

Opinion No. 42-4134

August 10, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Grace J. Corrigan Superintendent of Public Instruction Santa Fe, New Mexico

{*229} In your letter of August 6 you propound the following question to us. I quote from your letter: "Does the State Department of Education or a local governing Board of Education have legal authority to exclude from school students who marry during the school term?"

The governing authorities of a public school are vested with the power to make reasonable rules and regulations governing the student body, etc. Whether a rule or regulation is reasonable and valid is a question of law which will be decided by the Courts. This seems to be well settled in *Zucht vs. San Antonio School Board* 170 S. W. 840.

I have found one case in which the Supreme Court of Kansas denied the authority of the Governing Body of a High School to exclude therefrom a female student merely because she was married. *Nut vs. Board of Education of the City of Goodland* 278 Pac. 1065. In arriving at this decision, the Supreme Court of Kansas had the following to say:

"There is no controversy as to a minor being entitled to an education in the public schools. The question of her statutory right to enter school is not questioned provided, of course her moral standards are not objectionable. The constitutional and statutory right of every child to attend the public schools is subject always to reasonable regulation, and a child who is of a licentious or immoral character may be refused admission. As a general rule the power of expelling a pupil is in the school board, which has the power of controlling and governing the school. * * *"

In view of the foregoing case, which I believe reflects the overwhelming weight of authority, I conclude that neither the State Board of Education nor the local governing body of a public school in the State of New Mexico may exclude from its student body any minor student merely because such student may be married. Any such attempt by the governing authorities of a public school, or any rule which they might adopt along such lines, would, in my opinion, be unreasonable and subject to attack in the courts. Of course, if a minor student should marry and should also be of a licentious or immoral character, than they could, in my opinion be excluded; otherwise not. So far as the writer is aware, there is nothing immoral or licentious in getting married.

By HOWARD F. HOUK,

First Asst. Atty General