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Schools and School Districts - School Discipline - Reasonableness and Validity

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ment of such a line of contact is essential to the determination of the rights of the parties[27].

In the instant case, the court appears to have correctly applied the law. While it is true that land was restored to the location of that lost, the restoration was the result of accretion to the island, which was formed initially in the bed of the Missouri River, title to which was by statute vested in the state.

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SCHOOLS AND SCHOOL DISTRICTS — SCHOOL DISCIPLINE — REASONABLENESS AND VALIDITY — The principal of a public school promulgated the following rule: "No one while in school shall be allowed to enter the restaurant of Mr. Russell or any other business establishment in the town from 8:15 A.M. until 3:00 P.M. without permission." Children who lived near the school were permitted to go home for lunch upon request of their parents. All other students were required to eat in the school operated lunch room, which fed indigent pupils without charge. Appellee, who had two children in school, persisted in taking them or allowing them to go to Mr. Russell's cafe for lunch. The two children were suspended from school, but were to be automatically reinstated upon compliance with the school regulation. The lower court held the regulation void as being arbitrary and unreasonable, but on appeal it was *held* that the regulation, promulgated within the general discretionary powers of the school authorities, was neither unreasonable nor arbitrary, and appeared to be for the common good of all the children attending the school. *Casey County Board of Education* v. *C. T. Luster,* 282 S.W. 2d 333 (Ky. 1955).

The conduct of students, relating to and affecting the management of a school, is within the proper regulation of school authorities.[1] However, every school regulation must be reasonable,[2] and if so can not be invalidated.[3]

School regulations have been deemed reasonable that regulate the type of clothing to be worn,[4] the use of cosmetics,[5] and the time when pupils can leave the school grounds.[6] Conversely, school regulations have been considered

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27. Waldner v. Blachnik, 65 S.D. 449, 274 N.W. 837 (1937) (Plaintiff who failed to establish the line of contact between island and mainland accretions could not prevail).

1. Kinzer v. Directors of Independent School Dist. of Marion, 129 Iowa 441, 105 N.W. 686 (1906) (dictum).

2. See Richardson v. Braham, 125 Neb. 142, 249 N.W. 557 (1933).

3. Satan Fraternity v. Board of Public Instruction for Dade County, 156 Fla. 222, 22 So.2d 892, 893 (1945) (dictum).

4. Jones v. Day, 127 Miss. 136, 89 So. 906 (1921) (Court held a school regulation reasonable which required pupils in an agricultural high school to wear khaki uniforms while attending school and when visiting public places within five miles of the school).

5. Pugsley v. Sellmeyer, 158 Ark. 247, 250 S.W. 538 (1923) (Court, with one judge dissenting, held a regulation reasonable which prohibited students from using face paint or cosmetics. The court in arriving at its decision considered whether there was any humiliation or oppression to the student and what consumption of time or expenditure was neccessary to comply with it).

6. Christian v. Jones, 211 Ala. 161, 100 So. 99 (1924); Richardson v. Braham, 125 Neb. 142, 249 N.W. 557 (1933) (School rule was upheld that prohibited students from leaving school grounds between 9:00 A. M. and 3:05 P. M. except students who lived close to the school and whose parents requested in writing that they be permitted to go home for lunch).

unreasonable which bar the attendance of married pupils,[7] require school children, under the threat of suspension, to pay for school property carelessly destroyed,[8] allow students to purchase school supplies only from the school,[9] and attempt to regulate extracurricular activities of the students for the profit of another group.[10]

It may be argued that because the right to attend a public school is a political privilege rather than a private right,[11] one cannot be heard to complain of regulations imposed as conditions upon the privilege of attendance. In the light of compulsory attendance statutes[12] however, this oft-repeated tenet has little force when applied to grammar schools.

At least one jurisdiction has stated that the proper tests for determining the validity of school regulations are the power to act and the reasonableness of the action.[13] However, in determining the reasonableness of the regulation the courts will consider such factors as the involvement of any oppression or humiliation to the student and the consumption of time or expenditure of money necessary for compliance.[14] It is therefore obvious that a regulation may be reasonable as applied to the student body as a whole but void as applied in a specific instance. If, for example, it is alleged and proved that a child needs a special type of diet, it would be manifestly unreasonable to force a parent to choose between the health of his child and prosecution under a compulsory attendance statute.[15] The latter is not a mere abstract possibillity, for involuntary non-attendance of a child resulting from a suspension order occassioned by the parent's refusal to adhere to a school regulation cannot be legally justified on the ground that the parent is willing that his child attend school on "other terms".[16]

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7. McLeod v. State, 154 Miss. 468, 122 So. 737 (1929) (Was argued that the marriage relation brings about views of life which should not be known to unmarried children. Court in answering this argument stated that when the relation is entered into with correct motives the effect on the parties is refining and elevating, therefore, a pupil associating with such a party should be benefited rather than harmed).

8. Holman v. School Trustees of Avon, 77 Mich. 605, 43 N.W. 996 (1889) (Court felt that the rule would be reasonable if the injuries committed were done with malice or willfulness. To deem the present rule reasonable may mean indefinite suspension for a poor boy who was financially unable to pay for the injury).

