

1963

James H. Starkey and James Harold Starkey v. Board of Education of Davis County School District : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

FILED

JAMES H. STARKEY and
JAMES HAROLD STARKEY,
for himself and for all other
persons similarly situated,

Plaintiff and Appellant,

— vs. —

BOARD OF EDUCATION
OF DAVIS COUNTY SCHOOL
DISTRICT,

Defendant and Respondent.

APR 9 1903

State Supreme Court, Utah

Case
No. 9897

RESPONDENT'S BRIEF

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JAMES H. STARKEY and
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— vs. —

BOARD OF EDUCATION
OF DAVIS COUNTY SCHOOL
DISTRICT,
Defendant and Respondent.

Case
No. 9897

RESPONDENT'S BRIEF

THE FACTS

The factual situation represented by the Respondent is substantially as follows:

The Board of Education of Davis County School District is the governing body of said District which composes all of Davis County, Utah. The County lying as it does between Salt Lake and Ogden, the two most populous cities of the state, has many residents who work

outside the County. However, the residence of such families adds tremendously to an already Federally Impacted Area. The result of its geographical location and the important military bases located therein has created an enormous pupil growth in the past decade.

This burgeoning growth has increased, emphasized and aggravated the social and moral problems inherent in the administration, regulation, education and discipline of this vast number of pupils. One of the most serious problems is early school age marriages with the attendant "Drop Outs" and the problems necessarily involved in the comingling of married students with single teenagers together with the social and moral phases incident to this mixed relationship.

Recognizing these problems the Board of Education after prolonged study and consultation (R. 48) passed the Resolution in question. Counsel for appellant quoted only an excerpt from said Resolution which they deem to be pertinent to this issue. The entire Resolution should be read as a whole to understand fully the reasoning and thinking of the Board as to the basis for passing said Resolution. It should not be read piecemeal as suits the purpose of appellant. The Resolution in its entirety is as follows:

"Recently considerable concern has been expressed to the Board of Education relating to the influence of married students attending school with other students. Since occasionally married students have become the most prominent members of athletic teams and have held student body and class offices, a kind of glamour might be associated with such a marriage which may have the

effect of lending encouragement to young marriages. Furthermore, when students assume the responsibilities of marriage and parenthood, they represent a different culture and maturity from those of the unmarried students. As these students move from the society of the single to that of the married their new social interest and change of life patterns are so drastically different as to make it seem unwise and incompatible to leave them in positions of leadership among the unmarried students. Such time as they have free from their studies should logically be used in home-planning and income-earning responsibilities, instead of being involved in the activities with unmarried members of the student body.

“The members of the Board of Education feel an obligation to employ all efforts to discourage early marriage. They feel that lines should be drawn and policies established which will focus attention to the fact that our public schools are composed of a young, immature society, all of whom, with an occasional exception, are eighteen years of age or younger.

“The Board of Education hereby resolves that no married student shall be permitted to participate as a student body or class officer, on athletic teams or in those extracurricular activities which are separate and apart from the regular daily class schedules and expectations for graduation requirements, except wherein married students are presently holding office, such students may continue to do so for the remainder of the 1961-62 school year. Furthermore, presently married students may continue in athletics only until the end of the 1962-63 school year. This continued participation in either the holding of office or in activities shall be subject to good behavior and

proper execution of duty as determined by the school officials concerned.

“It is further understood that if any married student fails to conform to the proper standards of citizenship, he or she may be dismissed immediately.

“It is further resolved that a student shall not attend school during her period of pregnancy.

“This resolution becomes effective as of the date of passage.

“Dated: January 8, 1962”

Nothing that the student is taking for credit or graduation is affected by the Resolution (R. 42, 45, 46, 49, 52 and 53). Extracurricular activities are carried on outside of regular school hours (R. 50)

The balance of the factual situation is substantially as set forth by appellant under his statement of facts.

ARGUMENT

I.

THIS IS NOT A PROPER CASE FOR REMEDY BY WRIT OF PROHIBITION OR WRIT OF MANDAMUS. EXTRACURRICULAR ACTIVITIES LIE WITHIN THE DISCRETIONARY POWERS OF THE BOARD AND THERE IS NO QUESTION OF LACK OR EXCESS OF JURISDICTION. THE PROCEEDINGS COMPLAINED OF HAVE BEEN COMPLETED AND TERMINATED AND THERE IS NO LAW WHICH SPECIALLY ENJOINS THE PERFORMANCE OF ANY ACT NOW IN ISSUE BEFORE THE COURT.

