Opinion No. 67-117

October 20, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Mack G. Henington Superintendent Estancia Municipal Schools Estancia, New Mexico

QUESTION

FACTS

The Estancia Board of Education would like to adopt the following regulations:

"10.16 MARRIED STUDENTS

Married students may enter High School pending Board of Education approval. They will be expected to behave and act in a dignified manner. They are not authorized to participate in any school activity or club, unless the Principal determines they may.

10.17 PREGNANCY

The school officials have the right to request a student, to withdraw from school when it is known that said student is to give birth to a child and the school officials believe the attendance of the student at school and/or school sponsored activities is not proper."

This Office has been asked for an opinion on the validity of the above proposed regulations.

OPINION

*{*174}* **ANALYSIS**

Local School Boards of this State have the power, subject to the regulations of the state board, to supervise and control all public schools within the school district. In addition local school boards have the power to adopt regulations pertaining to the administration of all powers or duties of the local school board. See Section 77-4-3, N.M.S.A., 1953 Compilation (P.S.). It is our opinion that these powers are sufficiently broad to permit promulgation of regulations concerning the general behavior of students. Such regulations, however, must be consistent with other applicable laws and must not be unreasonable, arbitrary or capricious.

Section 77-10-2, N.M.S.A., 1953 Compilation requires persons between the ages of 6 and 17 to attend a public or private school or a school offered by a state institution. There are exceptions to this compulsory attendance law. The only exception, however,

that we believe is relevant provides that a person who is physically incapable of attending school is exempted from compulsory attendance.

This Office has issued two opinions stating that children under 17 years of age may not be excluded or exempted from school because they are married. See Attorney General Opinion No. 111, issued February 19, 1936 and Attorney General Opinion No. 188, issued September 4, 1953. Since there have been no pertinent changes in the compulsory attendance law, these opinions are still controlling. Therefore, if the married students are under 17 years of age they must attend an approved school. The above Attorney General Opinions are supported by what we consider to be the better reasoned court decisions. See for example, **Board of Education v. Bentley,** 383 S.W.2d 677 (Ky., 1964).

The first proposed regulation submitted to this office, if adopted, would prohibit married students from participating in any school activity or club, unless the Principal determines that they may participate. A discussion of two of the decisions found in other jurisdictions will point out the defects in the proposed regulation.

The first decision in **State v. Stevenson,** 189 N.E.2d 181 (Ohio, 1962) where a writ of mandamus was sought to compel the Board of Education of the City of Hamilton, Ohio to allow a married high school senior to engage in extracurricular activities. The student was co-captain of the high school basketball team which had won the state championship the previous year. The board of education had a regulation prohibiting all married students from participating in extracurricular activities which would include not only athletic activities, but such activities as band and glee club. This regulation was attacked on the grounds that it was arbitrary, unreasonable, and discriminatory and further that it penalizes marriage and is therefore void. The Attorney General of Ohio had already issued an opinion stating that such a regulation had the dubious purpose of punishing marriage. The Court of Common Pleas, however, upheld the regulation.

In upholding the validity of such a regulation the Ohio Court of Common Pleas found that it is common knowledge that the student who excels in athletics sets a pattern of conduct which his associates in the school are proud to follow. The board of education contended that high school marriages cause high school drop outs. They showed that in the City of Hamilton in the 1962-1963 school year there were 52 high school marriages and out of this number there were 41 drop outs. The previous school year there had been 53 high school marriages and of this *{*175}* number 51 of the married students had dropped out of school. The Court found that the school board had not abused its discretion in concluding that high school marriages cause high school drop outs.

We pointed out above that the Attorney General of Ohio and the Court of Common Pleas disagreed over the validity of the regulation prohibiting maried students from participating in extra-curricular activities. The Attorney General's Opinion pointed out that that extracurricular activities have become an integral part of contemporary education and therefore should not be denied students merely because of their marital status. The reasoning of the Court found in the **Stevenson** case, however, is primarily

based upon the fact that the student involved was the high school athletic hero and therefore other students were likely to follow his pattern of conduct and get married. We do not believe the Ohio Court would have reached the same result in the **Stevenson** case if the married students had wanted to participate in glee club, band or a language club rather than as co-captain of the state champion basketball team. Certainly the Court could have not used the same reasoning in reaching its conclusion upholding the validity of the regulation.

