

## SYLLABUS:

Students' morals may properly be the basis for rules and regulations by a board of education for the government of the students, and the following extra-curricular activities may be the subject of such rules and regulations: athletic competition, musical organizations, dramatics organizations and productions, social activities, class and school trips, cheerleading, class and school elective office, literary activities, military activities, service activities, scientific activities, scholastic activities, honor societies and honor organizations.

Columbus, Ohio, April 1, 1963

Hon. Thomas R. Spellerberg  
Prosecuting Attorney  
Seneca County  
Tiffin, Ohio

Dear Sir:

Your recent request for my opinion reads in part, and paraphrased, as follows:

"A female student in the public schools has never been married but is the mother of a child. The child has been given for adoption and is no longer with the natural mother. May the board of education prohibit such a student from participation in school activities? If it may so prohibit participation, what activities may be the subject of such prohibition, and how must the board of education implement such prohibition?

"The board of education feels that it has a responsibility to see that only worthy school citizens participate in activities in which the school citizen represents the school."

The necessary authority for the making of rules and regulations is found in Section 3313.20, Revised Code, which reads in part as follows:

"The board of education shall make such rules and regulations as are necessary for \* \* \* the government of \* \* \* the pupils of the schools \* \* \*."

There is no statutory declaration as to how a board of education goes about making its rules and regulations. However, Section 121.22, Revised Code, specifically declares that meetings of a board

of education are "public meetings open to the public at all times" and then inhibits the board from taking any kind of formal action (which includes adopting rules and regulations) at any executive session. I infer then that board rules and regulations must be adopted during a regular meeting. This necessarily suggests that persons will have opportunities to make their findings known to the members of the board, and vice versa, during the course of the board's consideration of rules and regulations.

Other than the statutory "necessary" there is no articulated limitation imposed upon the board of education in the extent to which it may govern the pupils of its schools. The board of education, in the first instance, determines the necessity, and a court will review the determination. The second and third syllabi of *Brannon v. Board of Education of The Tire Consolidated School District of Crawford County et al.*, 99 Ohio St., 369, read as follows:

"2. A court has no authority to control the discretion vested in a board of education by the statutes of this state, or to substitute its judgment for the judgment of such board, upon any question it is authorized by law to determine.

"3. A court will not restrain a board of education from carrying into effect its determination of any question within its discretion, except for an abuse of discretion or for fraud or collusion on the part of such board in the exercise of its statutory authority."

Implicit in this is that a court *will interfere if there is fraud, abuse of discretion, arbitrariness, or unreasonableness.*

Although the books are almost barren of cases which deal with the government of students in public schools, there are a few cases to examine.

*State ex rel. Baker v. Stevenson, et al.*, #80662 in the Court of Common Pleas, Butler County, Ohio, is as yet unreported, but the matter dealt with student rules and regulations. A board of education adopted rules and regulations (called a Code of Ethics) for the government of its students. One of the rules declared "\* \* \* that married students \* \* \* will not be permitted to participate in extra-curricular activities \* \* \*" and such activities were listed as "\* \* \* including but not limited to the following: leadership in school

organizations or activities; athletic activities; scholarship activities; member of band and glee club; social events; dramatics events and musical activities; cheerleader; school sponsored trips." The rules and regulations were adopted in the spring of the year and were effective as of the opening of school in the fall. The board of education's primary motive regarding these rules and regulations was to discourage juvenile marriages, and the reason behind the motive was the high percentage of students who leave school after their marriages. Behind that reason were the facts that, first, an outstanding school student athlete "had to get married" during the preceding February and that, second, outstanding athletes are real "heroes" who, as it were, can do no wrong. The court noted that the ultimate effect of the prohibition from participation in extra-curricular activities was not only to discourage student marriages but to preserve those marriages which in fact had taken place. This preservation stems from the making of after school time available for the marriage rather than for the school. And, the court upheld the board's rules and regulations after finding that they were not unreasonable, not arbitrary, not an abuse of discretion, and not a violation of public policy concerning marriage.

The "companion" cases of *The Brotherhood of Rooks, v. Grandview Heights Board of Education et al.* and *Holroyd et al. v. Eibling, Supt., et al.* appeals dismissed 174 Ohio St., 27, also dealt with school students regulations. The *Holroyd* case, 116 Ohio App., 440 was the only reported one. The headnotes of the case read as follows:

"1. A court will not interfere with the authority of a local board of education to make rules and regulations concerning, nor substitute its judgment for that of the board in, the conduct of the affairs of a school, in the absence of fraud, abuse of discretion or arbitrariness or unreasonableness.