As a preliminary consideration Respondent respectfully submits that Plaintiff has misconceived his remedy, if any he ever had. Neither of those writs is appropriate to operate in a field where administrative boards are invested with discretionary powers as are here involved. Writs of Prohibition and Mandate operate only within the realm of the absolute, not in the realm of discretion.

The historical nature and function of the Writ of Prohibition has been to arrest proceedings of an inferior court or tribunal wherein they threaten to make determinations upon matters over which they have no jurisdiction. In order for a Writ of Prohibition to be proper it must appear that there is a total want or an excess of jurisdiction, *Yearian v. Spiers*, 10 P. 609, 4 U. 385, and it will not issue to prevent or correct erroneous exercise of matters properly within the jurisdiction of the inferior court or tribunal, *Campbell v. Durand*, 115 P, 986, 39 U. 118; *Atwood v. Cox*, 55 P. 2d 377, 88 U. 437. In an article found at 37 Canadian Bar Review 294, (1959), the author, D. C. M. Yeardley, fellow of St. Edmond Hall, Oxford, states that "The only common and generally recognized ground for Prohibition both in England and Canada is that of defective jurisdiction." See also 42 Am. Jr., Prohibition, Sec. 19.

It is clear that the Legislature has given the local Board of Education the jurisdiction to concern itself with matters such as that now before the Court under the provisions of Section 53-6-20, Utah Code Annotated, 1953, wherein it is stated that "Every Board of Education . . . may do all things needful for the maintenance, prosperity and success of the schools, and the promotion

of education and may adopt by-laws and rules for its own procedure, and *make and enforce all needful rules and regulations for control and management of the public schools of the district*'' (Italics ours). When an inferior court or tribunal is acting within the scope of its jurisdiction a Writ of Prohibition is not a proper substitute and cannot be converted into a Writ of Review, particularly, when there are other plain, speedy and adequate remedies at law available to the applicant as there are in this case, *Oldroyd v. McCrea*, 235 P. 580, 65 U. 142; *Campbell Building Co. v. District Court*, 63 P. 2d 255, 90 U. 552, 42 Am. Jur. 165, Prohibition, Section 30.

In addition to denying a Writ of Prohibition on the Grounds that there is no question of excess or lack of jurisdiction and that there are other plain, speedy and adequate remedies available to Plaintiff, the Writ of Prohibition should be denied on the further ground that it is the office of Prohibition to "arrest the proceedings of any tribunal, corporation, board of person," Rule 65B (b) (4), Utah Rules of Civil Procedure. This statutory provision is in keeping with the judicial concept that the Writ of Prohibition is preventive rather than corrective, and should issue only to prevent the commission of a future act, and not to undo one which has already been performed, *Martineau v. Crabbe*, 150 P. 301, 46 U. 237; *Sheriff v. Board of Commissioners*, 268 P. 783, 71 U. 593. The facts, stipulations and findings now before the Court in this matter clearly reveal that the Board of Education has completed all actions by and through which the Resolution was adopted and applied with respect to Plaintiff

and Writ of Prohibition is therefore an improper remedy in the premises.

It is further submitted on behalf of the Board of Education that a Writ of Mandamus is not a proper remedy for Plaintiff to pursue in the matter now before the Court. Rule 65B (b) (3), Utah Rules of Civil Procedure, requires that Mandamus shall issue only to compel performance of an act which the law specially enjoins as a duty resulting from an office. Mandamus should never be granted in questionable situations, *Snyder v. Emerson*, 57 P. 300, 19 U. 319, and the legal right to require a person, court or tribunal to proceed and the legal duty to do so must be free from doubt, *Hoffman v. Lewis*, 87 P. 167, 31 U. 179; *Haslam v. Morrison*, 190 P. 2d 520, 113 U. 147; *Hamblin v. State Board of Land Commissioners*, 187 P. 178, 55 U. 402; *State v. Moorehouse*, 112 P. 169, 38 U. 324. Where a Writ of Mandamus is sought to compel public officers to do certain acts, the right of the Plaintiff to have the act performed must be clear, and the corresponding duty upon the officer to be required to act must be correspondingly plain and clear, and not open to serious question, *Woodcock v. Board of Education*, 187 P. 181, 55 U. 458, 10 A.L.R. 181; *Towler v. Warenski*, 202 P. 374, 59 U. 171. If the matter sought to be compelled is within the discretionary jurisdiction of the inferior tribunal or board, Writ of Mandamus may issue to compel such board to act on the matter but not to control its jurisdiction while acting or to compel performance in a particular way nor to reverse the judgment when it has been made, *Tuttle v. Board of Education*, 294 P. 294, 77 U. 270; *Hathaway v. McConkie*, 38 P. 2d 300, 85 U. 21. Re-

