2147

A BOARD OF EDUCATION MAY NOT ADOPT A REGULATION PROHIBITING THE ATTENDANCE OF MARRIED, OR PREGNANT WHEN MARRIED, STUDENTS.

A BOARD OF EDUCATION MAY ADOPT A RULE WHICH WOULD REQUIRE STUDENTS IN ADVANCE PREGNANCY NOT TO ATTEND SCHOOL—IN CASES IN WHICH THERE WOULD BE A DANGER TO THE STUDENT'S PHYSICAL HEALTH.

A BOARD OF EDUCATION MAY ASSIGN A TEACHER TO HOME INSTRUCT PREGNANT STUDENTS WHO ARE NOT ALLOWED TO ATTEND CLASS.

SYLLABUS:

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.

Columbus, Ohio, April 27, 1961

Hon. Thomas E. Ray, Prosecuting Attorney
Morrow County, Mt. Gilead, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads as follows:

> "Please furnish this office an opinion as to the following questions.

"1. May a local school board adopt regulations prohibiting the attendance of all students under 18 years of age who become married.

"2. May the school board prohibit the attendance of all *married* students who become pregnant.

"3. May the school board expend monies for home instruction of pregnant girls, whether married or unmarried."

I have been unable to locate any specific precedent in the matter about which you request an opinion. While it would appear that this question has never been resolved in a reported case, I believe an answer may be found in the school statutes of Ohio as interpreted by the Supreme Court

Unquestionably, a local board of education has the power to adopt rules and regulations for the government of the schools under its jurisdiction. Section 3313.47, Revised Code, reads in part as follows:

"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. * * *"

In the exercises of these powers, boards of education have been granted a wide area of discretion with which the courts generally will not interfere in the absence of an abuse of this discretion. *Board of Education, v. State, ex rel. Goldman,* 47 Ohio App., 417. A board of education also certainly has the power to suspend a pupil for disobedience of the lawful rules and regulations it has adopted for the government of its schools. *Sewell, v. Board of Education,* 29 Ohio St., 89.

The question which you have presented, however, is whether the adoption by a local board of education of a regulation prohibiting attendance of married students or married, pregnant students, is an abuse of the discretion vested in such boards of education to adopt lawful rules and regulations for the governments of the schools.

Section 3321.01, Revised Code, establishes a compulsory school age. This Section reads as follows:

"A child between six and eighteen years of age is 'of compulsory school age' for the purpose of Sections 3321.01 to 3321.13, inclusive, of the Revised Code; but the board of education of any district may by resolution raise the minimum compulsory school age of all children residing in the district to seven, subject to subsequent modification to six; and the compulsory school age of a

child shall not commence until the beginning of the term of such schools, or other time in the school year fixed by the rules of the board of the district in which he resides.

"The parents, guardians, or other persons who have the care of a child of compulsory school age shall instruct him, or cause him to be instructed as provided in such sections, unless he is employed on age and schooling certificate, or shall have been determined to be mentally incapable of profiting substantially by further instruction."

Section 3321.02, Revised Code, establishes the coverage of school attendance laws as follows:

"Every child actually resident in the state shall be amenable to the laws relating to compulsory education, and neither he nor the person in charge of him shall be excused from the operation of said sections or the penalties under them on the ground that the child's residence is seasonal, that the parent of the child is a resident of another state, or that the child has attended school for the legal period in another state."

Section 3321.03, Revised Code, makes school attendance laws compulsory as follows:

"Every child of compulsory school age who is not employed under an age and schooling certificate and has not been determined to be incapable of profiting substantially by further instruction shall attend a school which conforms to the minimum standards prescribed by the state board of education, under the conditions prescribed by law."

Section 3321.04, Revised Code, is the compulsory attendance law which reads, in part, as follows:

"Every parent, guardian, or other person having charge of any child of compulsory school age who is not employed under an age and schooling certificate and who has not been determined to be incapable of profiting substantially by further instruction, must send such child to a school, * * *"

This section also lists certain conditions under which excuses from future attendance from school may be granted by the local board of education. The only condition which could conceivably be applicable is the following:

"* * * * * * * * *

"(1) That his bodily or mental condition does not permit his attendance at school during such period;

"* * * * * * * * *"

The above-noted statutes indicate a strong mandate by the General Assembly that each child in this state, regardless of domestic position, shall receive an education in a public school or its equivalent. While no reported case indicates a judicial interpretation of these statutes as far as the rules you suggest are concerned, the Supreme Court of Ohio did have occasion to consider the relationship between a married student and a public high school education. In *State, v. Gans,* 168 Ohio St., 174 (1958), the Court upheld a conviction of parents for acts tending to cause the delinquency of their minor child in that the parents had consented to a West Virginia marriage of this child, age 11. At page 180, the Court reasoned as follows:

> "After providing, in Section 3321.01, Revised Code, that 'a child (male *or female*) between 6 and 18 years of age is of "compulsory school age," ' the General Assembly, in Section 3321.03, went on to provide that *'every child of compulsory school age* who is not employed under an age and schooling certificate and has not been determined to be incapable of profiting substantially by further instruction *shall attend a school* which conforms to the minimum standards prescribed by the state Board of Education, under the conditions prescribed by law.'
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> "The General Assembly then stated, in Section 3321.04, that it is the duty of every parent to see that a child between 6 and 18 does in fact attend school unless excused therefrom for one or more of the reasons set out in the latter part of the statute. *A close examination of those reasons fails to disclose that marital duties, such as house cleaning, cooking, washing, caring for infants, etc., are among them.*
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> "These sections of the Code exemplify another public policy of this state, which is that our free civilization in this country and in this state will maintain itself and advance only as its members become educated so as to be able to add their knowledge to that of their forefathres and thus progress.
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> "* * * * * * * * *
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> "The court notes that a high school education is an absolute prerequisite to obtaining most jobs nowadays, and that it is most likely that Kay will need or want a job at sometime in the future.
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> "These are obviously the reasons for the public policy of this state regarding compulsory school attendance, as set out in Chapter 3321 of the Revised Code, and we are in wholehearted agreement therewith." (Emphasis added)

It may thus be seen that the Supreme Court felt that marriage would not constitute a valid reason for failing to attend school in compliance with the compulsory attendance laws. From this it may be reasonably concluded that if a child may not use marriage as an excuse to avoid the compulsory attendance law the public policy of the State of Ohio requiring a basic education for each of its children may not be frustrated by a rule of a local board of education adopting the same circumstances as a bar to further education. This exact question has been considered in other jurisdictions. In *McCloud, et al., v. State, ex rel. Miles,* 122 So. 737, the Mississippi Supreme Court held that an ordinance adopted by school trustees barring married persons, otherwise eligible, from public schools was arbitrary, unreasonable and constituted an abuse of discretion. That Court reasoned as follows:

> "The compulsory education provision of the School Code, and the other provisions above set out, should be construed together. So construed, they do not mean that a child is entitled to attend a public school regardless of his conduct, but, on the contrary, that it is subject to such reasonable rules for the government of the school as the trustees thereof may see fit to adopt.
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> "* * * * * * * * *
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> "The question, therefore, is whether or not the ordinance in question is so unreasonable and unjust as to amount to an abuse of discretion in its adoption. No case directly in point is referred to in the briefs. The ordinance is based alone upon the ground that the admission of married children as pupils in the public schools of Moss Point would be detrimental to the good government and usefulness of the schools. It is argued that marriage emancipates a child from all parental control of its conduct, as well as such control by the school authorities; and that the marriage relation brings about views of life which should not be known to unmarried children; that a married child in the public schools will make known to its associates in schools such views, which will therefore be detrimental to the welfare of the school. 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, furthermore, it is commendable in married persons of school age to desire to further pursue their education, and thereby become better fitted for the duties of life. And they are as much subject to the rules of the school as unmarried pupils, and punishable to the same extent for a breach of such rules.

> "We are of opinion that the ordinance in question is arbitrary and unreasonable, and therefore void."

The soundness of this reasoning commends it to our consideration. 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.

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. I do not deny the probability, however, that at some stage of the pregnancy different factors may be involved. The typical rough-and-tumble characteristics of children in high school might present a danger which a pregnant spouse or a board of education might wish to avoid. Thus, regulation of such a stage of pregnancy where the bodily condition of the child is an important element would appear to be permissible, provided, of course, it is confined to *protecting* the child at an advanced state of pregnancy and not as an unwarranted and abusive punishment.

As to payment for home instruction of pregnant students, this category would apparently not fall within the statutory authorization for special classes. Under Chapter 3323., Revised Code, special classes are limited to the deaf, blind, slow learners or crippled. These are defined in Section 3323.03, Revised Code, as follows:

> "Any person of sound mind who, by reason of defective hearing or vision or by reason of being so crippled as to be physically unable to properly care for himself without assistance, cannot properly be educated in the public schools as other children, shall be considered deaf, blind, or crippled within the meaning of Sections 3323.01 and 3323.08 of the Revised Code. Persons with partial hearing or partial vision may also be instructed under such sections and under Section 3323.02 of the Revised Code."

The only statute expressly covering home instruction is Section 3323.05, Revised Code, which only applies to crippled children physically unable to travel to school, a section obviously inapplicable here.

Section 3319.08, Revised Code, authorizing teacher contracts reads, in part, as follows:

> "The board of education of each city, exempted village, and local school district shall enter into contracts for the employment of all teachers and shall fix their salaries which may be increased but not diminished during the term for which the contract is made, except as provided in Section 3319.12 of the Revised Code. Such boards may include in such contract duties beyond the regular duties and for such additional duties the salary of the teacher may be supplemented. Such boards may discontinue at any time the assignments of special duties beyond the regular classroom teaching duties and the supplemental salary allowed for such additional duties shall be discontinued upon relief from such additional duties. * * *"

It would appear possible for a local board of education to assign to a teacher the extra duty of home instruction of a female student in an advanced stage of pregnancy. This would be a temporary extra duty for which a teacher could be compensated, but it could not constitute a special class within the meaning of that term in Chapter 3323., Revised Code, for which credit would be given under the school foundation program.

It is, therefore, my opinion and you are accordingly advised:

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.

Respectfully,
MARK MCELROY
Attorney General