9. Hailey v. Brooks, 191 S.W. 781 (Tex. 1916) (Court implied that the only reason for the rule was to destroy plaintiff's business therefore it was not primarily for the promulgation of school interests, consequently unreasonable).

10. Gentry v. Memphis Federation of Musicians, Local No. 71, 177 Tenn. 566, 151 S.W.2d 1081 (1941) (The act attempted to prohibit bands or orchestras of any public school, college or university from in any way competing with or making unnecessary the employment of civilian musicians. Court stated that the act disavowed any purpose to promote discipline in the State's institutions or otherwise benefit such institutions).

11. Satan Fraternity v. Board of Public Instruction for Dade County, 156 Fla. 222, 22 So.2d 892, 893 (1945) (dictum).

12. See, *e.g.*, Rev. Code of Mont. Ann. §75-2901 (1947); N. D. Rev. Code §15-3401 (1943): "Every parent, guardian, or other person who resides in any school district and has control over any child of an age of 7-14, both inclusive, shall send or take the child to a public school each year during the entire time the public schools of the district are in session. If a child shall not have completed the 8th grade, he shall attend school, if necessary, to complete the 8th grade, until he becomes 17 years of age,"; S. D. Code Ann. §15.3201 (1939); Utah Code Ann. §53-24-1 (1953).

13. Richardson v. Braham, 125 Neb. 142, 249 N.W. 557, 559 (1933) (dictum).

14. Pugsley v. Sellmeyer, 158 Ark. 247, 250 S.W. 538, 539 (1923) (dictum).

15. *E.g.* N. D. Rev Code §15-3401 (1943) (States Attorney shall prosecute any person violating the compulsory school attendance provisions of the code).

16. See Anderson v. State, 84 Ga. App. 259, 65 S.E.2d 848 (1951); People v. Ekerold, 211 N.Y. 386, 105 N.E. 670 (1914) (By-laws were adopted that prohibited attendance at school by a student who had not been vaccinated. Court stated that father who did not believe in vaccination could not refuse to have his child vaccinated and then plead this as a defense to a prosecution under the education law).

It is evident that the validity of a school regulation is dependent on the determination of two factors: First, is it reasonable when applied to the group as a whole? Second, is it reasonable when applied to a particular individual? A negative response to the first inquiry renders the regulatory action totally void, whereas a similar response to the second results only in a partial limitation of the regulation's effective scope. As no special circumstances were alleged by the plaintiff, the decision in the instant case is clearly correct.

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TRADE UNIONS — CONSTITUTIONS AND BY-LAWS — RIGHT TO STRIKE — In an action brought by a local labor union against an employer, the union contended that the employer coerced members and prospective members to leave the local union and join an association which it alleged was not a bona fide labor union by virtue of its inability to strike. A separate action brought by the employer to enjoin picketing of his business establishment by the local union was consolidated for trial. The court *held* that the injunction be issued. The power to strike is not an indispensable attribute of a bona fide labor union. *Culinary Alliance and Hotel Service Employees Local Union* 402 v. *J. R. Beasley*, 286 P. 2d 844 (Cal. 1955).

A labor union is an association of workers organized for mutual help and cooperation, which exists for the purpose of bargaining on behalf of workers with respect to the terms or conditions of employment.[1] All rights, privileges and duties of an unincorporated union and its members and all express or implied powers must be found in the constitution, charter, or by-laws.[2] The constitution denotes the contract between member and union and also the contract between members and other members.[3] When one signs as a member he is bound by the union's laws unless they involve a surrender of personal or constitutional rights or contravene public policy.[4] The constitution may, for example, impose fines for tardiness, absence, failure to pay dues, or misconduct affecting the organization or its members,[5] and these penalties will be enforced where only the rights of the union and its members are involved.[6] Legal sanction has been given to rules made in good faith prohibiting union men from working with non-union men,[7] preventing union members from working for one who has broken a union contract,[8] and forbidding union members to

1. Restatement, Torts, §778 (1939).
2. Amalgamated Clothing Workers v. Kisen, 174 Va. 229, 6 S.E.2d 562 (1940).
3. Government and Civic Employees Organizing Committee v. Windsor, 262 Ala. 285, 78 So.2d 646 (1955); Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So. 810, 823 (1944) (dictum).
4. Bires v. Barney, 277 P.2d 751 (Ore. 1954); Allen v. Southern Pacific Co., 166 Ore. 290, 110 P.2d 933 (1941).
5. Willcutt and Sons Co. v. Bricklayers' Benevolent & Protective Union, 200 Mass. 110, 85 N.E. 897, 901 (1903) (dictum); United Brotherhood v. Carpenters Local Union 14, 178 S.W.2d 558, 567 (Tex. 1944) (dictum).
6. Martin, The Modern Law of Labor Unions, §150, at 206, 207 (1910).
7. Reinforce, Inc. v. Birney, 308 N.Y. 164, 124 N.E.2d 104, 106 (1954) (dictum). "But if the acts of unions have any reasonable connection with wages, hours of employment, health, safety, the right of collective bargaining, or any other condition of employment or for the protection from labor abuses, then the acts are justified".
8. Kingston Trap Rock Co. v. International Union, 129 N.J. 570, 19 A.2d 661, 665 (1941) (dictum).