spondent Board of Education submits that there is no law specially enjoining the Board of Education to provide Plaintiff with extracurricular activity and that this matter is entirely within the discretion of said Board of Education and that Mandamus is not a proper remedy in the premises.

The Board of Education therefore, respectfully submits that upon the reasoning and authority cited above, neither a Writ of Prohibition nor a Writ of Mandamus is a proper remedy for Plaintiff to pursue in the matter now pending before the Court.

II

EXTRACURRICULAR ACTIVITIES ARE PRIVILEGES ESTABLISHED SEPARATE AND APART FROM THE RIGHT TO EDUCATION AND MAY BE ESTABLISHED OR CONDUCTED SOLELY WITHIN DISCRETIONARY POWERS OF THE BOARD OF EDUCATION.

Plaintiff assails what he claims to be Superintendent Holt's definition of "Extracurricular Activities" and then calls that definition "capricious, discriminatory and violative of the Constitution." Plaintiff stands on false ground. We are not in this case to determine whether or not Superintendent Holt's definition of "Extracurricular Activities" is or is not accurate. We are considering the validity of the action of the Board as set forth in the resolution. This court has already, in the *Beard* case, *infra*, decided the nature of extracurricular activities.

Although Superintendent Holt's definition is not determinative of these issues it should be noted that Plaintiff has inaccurately set forth Superintendent Holt's position.

Appellant contends that Superintendent Holt included athletics, Usher Squad and the position of Vice President of the Boy's Association within his definition of extracurricular activities and excluded Band, Debate, A Cappella Choir, Opera and School Plays. An accurate reading of the record clearly shows that Band, Debate, A Cappella Choir, Opera and School Play are activities which are either primarily or entirely carried on in the classroom. As such they are not considered by Superintendent Holt to be extracurricular activities. However, there may be certain facets to these endeavors which may be properly considered as extracurricular activities. For example, the band may play at school games or the A Cappella choir may give an evening Christmas program away from the school. Superintendent Holt makes it clear that students who participate in these endeavors receive their credit toward graduation for the work which they perform in the classroom rather than for the participation in the outside activities (R. 52, 53). Superintendent Holt's testimony shows that when these activities are held as a class they are not considered extracurricular activities (R. 48, 49) and that only those incidental activities held outside the class, and having no bearing on grade or credit, are properly to be considered as extracurricular activities.

In *Beard v. Board of Education*, 16 P. 2d 900, 81 U. 51, this Court recognized the place of extracurricular

activities in a modern school system. In speaking of the establishment of extracurricular activities as desirable supplements to the required school curriculum, this Court stated at page 904:

“These are useful and wholesome preventive measures which save children from delinquency and the state from additional expense in connection with penal institutions. *Such activities, so far as conducted in connection with the school, are usually termed extra curricular activities, for the reason that, while they are necessary in a modern school system, they are in excess of the minimum requirements of a school curriculum.*” (Italics ours.)

In referring to certain sections of the Compiled Laws of Utah, 1917, which used the term “supervised recreational activity,” the Court stated:

“... these are activities which the Board itself *may* inaugurate and make provisions for proper supervision. The term “recreational activity” includes in its general meaning games, sports and plays . . . and dances. All such activities are included within the meaning of the term “entertainment.” *The Board may, but is not required to provide these activities and supervise them in the interest of public morals and welfare.* (Italics ours.)

In determining that it was proper for the Board of Education to permit the establishment of an organized Student Body through which extracurricular activities were organized and administered, the court said at page 906:

“While not required by statute as part of the minimum educational program. . . *it is within the*

power, of the Board of Education to *authorize* and maintain such an organization as one of the required educational activities and as part of the educational system of the district. This it may do pursuant to the provisions of Section (53-6-20, Utah Code Annotated, 1953,) wherein it is empowered "to do all things needful for the maintenance, prosperity and success of the schools and the promotion of education." (Italics ours.)