The second decision which we believe is necessary to discuss is the decision of the Supreme Court of Michigan in **Cochrane v. Board of Education,** 103 N.W. 2d 569 (Mich. 1960). In **Cochrane,** the Board of Education of the Mesick Consolidated School District adopted the following policy or rule:

"'Married students attending school shall not be eligible to participate in any co-curricular activities: i.e., competitive sports, band, glee club, class and club officers, cheer leading, physical education, class plays and etc.'"

Ronald Cochrane and David Shively, two married high school students, had participated in sports before each respectively was married. Both were seniors and eighteen years of age. The parents of Ronald and David brought a mandamus action to compel the school board to admit the two students to co-curricular activities. In the lower court, the Attorney General of Michigan intervened arguing that the rule in question was clearly void in that it attacked the married status of these students as ' "wrongdoing" '. The lower court found for the School Board and denied the writ. On appeal by the Attorney General and the plaintiffs, the Supreme Court of Michigan held that the action of the school board denying the plaintiffs the right to participate in co-curricular activities was arbitrary and unreasonable. The regulation set forth above was held null and void. In reversing the lower court, the Supreme Court of Michigan placed a great deal of reliance upon a 1929 Mississippi decision which was probably the first reported decision, either American or British, involving an attempt to exclude a pupil from school upon the ground of marriage. See Anno. "marriage or other domestic relations as grounds for exclusion of pupil from public school." 63 A.L.R. 1164. The 1929 Mississippi, decision is the decision of **McLeod v. State of Mississippi,** 122 So. 737 (Miss. 1929). The same arguments against having married students in high school that were presented to the Ohio Court of Common Pleas in **State v. Stevenson,** supra, were presented to the Mississippi Supreme Court in **McLeod,** supra. The Mississippi Supreme Court in answering the arguments said:

"We fail to appreciate the force of the argument. Marriage is a domestic relation highly favored by the law. When the relation is entered into with correct motives, the effect on the husband and wife is refining and elevating, rather than demoralizing. Pupils associating in school with a child occupying such a relation, it seems, would be benefited instead of harmed. And, *{*176}* furthermore, **it is commendable in married persons of school age to desire to further purpose their education and thereby become better fitted for the duties of life."**

It is our opinion that the better reasoned opinions uphold the right of the student to attend school and to participate in activities after marriage. We agree with the position of the Attorney General of Ohio as stated in **State v. Stevenson, supra,** that extra-curricular activities "have become an integral part of contemporary education." It is therefore the opinion of this office that a rule or regulation prohibiting married students from participating in band, glee club, dramatic events, school newspapers, school clubs, school sponsored trips and school athletics is arbitrary and unreasonable and therefore void.

We now turn to the second proposed rule, Rule 10.17. This rule would require the withdrawal of a student when it is known that she is pregnant and when the school officials do not believe that such attendance is proper. It is our opinion that this rule clearly violates our compulsory attendance law. We noted above that only a student who is physically incapable of attending school is exempted from attending between the ages of 6 and 17. Therefore if the girl is physically capable of attending school, the local school board may not prohibit her attendance by rule or regulation merely because she is pregnant. Even if such a rule could be adopted under our compulsory attendance law, such a rule would be arbitrary and capricious for the reasons stated above. See **Nutt v. Board of Education,** 278 Pac. 1065 (Kans. 1929). This is not to say that the Board may not promulgate regulations relating to the health of the pregnant student. Furthermore it is the opinion of this office that the Board may promulgate reasonable rules prohibiting students from attending school when the health of other students is involved.

By: Gary O'Dowd

Assistant Attorney General