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Schools and School Districts - Rules and Regulations - Reasonableness and Validity

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waters. Free access to the surface of the lakes of Minnesota is desirable if the development of trade common to such areas is to be exploited.[16]

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SCHOOLS AND SCHOOL DISTRICTS — RULES AND REGULATIONS — REASONABLENESS AND VALIDITY. — The Board of Education, prior to the 1958 school term, adopted a rule which barred married high school students from participating in co-curricular activities. In a mandamus proceeding by the parents of married high school students to compel the board of education to allow the students to play football, the trial court held that the defendant school district did not violate the statute guaranteeing to all students an equal right to public educational facilities. The Supreme Court of Michigan, in a 3, 1, 4 decision, *held* that the judgment be affirmed. Four judges supported the contention that the rule, which is admitted to be punitive, is violative of public policy in attacking the married status of these students as "wrongdoing". Three judges contended public policy does not favor marriages when consummated under the ages of twenty-one for the male and eighteen for the female, and that the rule is reasonable as being within the general discretionary powers of the school board. The remaining judge affirmed the decision but only on the ground that the question was moot. *Cochrane v. Board of Ed. of Mesick Consol. Sch. Dist.*, 103 N.W.2d 569 (Mich. 1960).

As a general rule decisions of school boards affecting the good order and discipline of the school are final when they relate to the right of pupils to enjoy school privileges.[1] Courts are not concerned with errors of judgment,[2] but the reasonableness of regulations is a question of law for the courts despite the presumption that such regulations are a reasonable exercise of discretion.[3] Whether a rule is reasonable is subject to inquiry by the courts,[4] and they may compel, by mandamus, the directors of a school to admit a pupil unlawfully excluded.[5]

It has been held that to expell a student from school because of marriage is an abuse of a school board's discretionary power.[6] There is no doubt a student may be punished for a breach of discipline, or for an offense against good morals, but not for innocent acts.[7] An act penalizing the conduct of

16. Duval v. Thomas, 114 So.2d 791, 795 (Fla. 1959) Wherein the count took judicial notice of "tourism" and calculated that immeasurable damage would result if guests were restricted to fishing and swimming only in the waters within a host's property lines; State v. Adams, *supra* at note 8.

1. See Batty v. Board of Education, 67 N.D. 6, 269 N.W. 49, 50 (1936).

2. See *e. g.*, State v. Walker, 88 Ga. 413, 76 S.E.2d 852, 855 (1953).

3. Burkitt v. School Dist. No. 1, Multonomah County, 195 Ore. 471, 246 P.2d 566, 576 (1952)

4. Kinzer v. Directors of Independent School Dist., 129 Iowa 441, 105 N.W. 686, 687 (1906).

5. Perkins v. Ind. School Dist. of West Des Moines, 56 Iowa 476, 9 N.W. 356 (1880).

6. Nutt v. Board of Education, 128 Kan. 507, 278 Pac. 1065 (1929); McLeod v. State, 154 Miss. 468, 122 So. 737 (1929). *But see,* State v. Marion County Board of Education, 202 Tenn. 29, 302 S.W.2d 57, 58 (1957) (married student was expelled for remainder of term with the right to return the following term); Kissick v. Garland Independent School District, 330 S.W.2d 708 (Tex. Civ. App. 1959) (Practically the same factual situation was evident in this case as in the instant case. The court found that restricting the privileges of a married student was not an abuse of discretion).

7. Perkins v. Ind. School Dist. of West Des Moines, 56 Iowa 476, 9 N.W. 356 (1880). See also 35 Cyc. 1135, ". . . it has been held that a rule is not reasonable which will deprive a child of school privileges except as a punishment for a breach of discipline or an offense against good morals . . ."

students in state institutions, which conduct has no relation to the welfare of the institution, has also been held to be unreasonable.[8]

It is true that state statutes generally restrict the marriages of males under twenty-one and females under eighteen by requiring the consent of their parents prior to the issuance of a marriage license,[9] but this restriction does not necessarily mean that public policy disfavors such marriages after consumation.[10] A few states have even shown favoritism towards minors after marriage by extending their legal rights.[11]

A consummated marriage contract subjects the parties to the most important of social institutions, and the public policy which supervenes to maintain a marriage is correspondingly strong.[12]

It is evident that a school board should only penalize when a breach of discipline or good morals has occured. Neither such breach has occured in this instance, yet the school board has undoubtedly passed a punitive regulation. It is very questionable whether the welfare of the school will be endangered, and also whether the penalty was prescribed with the "good" of the school in mind. Furthermore, it seems a marriage once entered into should be, and is, favored by public policy. The view point has been expressed that school board members often yield to various social forces in a community in suppressing educational freedom.[13] Such seems to be the case here.

SERGE H. GARRISON.

SOCIAL SECURITY — UNEMPLOYMENT COMPENSION — IS CONSCIENTIOUS OBJECTION TO SIGNING A LOYALTY OATH GOOD CAUSE FOR REFUSAL OF SUITABLE EMPLOYMENT? — Plaintiff, who was receiving benefits from the California Unemployment Commission, was disqualified for refusing to accept employment with a county agency because he conscientiously objected to a loyalty oath required of all California civil servants. Plaintiff maintained that this was good cause for refusal. The Supreme Court of California *held,* two justices dissenting, that when an applicant declines to take an oath and states his own conscientious objection to the taking, and there is no finding that his stated objection is a sham for the purpose of avoiding work or is otherwise false, the applicant may not be denied such unemployment insurance benefits as would otherwise be payable. *Syrek v. California Unemployment Insurance App. Bd.,* 354 P.2d 625 (Calif. 1960).

All of the states in this country have some system of unemployment com-

8. Gentry v. Memphis Federation of Musicians, 177 Tenn. 566, 151 S.W.2d 1081 (1941) (It was found that the act in question disavowed any purpose to promote discipline or benefit the school). In the present case only one school board member, when questioned, mentioned that action was taken for the "good" of the school and this was in reply to a leading question.

9. See, *e. g.,* N.D. Rev. Code § 14-0302 (1943) ". . . If the male is under the age of twenty-one years, or the female under the age of eighteen years, a marriage license shall not be issued without the consent of the parents or guardian, if there are any."

10. See *In re* Anonymous, 32 N.J. Super. 599, 108 A.2d 882, 887 (1954) ". . . the purpose of the statute is to discourage child marriages and to protect children from the consequences which a binding marriage involves."

11. See 41 Iowa L. Rev. 436 (1956) "Whatever effect marriage has on minority in Iowa is based on section 599.1 of the 1954 Iowa Code, which provides that 'the period of minority extends to the age of twenty-one years, but all minors attain their majority by marriage' . . ." Other states with similar statutes are Florida, Kansas, Louisiana, and Utah.

12. Gress v. Gress, 209 S.W.2d 1003 (Tex. Civ. App. 1948).

13. 59 Yale L.J. 929, 930 (1950).