"The evidence shows that the student body organization was authorized by the Board of Education of the district, and that the constitution adopted by the student body had the sanction and approval of the Board."

Thus, the Court held that the Board of Education *may* allow the establishment of a student body organization through which extracurricular activities *may* be planned and administered and so stated at page 907:

"That the student body organization and proper activities thereof are part of the educational system of the district we think admits of no doubt. The scope of its activity, as indicated by the constitution (referring to the student body constitution), shows a purpose closely related to the school curriculum, *although not required thereby*, and is certainly within what is now regarded by all educators as a modern educational system." (Italics ours.)

The holding of *Beard v. Board of Education* is, therefore, that the local Boards of Education may permit and allow the establishment of extracurricular activities even though such a program is not required to be established. The case further holds that the establishment of such a program is discretionary with the Board

of Education and the Court so indicates at page 909 of its opinion:

“It does not follow, however, that every activity that may be engaged in by the student body is part of the modern educational program. The student may not do more than the Board of Education may authorize or approve, or do anything that is prohibited by law.”

We call the Court’s attention to the following additional portions of this Court’s holding in the *Beard* case which are very pertinent here:

“* * * It is well established that, if the action of the board of education is within the powers conferred upon it by the Legislature, and pertains to a matter in which the board is vested with authority to act, the courts will not review the action of such a board to substitute its judgment for that of the board as to matters within its discretion.

* * * *

“ ‘The courts will not interfere with the exercise of discretion by school directors in matters confided by law to their judgment, unless there is a clear abuse of the discretion, or a violation of law. So the courts are usually disinclined to interfere with regulations adopted by school boards, and they will not consider whether the regulations are wise or expedient, but merely whether they are a reasonable exercise of the power and discretion of the board. Acting reasonably within the powers conferred, it is the province of the board of education to determine what things are detrimental to the successful management, good order, and discipline of the schools and the rules required to produce these conditions. The presumption is always in favor of the reasonable-

ness and propriety of a rule or regulation duly made. The reasonableness of regulations is a question of law for the courts.' ”

* * * *

“The court, in its findings of fact, found that the student body was organized by the students of the school by and with the permission of the board of education ‘for the government of themselves and their carrying on of student social and entertainment activities not contemplated by the school curriculum,’ and that the dances, motion picture shows, lyceum lectures, and musicales, games, and athletic contests about which complaint is made are conducted by the student body, and that a fee is charged for admission to such entertainments, and that no part of the income goes to the school treasury to cover the cost of heating, lighting, janitorial, and other services.” (Italics ours).

“That the student body organization and proper activities thereof are part of the educational system of the district we think admits of no doubt. The scope of its activity, as indicated by the constitution, shows a purpose closely related to the school curriculum, although not required thereby, and is certainly within what is now regarded by all educators as a modern educational system.” (Italics ours.)

The views of *Beard v. Board of Education*, Supra, have been enunciated in other courts of the United States. In *Cochrane v. Board of Education*, 103 N.W. 2d 569 (Michigan, 1960), the Supreme Court of Michigan affirmed the decision of a lower court which had held valid a school resolution prohibiting married students from participating in extracurricular activities. In the affirming opinion of Justice Kavanaugh it was recog-

nized that extracurricular activities may be furnished but that there is no obligation to do so. In speaking of inter-scholastic games, particularly football, Justice Kavanaugh stated:

“Football contests between schools are extracurricular in nature. The right to provide such activity is clearly recognized. Constitutional provisions and statutes giving the right to receive education and physical training cannot properly be said to include inter-scholastic sports as necessary requirements of education.”

The Board of Education recognizes its responsibilities and duty to furnish students with physical education. However, a distinction should be made between physical education included within the curriculum and inter-school or inter-scholastic athletics which are considered extracurricular. The distinction is set forth in *State v. Lawrence Circuit Court*, 162 N.E. 2d 250 (Indiana, 1959) wherein it is stated:

“The difference between physical education or physical training included within the curriculum of public schools and inter-school or inter-scholastic athletics, which are generally considered extracurricular, is discussed in an authoritative opinion by Senator John W. Bricker when he was Attorney General of Ohio . . . from which we quote:

“ . . . in the light of the holding and reasonings of these Courts, I am of the opinion that the term ‘physical education’ which the statutes of Ohio direct shall be included in the curriculum of the public schools of Ohio does not include what is commonly called ‘inter-scholastic athletics’, that is, the play-

ing of games in competition by picked teams representing the several schools. Inter-scholastic athletics is not a proper public school activity within the scope of 'physical education' as the term is used in our statutes."

