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A BOARD OF EDUCATION MAY NOT PROHIBIT MARRIED STUDENTS OR PREGNANT MARRIED STUDENTS FROM ATTENDING NON-CREDIT ACTIVITIES EXCEPT WHEN IT ENDANGERS THE HEALTH OF SAID STUDENTS. — THE BOARD MAY ADOPT A RULE WHICH PROHIBITS THE ATTENDANCE OF ALL UNMARRIED PREGNANT STUDENTS FROM SUCH ACTIVITIES. — §§3313.47, 3313.20, R.C., OPINION 2147 OAG 1961

SYLLABUS:

1. Under the rule-making powers of Sections 3313.20 and 3313.47, Revised Code, a board of education may not adopt a regulation automatically prohibiting attendance of married students, or married students who become pregnant, at activities of the school not offering credit towards graduation, but may adopt a rule which would, for the physical safety of the student, require that at an advanced stage of the pregnancy a married pregnant student not attend such activities. (Opinion No. 2147, Opinions of the Attorney General for 1961, issued on April 27, 1961, affirmed and followed.)

2. A board of education may adopt a rule which would prohibit the attendance of all unmarried pregnant students at such activities.

Columbus, Ohio, May 15, 1962

Hon. George Schilling, Jr., Prosecuting Attorney
Clinton County, Wilmington, Ohio

Dear Sir:

Your request for my opinion reads as follows:

> "I respectfully request your formal opinion, in your official capacity as Attorney General of Ohio, as to the following question: May a board of education of a local school district legally promulgate a rule excluding any pupil, male or female, attending said school, from any activity of said school that does not offer credit towards graduation, for the stated reason that said pupil is either married or is presently anticipating parenthood or both?"

Regarding the power of a board of education of a local school district to adopt rules and regulations, section 3313.47, Revised Code, reads in part:

> "Each city, exempted village, or local board of education shall have the management and control of all of the public

schools of whatever name or character in its respective district. * * *"

Also, Section 3313.20, Revised Code, reads in part:

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

The question here is whether the adoption by the board of education of a rule such as you mention is an abuse of the discretion vested in the board to adopt lawful rules and regulations for the government of its schools.

In my Opinion No. 2147, issued on April 27, 1961, I considered whether a board of education may adopt regulations prohibiting the attendance of students who become married and of married students who become pregnant. The syllabus of that opinion reads as follows:

"1. A board of education may not adopt a regulation prohibiting attendance of all students under the age of eighteen who become married or, when married, become pregnant, as such would be contrary to the established public policy of this state as expressed in the compulsory education laws, Section 3321.01, *et seq.*, Revised Code, which laws require a basic education for all children.

"2. For the same reason a board of education may not adopt a rule which would automatically prohibit the attendance of all married students who become pregnant, but may adopt a rule which would, for the physical safety of the student, require that at an advanced stage of the pregnancy a pregnant student not attend regular school classes.

"3. Pursuant to the provisions of Section 3319.08, Revised Code, a board of education may assign a teacher to the home instruction of a pregnant student who is not allowed to attend classes because of the pregnancy."

In Opinion No. 2147 I made the following comment:

"* * * * * * * * *

"* * * To punish a child who, perhaps unwisely enters into a marriage contract at an early, although lawful, age by permanently forbidding to him the advantages acquired by education certainly appears to be excessively harsh and unreasonable, and I am of the opinion that a board of education is

without authority to adopt a rule which would accomplish that end.

"* * * * * * * * *"

Your request deals with school activities which do not offer credit towards graduation, that is, extra-curricular activities. While I did not specifically consider such activities in said Opinion No. 2147, I believe that the reasoning of that opinion may be applied also in this instance.

In developing a program of education which meets the minimum standards adopted by the state board of education for the education of Ohio youths, boards of education have uniformly included a multitude of extra-curricular activities. Such activities have become an integral part of contemporary education and to deprive a student from participating in such activities for the dubious purpose of punishing marriage would amount to an abuse of discretion. For this reason, and within the reasoning of Opinion No. 2147, *supra,* I am of the opinion that a board of education may not lawfully adopt a regulation prohibiting married students from participation in extra-curricular activities fostered and promoted by the school as part of the regular school program; and may not adopt a regulation automatically prohibiting the attendance of married pregnant students at such activities, except that a board of education may adopt a rule which would, for the physical safety of the student, require that at an advanced stage of the pregnancy a pregnant student not attend such activities.

Your request raises one other question not considered in Opinion No. 2147, *supra.* That is, whether a board of education may adopt a regulation barring unmarried pregnant students from school activities not offering credit towards graduation.

In Opinion No. 2147, in referring to married pregnant students, I said:

> "As to the question of barring married pregnant students, the situation is no different. Pregnancy can hardly be considered anything but a natural corollary to the married state, and it would not appear consistent with public policy to *punish* lawfully *married* persons who become pregnant * * *."

While pregnancy is a natural corollary to the married state, pregnancy in an unmarried student obviously presents a different situation. Where the unmarried student is concerned, the board of education might reason-

ably consider that the presence of the student could create an adverse effect on the morale of the student body, and might interfere with the proper discipline and government of the students. In such a case, I would consider it within the discretion of the board to adopt a rule barring such unmarried pregnant students from the activities here concerned, or from other activities of the school for that matter.

To conclude, it is my opinion and you are advised:

1. Under the rule-making powers of Sections 3313.20 and 3313.47, Revised Code, a board of education may not adopt a regulation automatically prohibiting attendance of married students, or married students who become pregnant, at activities of the school not offering credit towards graduation, but may adopt a rule which would, for the physical safety of the student, require that at an advanced stage of the pregnancy a married pregnant student not attend such activities. (Opinion No. 2147, Opinions of the Attorney General for 1961, issued on April 27, 1961, affirmed and followed.)

2. A board of education may adopt a rule which would prohibit the attendance of all unmarried pregnant students at such activities.

Respectfully,
MARK MCELROY
Attorney General