

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI  
21st JUDICIAL CIRCUIT**

JP	)		
Plaintiff,	)	January 30, 2018	
	)		
VS.	)		
	)		
CITY OF UNIVERSITY CITY, MO,	)	Division 1	
Defendant, et al,	)		

**ORDER AND JUDGMENT**

**INTRODUCTION**

Presently before the Court is Defendant PC’s Motion to Dismiss Plaintiff’s Petition (“Motion”).<sup>1</sup>

The Court, having read all of the pleadings of the parties, reviewed the applicable state statutes, the Rules of Civil Procedure and caselaw, heard the arguments of counsel and being now fully advised, hereby finds that the Motion is without merit.

It is important to note at the outset that “[a] motion to dismiss . . . is solely a test of the adequacy of the plaintiff’s petition. It assumes that all of plaintiff’s averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.” *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 464 (Mo.banc 2001).

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<sup>1</sup> Plaintiff has also brought suit against Defendant City of University City (“U. City”). Count I of Plaintiff’s Petition for Damages is filed against Defendant U. City and Count II is filed against Defendant U. City and Defendant PC.

## DISCUSSION

### Legislative Immunity and Privilege

Plaintiff has alleged that Defendant PC, individually and in her capacity as an employee of the City of University City (member of the City Council), made certain defamatory statements about Plaintiff in public at a City of University City City Council meeting.

Defendant PC contends that she is immune from this suit because the alleged defamatory statements allegedly were made at an open session of the City Council. As such, Defendant PC submits that she was protected by the doctrine of legislative immunity.

Defendant PC cites *Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998), for the proposition that a legislator is afforded absolute immunity for all actions “in the sphere of legitimate legislative activity” where the legislator is exercising her legislative functions in a legitimate matter.

It is important to note that in *Bogan* the United States Supreme Court was discussing a federal civil rights action brought pursuant to 42. U.S.C. §1983 and is not relevant to this matter.

However, the Missouri Supreme Court has recognized an absolute privilege in certain circumstances:

’The class of occasions where the publication of defamatory matter is absolutely privileged is confined within narrow limits to cases in which the public service or the administration of justice requires complete immunity from being called to account for language used.’ The classic examples of the application of an absolute privilege are the proceedings of legislative bodies, judicial proceedings, and communications by military and naval officers.

*Pulliam v. Bond*, 406 S.W.2d 635, 640 (Mo.banc 1966), quoting 53 C.J.S. Libel and Slander s 102, p. 164.

It has been held that “legislative immunity is available only where a legislator exercised his legislative functions in a legitimate manner.” *State v. Edwards*, 337 S.W3d 118, 121 (Mo.App.E.D. 2011).

At this nascent stage of the litigation, granting Plaintiff all reasonable inferences therefrom, Plaintiff has made sufficient allegations in her Petition for Damages that Defendant PC's actions were not part of her legislative functions and/or were not exercised in a legitimate manner.

### Statements of Opinion Privilege

Defendant PC next contends that her alleged statements are of the opinion variety and therefore not actionable as defamatory.

There is not a "wholesale defamation exemption" for anything that might be labeled opinion. *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18 (1990). "The test to be applied to an ostensible 'opinion' is whether a reasonable factfinder could conclude that the statement implies an assertion of objective fact." *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 314 (Mo.banc 1993).

Plaintiff has alleged that Defendant PC made certain statements and in such a manner so as to create the impression that Plaintiff had been admonished by the Missouri Attorney General's Office and that Plaintiff had failed to fulfill her job duties and comply with Missouri law. The statements as alleged do not appear on their face at this stage of the litigation to be of the opinion variety.

"The issue of falsity relates to the defamatory facts implied by a statement – in other words, whether the underlying statement about the plaintiff is demonstrably false. *Overcast* at 73 (citation omitted).

### Sovereign Immunity

Defendant PC alleges that Plaintiff's cause of action is stated against Defendant PC in her official capacity and therefore the action is one against the municipal entity. As such, Defendant PC argues that she enjoys the sovereign immunity protection afforded Defendant U. City.

However, the Court has found that Plaintiff has sufficiently alleged that Defendant U. City has waived its sovereign immunity protection for the purposes of this litigation.<sup>2</sup> Thus, this protection is not available in this matter to Defendant PC.

CONCLUSION

Accordingly, Defendant PC's Motion to Dismiss Plaintiff's Petition is hereby **DENIED**.

SO ORDERED:

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Brian H. May  
Circuit Judge, Division 1

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<sup>2</sup> The Court addressed this issue in detail in the Order and Judgment denying Defendant U. City's Motion to Dismiss.