The Respondent Board of Education makes this same differentiation between physical education and extracurricular activities. The testimony of Superintendent Holt shows that requirements are fulfilled and credit given toward graduation solely on the basis of physical education which is performed during school hours and not for participation in extracurricular athletic activities which take place after the close of school (R. 52).

State v. Lawrence Circuit Court, Supra, held that the right to go to public school and receive education and training does not include the right to participate in inter-scholastic games and the court went on to say in its opinion:

"We believe the foregoing authorities are decisive of the question before us and that the right of Plaintiff under the Indiana Constitution and Statutes to go to the public schools and receive education and training cannot properly be said to include inter-scholastic sports and games, viz: inter-school basketball as may be engaged in between picked teams of the various public, private and parochial schools constituting the membership of relator athletic association."

A similar problem confronted the Supreme Court of Washington in *Wayland v. Board of School Directors*, 86 P. 642, wherein the Board of Education had adopted a rule that all students thereafter becoming members

of any high school fraternity should be denied all the privileges of the high school except those of the classroom. In affirming a decision of the lower court upholding the Resolution of the Board of Education the court said at page 643:

“It will be observed that no attempt is being made by the respondents to deny appellant any instruction afforded by class work or by the required curriculum of the school. He is only denied certain other *privileges* such as participation in *athletic*, literary, military, musical, or *class organization*. In other words, the respondent made it optional with appellant to determine whether, against the known wishes of the school authorities, he would continue his membership in said secret society, and thereby forfeit participation in the privileges above mentioned, which were no part of the class or curriculum, or whether by complying with the adopted rules, he would elect to enjoy the privileges of which he is now deprived.” (Italics ours.)

The Court also stated at page 644:

“Respondents are only seeking to prevent appellant and his associates from dictating the terms on which they shall enjoy certain privileges which are merely incidental to the regular school work, and this they have authority to do.”

Based upon the record and authority referred to herein, Respondent Board of Education submits that extracurricular activities are supplementary to the required curriculum, but that they are not required, and if they are made a part of the curriculum, which these

are not, they would then be made so solely within the discretionary powers of the Board of Education.

Some of the cases cited by appellant are not discussed by us in this brief for the reason that the Court will itself immediately observe that they pertain primarily to racial problems which are not in point here or factual situations unrelated to our issue, or are cited by ourselves in this brief as authorities for the position of Respondent.

III.

IF THE BOARD OF EDUCATION SEES FIT TO INSTITUTE A PROGRAM OF EXTRACURRICULAR ACTIVITIES IT HAS THE DUTY, POWER, AUTHORITY AND JURISDICTION TO EXERCISE ITS DISCRETION IN PROMOTING THE WELFARE AND EFFICIENCY OF THE SCHOOL SYSTEM BY ESTABLISHING RULES AND REGULATIONS FOR THE PURPOSE OF GUIDANCE IN DETERMINING UNDER WHAT CONDITIONS AND CIRCUMSTANCES STUDENTS MAY AVAIL THEMSELVES OF THOSE PRIVILEGES.

The Board of Education of the Davis County School District recognizes the supplementary benefits which may be derived from the institution of a program of extracurricular activities and has seen fit to exercise its discretion in a manner providing for the establishment of such a program. Once such a program is established and these activities provided, it is proper for the board to supervise them in the interest of public morals and welfare. As stated above, Section 53-6-20, Utah

Code Annotated, 1953, gives the Board of Education the power to "do all things needful for the maintenance, prosperity and success of the schools, and the promotion of education; and (to) make and enforce all needful rules and regulations for the control and management of the public schools of this District."

