernal City was executed, (page 3). It is pursuant to the February 5th contract that the \$1,875.00 in question was distributed, (at pages 2 and 3).

Appellants only complaint concerning the December 23rd meeting is that the meeting was closed to the public. Appellants have ignored the provisions of Title 52, Chapter 4, Section 5 (1)(b) which provides that "A closed meeting may be held pursuant to Section 52-4-4 for any of the following purposes:...(b) Strategy sessions with respect to collective bargaining, litigation, or purchase of real property;..." Utah law therefore specifically allows a public entity to meet in closed session to consider matters con-



cerning litigation. A closed meeting of the Vernal City Council to consider the advisability of bringing legal action is therefore clearly not in violation of the open meeting laws of the State of Utah.

Furthermore, even assuming a violation of the open meeting laws of this State, the Appellants have failed to plead such violations in their Complaint. Title 52, Chapter 4, Section 8 provides that:

"Any final action taken in violation of Section 52-4-3 and 52-4-6 is voidable by a Court of competent jurisdiction. Suit to void final action shall be commenced within 90 days after the action except that with respect to any final action concerning the issuance of bonds, notes, or other evidences of indebtedness suit shall be commenced within 30 days after the action."

The foregoing mandates that suit be brought to compel compliance or enjoined violations of the open meeting laws within ninety (90) days. In their Complaint, the Plaintiffs have failed to make any allegations concerning a violation of Title 52, Chapter 4. In fact, the Complaint fails to allege or complain about any decision made at a closed meeting. Since more than ninety (90) days has passed, the Appellants are barred from bringing any action concerning the violation of the open meeting laws of this State.

#### POINT TWO

ABSENT BAD FAITH, PUBLIC OFFICIALS ARE IMMUNE FROM PERSONAL LIABILITY WHERE ACTING WITHIN THE DISCRETIONARY FUNCTION OF THEIR OFFICE:

Under the laws of the State of Utah, a municipality has the power to sue and can be sued.<sup>1</sup> The decision of whether or not to bring legal action concerning an issue is a matter of judgment within the discretionary function of the City Council. The case law

<sup>1</sup> Title 10, Chapter 1, Section 202, Utah Code Annotated (1953 as Amended); Title 63, Chapter 30, Utah Code Annotated (1953 as Amended).

is unanimous in holding that, absent bad faith, public officials are not personally liable when making decisions that are discretionary in nature.<sup>2</sup> To subject public officials to personal liability when they act in good faith in the performance of their duties would "dissuade competent and responsible persons from accepting the responsibilities of public office".<sup>3</sup> The case law in the State of Utah uniformly supports this qualified immunity for public officials. In Utah State vs. Sutro, (supra at page 721) the Court indicated:

"The generally recognized doctrine of law is that public officials are protected by a qualified immunity from suits growing out of the performance of lawfully authorized discretionary duties, so long as they are acting in good faith and are not guilty of any willful or intentional wrongdoing."

Such a policy is in accord with the interest of justice and allows public officials freedom to make important decisions they face in discharging the responsibilities of their office without fear that they may be held liable for mistakes in judgment.

In Logan City vs. Allen, (supra) the Plaintiff claimed that the Cash County Commissioners and the State Tax Commissioners acted wrongfully and unlawfully in compromising property taxes which were due. As in the case at bar, the Plaintiff asserted that the individual public officers were personally liable. The Court in its holding found that the decision of whether or not to accept a reduction in the amount of taxes was within the discretionary function of the officers and therefore found that the public officials could not be held liable. In doing so, the Court observed at page 1089 that:

"Whether or not the Tax Commissioners were correct in their analysis of this Court's decision or in reaching the conclusion they did is of no moment here. It is apparent to us the Board of Commis-

<sup>2</sup>Salt Lake County v. Clinton, 117 P. 1075, 39 Utah 462 (Utah 1911); Board of Education of Nebo School District v. Jeppson, 280 P. 1065, 74 Utah 576 (Utah 1929); Logan City v. Allen, 44 P.2d 1085, 86 Utah (Utah 1935); Anderson v. Granite School District, 413 P.2d 597, 17 Utah 2d 405 (Utah 1966); Utah State University v. Sutro & Co., et al. 646 P.2d 715 (Utah 1982); Carbon County v. Hamilton, 160 P. 765, 4 Utah 503 (Utah 1916).

