OPINION NO. 68-061

Syllabus:

A board of education may not exclude from school an unmarried pregnant student, unless school attendance would be detrimental to her physical safety and well being.

To: Neil M. Laughlin, Licking County Pros. Atty., Newark, Ohio
By: William B. Saxbe, Attorney General, April 1, 1968

I have before me your request for my opinion on the following question:

> "Recently this office received a written request to render an opinion as to the right of the school board of a school district to exclude from school an unmarried pregnant girl.
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> "* * * * * * * * *"

The authority to expel a student from a public school is contained in Section 3313.66, Revised Code, which provides:

> "The superintendent of schools of a city or exempted village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall within twenty-four hours after the time of expulsion or suspension, notify the parent or guardian of the child, and the clerk of the board of education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the board may hold the hearing in executive session but may act upon the expulsion only at a public meeting.

The board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester."

Of course expulsion of students must be considered in light of the compulsory school attendance law. Section 3321.01, Revised Code, provides in part:

"A child between six and eighteen years of age is 'of compulsory school age' for the purposes of Section 3321.01 to 3321.13, inclusive, of the Revised Code."

In the past this office has considered other aspects of the problem of pregnant students in public schools. A review of those opinions can serve as a foundation for the answer to your question.

In Opinion No. 120, Opinions of the Attorney General for 1963, I stated:

"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."

This opinion dealt with the power of the board of education to restrict and control the extra-curricular activities of an unwed student mother.

One of my predecessors considered another facet of this problem in Opinion No. 2998, Opinions of the Attorney General for 1962, which states in the 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."

In Opinion No. 2998, supra, the then Attorney General stated:

"While pregnancy is a natural corollary to the married state, pregnancy of an unmarried student obviously presents a different situation. Where the unmarried student is concerned, the board of education might reasonably consider that the presence of the student could create an adverse effect on the moral (sic) 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."

Again, in Opinion No. 2147, Opinions of the Attorney General for 1961, this office stated in the 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."

Thus it has been established that a school can control and restrict the extra-curricular activities of a pregnant student. Now let us consider the compulsory school law.

Section 3321.03, Revised Code, provides:

"Except as provided in this section, the parent, guardian, or other person having the care of a child of compulsory school age which child has not been determined to be incapable of profiting substantially by further instruction shall cause such child to attend a school which conforms to the minimum standards prescribed by the state board of education for the full time the school attended is in session, or shall otherwise cause him to be instructed in accordance with law. Every child of compulsory school age who 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 unless one of the following occurs:

"(A) The child receives a diploma granted by the board of education or other governing authority indicating such child has successfully completed the high school curriculum.

"(B) The child receives an age and schooling certificate as provided in section 3331.01 of the Revised Code.

"(C) The child is excused from school under standards adopted by the state board of education pursuant to section 3321.04 of the Revised Code."

The compulsory attendance law, Section 3321.04, Revised Code, states:

"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, which conforms to the minimum standards prescribed by the state board of education, for the full time the school attended is in session, which shall not be for less than thirty-two weeks per school year. Such attendance must begin within the first week of the school term or within one week of the date on which the child begins to reside in the district or within one week after his withdrawal from employment.

"Excuses from future attendance at or past absence from school may be granted for the causes, by the authorities, and under the following conditions:

"* * * * * * * * *

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

"* * * * * * * * *"

Compulsory education guidelines are discussed by the Supreme Court in State v. Gans, 168 Ohio St. 174, page 180:

> "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 forefathers and thus progress.
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> "We do not mean to imply that a high school education provides a modern person with world-shaking tools of knowledge such as those of the scientists who work with atomic energy. It seems beyond argument to this court, however, that a child who is not at least exposed to his own potentialities by a high school education (that contemplated by the statutes here under consideration) can hardly be expected to realize his potential either to himself or to his community, regardless of his basic or natural intelligence.
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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."

Thus it is readily apparent that compulsory education is

mandatory. The only exceptions are statutory and pregnancy is not an exception per se, although it may be a factor contributing to the physical safety of the student.

Therefore, it is my opinion and you are hereby advised that a board of education may not exclude from school an unmarried pregnant student, unless school attendance would be detrimental to her physical safety and well being.