Section 53-14-10, Utah Code Annotated, 1953, provides as follows:

"It shall be the duty of all district boards of education, boards of education of the cities of the first and second class, forums, and classes supported in whole or in part by the state of Utah to provide that persons employed to give instruction and guidance to young people under eighteen years of age, shall so arrange and present their instruction, *guidance and plans for pupil and student thinking, discussion, decision and activity* as shall give special emphasis to common honesty, morality, courtesy, obedience to law, respect for the Constitution of the United States and the Constitution of the State of Utah, respect for parents and home, the dignity and necessity of honest labor and other skills, habits and qualities of character which will *promote an upright and desirable citizenry and which will better prepare our youth for a richer, happier life.* (Italics ours.)

The responsibility of establishing rules and regulation for participation in extracurricular activities is, therefore, properly within the province of the local Board of Education. Should they decide, in the exercise of the discretion vested in them under Section 53-6-20, Utah Code Annotated, 1953, that the prosperity, success and welfare of the schools and the achievement of those

goals set forth in Section 53-14-10, Utah Code Annotated, 1953, can more properly be served and achieved by not allowing married students to participate in these extra-curricular activities, then the Board of Education has exercised the discretion vested in it by the Constitution and Statutes of the State of Utah and People of Davis County and such discretionary determination should not be interfered with by the Courts of this state as was so well stated by this court in the *Beard* case and in many other cases of which the following are a few:

State v. Packer Corporation, 77 U. 500, 297 P. 1013.

Patterick v. Carbon Water Conservancy Dist., 106 U. 55, 145 P. 2d 503.

Hansen v. Public Employees Retirement System, 122 U. 44, 246 P. 2d 591.

The Kent Club v. Toronto, 6 U. 2d 67, 305 P. 2d 870.

Davis v. Ogden City, 117 U. 315, 215 P. 2d 616.

State v. Twitchell, 8 U. 2d 314, 333 P. 2d 1075

Abrahamson v. Board of Rev. of Ind. Comm., 3 U. 2d 289, 283 P. 2d 213.

All education, whether curricular or extracurricular, is, and must be based upon the classification of individuals in accordance with their *past growth and development and their present potentialities* as was stated by this court in the *Kowallis* case, *infra*. No doubt, even plaintiff would agree that during his years in the grade school, Junior High School and High School he was studying and developing, mentally and physically, along

with other individuals of his age who, up until his marriage, had had similar experience as to background and training. The “uniform system” that the Utah Constitution requires, has inherent within it, a demand for classification of the students on the basis of past experience to insure *uniform* instruction to all students in that age group.

Would plaintiff contend that a “uniform system” required that all students be permitted to play baseball regardless of age, sex or aptitude? Would plaintiff contend that a child of tender age should, if he demanded, be permitted to attend the classes given to more mature students with reference to moral problems as encountered during adolescence? The proposition answers itself. There has to be classification of students for study and there likewise should be classification of participants in extracurricular activities. Under the law the Board of Education is vested with exclusive authority to exercise its discretion in determining these classifications and in determining the types of individuals who may qualify for the various activities.

Having exercised its discretion the Court should not disturb the decision unless it is manifestly wrong, unreasonable, arbitrary or capricious.

In dealing with a matter almost identical with that now before the Court, the Supreme Court of Michigan affirmed this principle in *Cochrane v. Board of Education*, Supra, wherein Justice Kavanaugh stated:

“It necessarily follows that those in charge of the school must be allowed to judge and to determine

the propriety of allowing married students to participate in the playing of football on the high school team. It is manifest that those in charge of the schools, and not the Courts, are better qualified to determine when and under what circumstances a student may be allowed to play football under the banner of the high school team.”

It is Respondent's belief that the statutes of the State of Utah referred to above confer upon it the duty, power, authority and jurisdiction to exercise its discretion in the matter now before the court and that said discretion has been properly exercised by the adoption of the Resolution of January 8, 1962 and that the Court should not substitute its discretion for that of the Board of Education. The people of Davis County have seen fit to vest this discretionary power within the Board of Education through the exercise of Democratic election procedures. And any objection to the manner of exercising this discretion may be remedied in that same manner. *Allen v. Board of Education*, 236 P. 2d 756, 120 U. 556.

IV.

THE RESOLUTION OF JANUARY 8, 1962 WAS ADOPTED AS AN EXERCISE OF THE DISCRETION VESTED IN THE BOARD OF EDUCATION BY THE CONSTITUTION AND STATUTES OF THE STATE OF UTAH AND PEOPLE OF DAVIS COUNTY FOR THE PURPOSE OF PROMOTING THE WELFARE AND EFFICIENCY OF THE SCHOOLS WITHIN THE DAVIS COUNTY SCHOOL DISTRICT AND WAS NOT UNREASONABLE, ARBITRARY, CAPRICIOUS OR AN ABUSE OF

THE DISCRETION VESTED IN SAID BOARD.