<sup>3</sup>Anderson v. Granite School District, (Supra at P. 599).

moners and the State Tax Commission acted in the utmost good faith, and in the belief the settlement effected was for the best interest of the State, County, and the City."

Consequently, the issue in this case is not whether the City could maintain a defamation action. The issue is whether the City officials acted in good faith in filing the action and in authorizing payment for attorney fees in connection with the action. In this regard, it should be noted that in reviewing legislative acts, the Courts have accorded public officials the presumption of good faith.<sup>4</sup>

The Vernal City Council was faced with a difficult situation when it made its decision to bring a defamation action. A citizen had charged that a police officer had attempted to rape her while the officer was performing his official duties. Similar allegations of improper and unlawful acts on the part of the officers (sexual assault) had received wide circulation through the media. The morale of the police officers and the public trust and confidence in its police department had both suffered as a result of the charges. After receiving a report by the Salt Lake County Sheriff's Office which showed that there was no evidence to support the charges and after consulting with two attorneys, the City Council decided to bring a defamation action on behalf of the City. It is clear that in doing so the City Council was both attempting to improve the morale of its officers and was attempting to restore public confidence in the officers by forcing a public resolution of the matter through the court. There have been no allegations that the individual Council members would personally benefit from the bringing of the action or that they otherwise acted in bad faith. The only allegations are that the decision to litigate was improperly made at a closed session and that the decision benefited private individuals (the

<sup>4</sup>Boards v. Board of Education of Ogden City, 572 P.2d 1359 (Utah 1977).

officers) rather than the general public. Even assuming the allegations of Appellants' Complaint, it is clear that the City Council acted in good faith within the discretionary function of their offices. Therefore, under the cases above cited, they are immune from personal liability.<sup>5</sup>

#### POINT THREE

APPELLANTS HAVE NOT ALLEGED THAT THE ACTION COMPLAINED OF WAS TAKEN IN BAD FAITH OR WAS A RESULT OF FRAUD OR CORRUPTION:

Rule 9(b) of the Utah Rules of Civil Procedure state: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." This requirement has two purposes: (1) It protects the Defendant from lightly made public claims or accusations, and (2) It provides a Defendant an opportunity to understand what conduct is complained of, in order to prepare his defense.<sup>6</sup> Since fraud must be particularly plead, the general rule that pleadings should be liberally construed does not apply to allegations of fraud.<sup>7</sup> Moreover, when considering acts of public officers within their public duties, good faith is presumed.<sup>8</sup>

In their Complaint, the Appellants have not alleged acts that were in bad faith, or which were fraudulent or corrupt. In Appellants' argument, he has argued that his Complaint, "point categorically to something bordering on fraud or deceit" or "implies something almost identical to fraud" or "borders on fraud" or was "shady". Neither those allegations nor the allegations in the Complaint meet the requirements of particularity as required under our rules for pleading. The general allegation that the acts of the Council were without authority or were unlawful similarly do not meet the requirements of Rule 9(b).

Defects which may make the distribution of funds unauthorized and unlawful range from merely innocently failing to follow proper procedures to outright theft. An allegation of an unlawful and unauthorized distribution of funds does not necessarily imply bad

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<sup>5</sup>Salt Lake County v. Clinton, (Supra).

<sup>6</sup>Rich v. Touche Ross and Co., 68 F.R.D. 243 (1975).

<sup>7</sup>Rosenthal v. Perkins, 257 S.E.2d 63 (North Carolina 1979).

<sup>8</sup>Sears v. Board of Education of Ogden City, (Supra).

faith or fraudulent acts. Because fraud is never presumed, the mere fact that one may have intended to plead fraud will not cure the defect of failing to plead fraud with particularity.<sup>9</sup> Pleadings such as the pleadings involved in this case which merely allege improper action without setting forth the facts relied upon have not been upheld as meeting the requirements of particularity.<sup>10</sup>

#### POINT FOUR

APPELLANTS' DISTRIBUTION OF FUNDS IN THIS CASE WAS A LEGAL DISTRIBUTION OF FUNDS FOR AN AUTHORIZED PUBLIC PURPOSE:

The central issue of this case is the determination as to whether the monies were expended for an authorized public purpose. Although not required by any specific clause of our Constitution, it is a well established constitutional tenet that public funds can only be expended for public purpose.<sup>11</sup> The well recognized test in determining whether a particular expenditure is for a public purpose is whether the expenditure confers a benefit of a reasonably general character upon the public.<sup>12</sup> What constitutes a public purpose cannot be precisely defined. Therefore, to a considerable extent each case must be decided upon its own facts,<sup>13</sup> keeping in mind the changing developments<sup>14</sup> and social needs of the times.<sup>15</sup> Furthermore, when a public purpose exists, the power of the Legislature to act will not be curtailed or destroyed merely because some private interest may be benefited.<sup>16</sup>

In this case, it is important to note that, in the judgment of the Vernal City Council, the public trust and confidence had seriously been damaged by Newman's claims that the police officers had raped her. Also, Newman and her attorneys had indicated

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<sup>9</sup> Cooper v. Leslie Salt Co., 451 P.2d 406 (Calif. 1969).

<sup>10</sup> Rosenthal v. Perkins, (Supra).

<sup>11</sup> Hooper v. City of Madison, 256 N.W.2d 139 (Wisc. 1977).

<sup>12</sup> Opinion of the Justices, 208 N.E.2d 823 (Mass. 1965).

<sup>13</sup> Horton v. City of Kalamazas, 264 N.W.2d 128 (Mich. 1978).

<sup>14</sup> City of Glendale v. White, 194 P.2d 435 (Ariz. 1948).

<sup>15</sup> Evolution Services, Inc. v. Board of Adjustment, 119 A.2d 761 (N.J. 1956).

<sup>16</sup> E.L. Stout Co. v. City of Minneapolis, 269 N.W.2d 331 (Minn. 1978);

Shields v. City of Philadelphia, 176 A.2d 697 (Pa. 1962); Opinion of the Justices, (Supra).

that they intended to bring legal action against Vernal City and its officers. All of this had combined to affect the police officers' morale. It was the Council's judgment that the actual facts should be brought before the public and that the individual officers should be compensated for the damages they had received while discharging their official duties.

No one can doubt that the City has a legitimate interest in promoting and encouraging public confidence in public officials who administer and enforce the law. Under our form of government, citizens must rely upon the honesty and integrity of their officers in enforcing the law. When public trust in officers decline, respect and obedience to the law must necessarily decline. On a very practical plane, citizens are more likely to question and challenge law enforcement officials in the performance of their duties if they believe that the officers themselves have engaged in unlawful conduct. To be effective, the public perception of the officers' integrity must be that the officers are above reproach. In this case, the Council was legitimately concerned that the public trust and confidence in its police officers was declining in spite of the fact that the officers were innocent of any wrongdoing. Their decision to support the officers through a public trial, wherein the main issue would revolve around the various allegations made by Mrs. Newman, was an attempt to restore public trust and confidence in its police officers.

The City Council was also legitimately concerned with the morale of its officers. The public allegations made toward the officers had been made as a result of the officers acting in their official duties as police officers. In spite of the investigation by the Salt Lake Sheriff's Department, which showed no evidence of improper police action, morale continued to be low. Such accusations die hard, the press and community discussion in such cases is never as great as that afforded the initial charge.

Certainly the Council had a legitimate interest in improving the morale of its police department. Common experience teaches that poor morale leads not only to poor job performance, but also contributes to high turnover rates, and tends to discourage qualified persons from seeking and obtaining employment. All of this inevitably leads to less effective law enforcement. The City Council clearly has a public interest in encouraging effective law enforcement. In the judgment of the Council, the morale of the police officers would be greatly improved through the Council's active support of the defamation suit. The Affidavit of Mayor Snyder indicates that morale in fact did improve as a result of the City's participation in the lawsuit, thus showing the soundness of the Council's decision.

Also, in this State, it is common practice to provide public employees with such benefits as: paid vacations, increased wages for longevity as an employee, health and accident insurance, retirement plans, and other public employee benefits. In authorizing public expenditures for these employee benefits, the elected officials presiding over the various entities have exercised their judgment that the costs of such employee benefits are offset by the benefits which inure to the entity through higher morale, and through the ability of the entity to attract and keep employees who are well trained and qualified. Certainly all these considerations act with equal weight in this case and justify the Council in expending public funds to increase the morale of its officers.

