SCHOOLS: Marriage of pupil is not grounds for dismissal.

May 13, 1949

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Honorable Hubert Wheeler
Commissioner of Education
State Department of Education
Jefferson City, Missouri

Dear Mr. Wheeler:

This department is in receipt of your request for an official opinion which reads as follows:

> "Do the laws of this State authorize boards of education to establish such rules for the regulation and control of the schools which would deny students who are under twenty years of age the privilege of attending school and receiving proper credits after they have married?"

Section 1(a), Article IX of the Constitution of Missouri, 1945, provides that:

> "* * * the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law. * * * ."

Section 10340, R.S. Mo. 1939, provides, in part, as follows:

> "The board shall have power to make all needful rules and regulations for the organization, grading and government in their school district * * *. They shall also have the power to suspend or expel a pupil for conduct tending to the demoralization of the school, * * * ."

Under the provisions of the above statute a school board may make all needful rules and regulations for the government and conduct of the school, and may expel any

pupil who violates such rules and regulations. However, it has been uniformly held in this state that, in order for a board to expel a pupil for violation of a rule, the rule must be reasonable. Wright vs. Board of Education of St. Louis, 295 Mo. 466, 246 S.W. 43; King vs. Jefferson City School Board, 71 Mo. 628.

We must, therefore, determine whether a rule of a school board that provides that the marriage of a pupil is grounds for expulsion is a reasonable rule. The general rule is stated in 47 Am. Jur. 412, as follows:

> "* * * However, a pupil may not be excluded from school because married, where no immorality or misconduct of the pupil is shown, nor that the welfare and discipline of the pupils of the school is injuriously affected by the presence of the married pupil."

The identical question was presented in McLeod vs. State ex rel. Miles, 122 So. 737. This case, as was stated in 63 A.L.R. 1164, "is the only case found, either American or British, involving an attempt to exclude a pupil from a public school upon the ground of marriage; ."

Upon a set of facts identical with that presented in your request, the Supreme Court of Mississippi said in the McLeod case:

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

The Supreme Court of Missouri in passing upon the reasonableness of a rule of the Board of Education of the City of St. Louis, which provided that the marriage of any lady in the employ of the board is considered as a resignation and no married woman is to be appointed to a position, held: "Our conclusion is that the board's rule requiring the removal of women teachers solely on the ground of marriage is unreasonable and arbitrary and violated the intent of the then applicable statute." (State ex rel. Wood vs. Board of Education of City of St.Louis, 206 S.W. (2d) 566, l.c. 568).

Therefore, it would appear that a rule of a school board which provides that a pupil may be expeled on the sole grounds that said pupil married during the time he or she was a pupil is arbitrary and unreasonable, and that such a ground is not a proper one in order to allow the board to expel the pupil.

CONCLUSION

It is, therefore, the opinion of this department that a rule and regulation of a school board which denies

students under the age of twenty years the privilege of attending school and receiving proper credits after they are married is arbitrary and unreasonable and it is not within the power of the board to make such a rule.

Respectfully submitted,

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APPROVED:

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