"2. A local board of education has, inherent and pursuant to Section 3313.20, Revised Code, authority to adopt a regulation prohibiting pupils in a public school from affiliating with social clubs under penalty of making such pupils ineligible to participate in certain extra-curricular activities."

In that case, some public school students sought to restrain the Board of Education from enforcing the following regulation:

“Section 10.22. Prohibition Upon Public Affiliation with Certain Organizations.

“(a) It shall be unlawful for any pupil enrolled in the Columbus Public Schools, in any manner, to organize, join, or belong to any school fraternity, sorority, society, or organization, as defined in sub-section (b), or to solicit members for such organizations, or to attend meetings of such organizations, or to engage in activities sponsored by such organizations, or to wear or display rings, pins, or any type of emblem, symbol or attire, which signifies or designates membership in any such organizations. Any such fraternity, sorority, society or organization as defined and referred to in this section, is declared an obstruction to education, inimical to the best interests of the Columbus Public Schools and to the public welfare, and illegal.

“(b) For purposes of this section, a school fraternity, sorority, society or organization, referred to in sub-section (a) is hereby defined and determined to be any organization whose active membership is composed wholly or in part of pupils enrolled in the Columbus Public Schools, and which perpetuates itself by admitting additional members from the pupils enrolled in the Columbus Public Schools on the basis of the decision of its membership rather than upon the right and free choice of any pupil who is qualified by the rules of his school to be a member of and take part in any class or group exercises designated and qualified according to sex, subjects required by the course of study, or program of school activities fostered and promoted by his school, except for organizations officially approved by the Superintendent of Schools as having sufficient education merit to justify their existence.

“(c) Any pupil enrolled in the Columbus Public Schools, who is in violation of this section, shall be barred from, declared ineligible for and shall forfeit his right and opportunity to participate in any athletic, literary, military, musical, dramatic, service, scientific, scholastic, and other similar activities and organizations of his school, including honor societies or honor organizations. It is the purpose and intent of such bar to cause the forfeiture of participation in those activities and organizations incidental to regular school work.

“Such pupils shall also be barred from, declared ineligible for, and shall forfeit his right and opportunity to hold any school or class office, to participate in any class election, to receive any honor whatsoever based upon

scholastic or other achievement, or to represent the school in any activity or organization.

“(d) It shall be the duty of the principal of each school of the Columbus public school system to enforce the provisions of this section, subject, however, to the right of the Superintendent of the Columbus public school system, at his discretion, to review the actions of the school principal in the performance of the duties enjoined upon him by this section.

“(e) The provisions of this section shall be in force and shall apply to all students enrolled in the Columbus public school system, who are scheduled for graduation during or after June, 1962.”

One of the high schools had some ten percent of its students active in a half-dozen youth organizations which were known as social clubs. The school authorities were of the opinion that these organizations had a “divisive influence in the school” and that they presented “difficult problems for the school authorities.” The court assumed that “the primary purpose of the Board of Education was to abolish these six clubs and all other similar organizations in the \* \* \* schools”, and the court felt the sole issue to be that of the authority of the Board of Education to adopt the regulation. The following illuminating portion of the opinion appeared after the court’s mention of the annotation in 27 A.L.R. 1074:

“\* \* \* The rationale of these decisions is that a board of education is vested with broad discretionary powers in adopting a policy prohibiting affiliation with such organizations in the government, management and discipline of the schools; that such regulations do not deprive the pupils of any *natural* or constitutional rights or privileges; that, when, in the opinion of the school authorities, such organizations have a deleterious influence and are found to be inimical to the best interests of the school, a school board is authorized, even in the absence of a specific statute granting such power, to adopt regulations prohibiting them; and that such power is inherent in a board of education. \* \* \*” (Emphasis theirs)

It appears from all of the foregoing that the extent to which a board of education may go to the government of its student is quite far; and it appears that a morals situation such as we are discussing here is not so substantially dissimilar from the situations

which were actually in the cases that a different result should obtain. Therefore, I conclude that a morals situation may properly be the basis for rules and regulations for the government of students.

I further conclude that the following extra-curricular activities may be the subject of such rules and regulations: athletic competition, musical organizations, dramatics organizations and productions, social activities, class and school trips, cheerleading, class and school elective office, literary activities, military activities, service activities, scientific activities, scholastic activities, honor societies and honor organizations.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General