The officers in this case had suffered damages to their reputations through the malicious allegations of Mrs. Newman. If the damages suffered had been physical in nature, the City would have been responsible to compensate the officers for medical expenses and other costs incurred by the officers in curing the injury. No one would question the authority of the City to expend public funds under those circumstances. In this case, the officers

were just as surely damaged while discharging their official duties. It must be remembered that Mrs. Newman wasn't merely saying that the officers weren't nice people, she had claimed that they had attempted to rape her and had sexually assaulted her. It is easy to envision the damage one would suffer as a result of such allegations. Surely the City can act affirmatively to compensate the officers for these damages. Therefore, the expenditure of public funds in this case is justified as an attempt by the City to compensate its officers for losses suffered in the line of duty.

Also, in this case, the police officers were acting within the scope of their duties as officers. The City, as the officers' employer, faced the possibility that Newman would bring suit against the City. In fact, Newman and her attorneys had indicated that legal action would be brought against the City and its officers. Because central issues of the defamation suit revolved around the validity of Newman's allegations, the City was justified in bringing the action in order to reduce the risks of potential liability to the City. The cost to the City in bringing an action locally would be much less than the cost of defending an action in another jurisdiction or before another Court.

Other courts in considering similar issues have upheld payment for legal fees as lawful public expenditures. In City of Montgomery vs. Collins, 355 So.2d 1111, the City of Montgomery had contracted to expend funds for the defense of city police officers who had been charged with a crime. Taxpayers brought an action to enjoin the payment of the funds. The taxpayers claimed that it was beyond the power of the City to expend public funds to defend officers who had committed criminal acts. In that case, the Court held that the City had a legitimate interest in defending the police officers. The Court noted that because the criminal charges arose out of performance of the officers' official duties, the City was exposed to



potential liability should the charges prove successful. In so doing, the Court observed:

"Because a conspiracy might provide a basis for a civil action, and because a municipality may be made a party defendant in such an action, it would be within the reasonable scope of proper corporate interest for the municipality to attempt to protect itself and its officers against future civil litigation brought under agency principles by defending their agents against criminal charges arising out of the same general circumstances with the view of obtaining their acquittal...

Moreover, the officers in charge of the administration of municipal government might reasonably conclude that such action is necessary to the good morale of the police department, or for recruitment and retention purposes. Or there may exist other equally compelling reasons falling within the proper corporate interest." (at pages 1114 and 1115).

Under the facts of this case, the expenditures were clearly for a legitimate public purposes. These expenditures are justified under any or all of the following: (1) As an attempt to improve the trust and confidence of the public in those officials who enforce the law, (2) As an attempt to improve the morale of its employees, (3) As an attempt to assist the officers in receiving compensation for injuries suffered in the line of duty, or (4) as an attempt to protect itself and its officers against future civil litigation.

In this case, it must be noted that the Appellants have not argued that a City is barred from bringing a defamation action. Basically, the central theme of the Appellants' argument is that such lawsuits have not been successful in the past. Even assuming that such is the case, it does not follow that a similar lawsuit will never be successful in the future. The law<sup>17</sup> and public policy of this Court is that the Courts are open to all individuals and entities within this State. To hold that it is unlawful to spend funds to pursue a particular remedy because it has not been suc-

<sup>17</sup>Article I, Section 11, Constitution of Utah.

cessful in the past would violate the basic premises upon which Courts operate and would in effect prevent the orderly development of the law. Vernal City is entitled to litigate before the Courts of this State the issue of whether or not a city may be defamed. To hold that the City could not expend public funds to litigate this or any other issue would effectively deny Vernal City its constitutionally guaranteed access to the Courts and would tend to stagnate the law. The implications of such a holding upon the orderly development of the case law in this State are staggering.

#### POINT FIVE

THE JUDGMENT OF PUBLIC OFFICIALS WILL NOT BE INTERFERED WITH UNLESS A REVIEWING COURT CANNOT ENVISION ANY REASONABLE RELATIONSHIP BETWEEN THE EXPENDITURES AND THE INTEREST OF THE PUBLIC:

The case law is well settled concerning the nature and scope of a Court's review of a legislative decision. Basically, the question of what is a proper public purpose is a matter for the Legislature to determine.<sup>18</sup> Consideration of whether or not there is a public purpose involve economic, social, and political philosophies. Such considerations properly should be made by the elected representatives of the people.<sup>19</sup> In reviewing the decision of a Legislative body the Court will not be concerned with the wisdom or practicality of the Legislative decision.<sup>20</sup> On review there is a strong presumption that the Legislative acts are proper.<sup>21</sup>

In determining and defining whether an expenditure is public, the Court will construe the word "public" broadly so as to allow Legislative bodies wide latitude in deciding what may bene-

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<sup>18</sup> Hooper v. City of Madison, (Supra).