It has been pointed out by reference to Sections 53-6-20 and 53-14-10, Utah Code Annotated, 1953, that the local Board of Education has been vested with the power, authority, jurisdiction and discretion to contemplate and cope with educational problems and considerations which may arise on a local level.

Whether we adopt the doctrine of John Dewey that the general objective of an education is a well-rounded, happy life in order to get the most out of our existence or the edict of Admiral Hyman Rickover that we must concentrate our education on the sciences necessary to survival, we should agree with *all* educators that one of the major problems of our age is the "Drop Out" of high school students, and one of the prime factors contributing to these "drop outs" is teenage marriages between high school students.

What action should be taken to meet this challenge and who should take the action?

It is one of the most sacred responsibilities of parenthood, but the burden is also cast by statute upon the Board of Education. There is no fixed formula that has yet been devised to control and guide the forces of nature that are turned loose at that age in such great abundance which could enable this Court or any other agency to decree by edict, a solution that either parent or school board *must follow*. Only by the exercise of discretion, judgment and the utmost patience and understanding can the problem even be approached and understood.

Assuming that it is and should be a proper objective of the Board to keep these youths in school, the Board has assumed there are some things that can be done now: (1) Not to permit students who disregard this good advice and marry prematurely to occupy positions of leadership and glamour and to wield great influence in the eyes of other students in the school; and, (2) should students nevertheless fail to heed this warning and advice given for their happiness, that they will then be expected to hang up the toys of childhood and not be lured away from marital and academic responsibilities and duties by the allurements of extracurricular activities that have nothing whatsoever to do with the prescribed courses required for graduation and necessary for a future, well-rounded life. This is in line with the law that makes a married man an adult and yet the Resolution enables him to stay in school until graduation.

This program as established by the Resolution may be halting; it may even be unwise; but it represents the best judgment of the Board on this most difficult subject and is within the discretionary power of the Board and should not be disturbed by this Court.

The Court should not interfere with the exercise of discretion by administrative Boards and Agencies as long as there is a reasonable relationship between the aims and objectives sought to be accomplished and the manner in which the Board of Agency chooses to accomplish those aims and objectives. This principle is succinctly summarized in 47 Am. Jur. 328, Schools, Section 47:

“Since the courts will not interfere with the exercise of discretion by the school directors in mat-

ters confided by law to their judgment, unless there is a clear abuse of discretion or a violation of law, they are usually disinclined to interfere with regulations adopted by school boards and they will not consider whether the regulations are wise or experient, but merely whether they are a reasonable exercise of the power and discretion of the board. The reasonableness of regulations is a question of law for the courts. Acting reasonably within the powers conferred, it is the province of the board of education to determine what things are detrimental to the successful management, good order, and discipline of the schools and the rules required to produce these conditions. The presumption is always in favor of the reasonableness and propriety of a rule or regulation duly made.”

In *Gabrielli v. Knickerbocker*, 82 P. 2d 391, (California, 1938), the Supreme Court of California was called upon to determine the reasonableness of a school regulation requiring students to participate in a ceremony of saluting and pledging allegiance to the flag of the United States. In determining that there was no violation of any article of the Federal or State Constitutions and that the regulation was a reasonable exercise of administrative discretion the Court stated at page 394:

“The legislature has conferred upon school boards broad plenary powers to make all reasonable regulations that will in the reasonable exercise of judgment promote the efficiency of the school system in performing public welfare duties, which are limited not merely to the development of the mind in academic fields, but the sphere is much broader and extends to those subjects which will tend to develop and quicken the civic con-

science in ways of attachment for home and country. It is only where its regulations are clearly shown to be in violation of the fundamental law that the courts, even though entertaining a different opinion from that of the governing boards as to the wisdom or expediency of adopting social regulations, may annul them. Many authorities may be cited sustaining the action of school boards in matters in which the wisdom of the board's action may be so highly controversial that a reasonable mind might well be divided as to the wisdom of the board's action. In such cases, its action is conclusive.