<sup>19</sup> Horton v. City of Kalamazas, (Supra).

<sup>20</sup> Hooper v. Madison, (Supra); R.E. Short Co. v. City of Minneapolis, (Supra).

<sup>21</sup> R.E. Short Co. v. City of Minneapolis, (Supra); City of Roseville v. Tulley, 131 P.2d 395 (Calif. 1942); City of Glendale v. White, (Supra); Triangle Oil, Inc. v. North Salt Lake Corporation, 609 P.1338 (Utah 1980); Tygesen v. Magna Water Co., 226 P.2d 127, 119 Utah 2d 274 (Utah 1950); Sears v. Board of Education of Ogde City, (Supra); Child v. City of Spanish Fork, 538 P.2d 184 (Utah 1975).

fit the public,<sup>22</sup> and will presume that the officials acted legally<sup>23</sup> and in good faith.<sup>24</sup>

Courts have indicated that, where possible, it is the duty of the Court to construe a decision in such a way as to validate the decision,<sup>25</sup> and that it is the burden of the person claiming an impropriety to demonstrate such beyond a reasonable doubt,<sup>26</sup> and that a decision of the Legislative body should be invalidated only when no legitimate public purpose can be conceived.<sup>27</sup> Utah cases have expressed the above principles as follows:

"When a municipality acts within the powers given it by statute, its acts are not subject to review by the Courts unless there is a manifest abuse of those powers or unless such right to review is granted by statute." Tygesen vs. Magna (Supra) at page 132.

"The Courts may not delve into the wisdom of a Legislative act; it is only where there is no possible benefit to the public that the Courts will review such a Legislative determination." Sears vs. Ogden (Supra) at page 1362.

"...the City Council is endowed with broad discretion to make decisions and determine policies which it thinks will best fulfill its responsibilities. Consequently, as in all Legislative matters, Courts are reluctant to interfere therewith; and do so only where the decisions or actions taken are clearly outside the authority of the governing body, or are so wholly unreasonable and unjust that they must be deemed capricious and arbitrary in adversely affecting someone's rights." Child vs. City of Spanish Fork (Supra) at page 186.

<sup>22</sup> Horton v. City of Kalamazas, (Supra); Child v. City of Spanish Fork, (Supra).

<sup>23</sup> R.E. Short Co. v. City of Minneapolis, (Supra).

<sup>24</sup> Sears v. Board of Education of Ogden City, (Supra).

<sup>25</sup> Hooper v. City of Madison, (Supra).

<sup>26</sup> Hooper v. City of Madison, (Supra).

<sup>27</sup> Hooper v. City of Madison, (Supra).

CONCLUSIONS

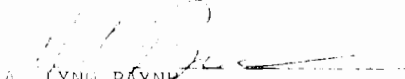
In its Brief, the Appellants have alleged that the open meeting laws of this State were violated by Mernal City. Not only is the record completely void of any evidence to support that allegation, but the Appellants themselves have failed to allege such a violation in their Complaint. Similarly, the Appellants have wholly failed to plead bad faith or fraud. Given the requirements that such matters must be plead with particularity; the presumption that public officials act in good faith; and the rule of law that absent bad faith public officials are immune from personal liability, such defect is fatal to the Appellants' case.

In this case there is ample evidence that the City Council acted in pursuing any one of a number of legitimate public purposes (1) To improve public trust and confidence in the officers, (2) To improve the morale of the police officers, (3) To assist the officers in receiving compensation for injuries suffered in the line of duty, (4) To pursue its claim of damages for defamation or (5) To reduce any risk of potential liability to the City.

Furthermore, Appellants have failed to allege any facts which would justify the Court in substituting its judgment for that of the City Council's. The facts indicate that there is ample support for the actions of the Council in this case.

In this case, it is obvious that the City Council acted in complete good faith and in the interest of the public. Therefore, Respondents respectfully request that the Court affirm the decision of the District Court in this case.

Respectfully submitted this 16 day of May, 1983.

  
A. LYNN PAYNE

CERTIFICATE OF MAILING

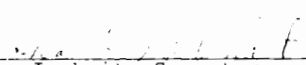
I, Trisha Inabnit, secretary to A. Lynn Payne, do hereby certify that I mailed two true and correct copies of the foregoing Respondents' Brief, first class postage prepaid, on the 4th day of May, 1983, to:

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