In *State v. Chamberlain*, 175 N.E. 2d 539 (Ohio 1961), the court held that the board of education did not abuse its discretion in adopting a rule requiring pregnant students to withdraw from school and that such exercise was within the wide area of discretion vested in the board of education and the court would not interfere with said exercise of discretion.

In *Kissick v. Garland Independent School District*, 330 S.W. 2d 708, (Texas, 1959) the local board of education had adopted a resolution providing that married students or previously married students should be restricted wholly to classroom work and barring them from participating in athletics or other exhibitions and prohibiting them from holding class offices or other positions of honor other than academic honor such as valedictorian and salutatorian. The Supreme Court of Texas held that such resolution was not arbitrary, nor capricious, nor discriminatory, nor unreasonable as applied to a high school student who was previously married, even though he had been a letterman on the football team in prior years and

was looking to an athletic scholarship and college. In upholding the resolution of the school board the Supreme Court of Texas, in the *Kissick* case referred to a decision of the Supreme Court of Tennessee in *State ex rel. Thompson v. Marion County Board of Education*, 302 S.W. 2d 57 (Tennessee). The Tennessee case involved a local school board which recognized that newly married students generally have a detrimental effect upon unmarried students for a short time following their marriage. In an effort to remedy this undesirable situation the local board passed a resolution providing that students marrying during the term should be excluded from the school for the remaining part of that term, provided, however, that they would be allowed to return to school the next succeeding term. The Supreme Court of Texas referred to that case as follows:

“In upholding this regulation as not amounting to an abuse of discretion the Tennessee Supreme Court made the following observation, with which we agree: ‘Boards of Education, rather than courts, are charged with the important and difficult duty of operating the public schools. So, it is not a question of whether this or that individual judge or court consider a given regulation adopted by the board as expedient. The court’s duty, regardless of its personal views, is to uphold the board’s regulation unless it is generally viewed as being arbitrary and unreasonable. Any other policy would result in confusion detrimental to the progress and efficiency of our public school system.’ ”

Based upon the foregoing texts and authorities, Respondent Board of Education submits that it has the

power, authority, jurisdiction and discretion to adopt and enforce rules and regulations designed to promote the general welfare, success and efficiency of the school system and that the adoption of the Resolution of January 8, 1962 was a reasonable exercise of said discretion and in the best exercise of that discretion the members of the Board of Education deemed its adoption necessary and advisable for the more efficient administration and promotion of the welfare, success and efficiency of the public schools within the Davis County School District.

V.

ADOPTION OF SAID RESOLUTION DOES NOT DENY PLAINTIFF ANY FED- ERAL OR STATE GUARANTEE OF DUE PROCESS OF LAW OR EQUAL PROTEC- TION OF THE LAW.

Article III, Section 4 and Article X, Section 1 of the Constitution of Utah provide that the Legislature shall establish a system of public schools within the state of Utah. Pursuant to these and other constitutional provisions, the Legislature has proceeded to create and establish a system of public schools within the state of Utah. Pursuant to these and other constitutional provisions, the legislature has proceeded to create and establish such schools through the enactment of various statutory provisions found in Title 53, Utah Code Annotated, 1953. The provisions of Title 53 set forth curriculum requirements for the schools within the state of Utah. It should be noted that the Resolution of January 8, 1962 is in no manner at variance with these constitutional and statu-

tory provisions. The Resolution does not in any manner interfere with full and complete participation in the required educational curriculum and fulfillment of graduation requirements (R.53).

A similar resolution was affirmed against the same constitutional attacks in *Cochrane v. Board of Education*, Supra, wherein the Michigan Supreme Court said in the affirming opinion of Justice Kavanaugh: "Plaintiff students were not prevented from obtaining an education. They were merely denied the right to play on the high school football team."

The Supreme Court of Texas held in *Kissick v. Garland Independent School District*, Supra, that a resolution of the school district which provided that married students or previously married students should be restricted *wholly to class room work* and barring them from participating in athletics or other exhibitions and prohibiting them from holding class offices or other positions of honor other than academic honor was not void on the ground that it deprived married high school students of equal protection of the law or due process of law. (Italics ours.) In reaching this decision the Supreme Court of Texas quoted and approved *Board of Trustees of University of Mississippi v. Waugh*, 62 So. 827, (Mississippi, 1913).

The *Waugh* case involved a legislative enactment entitled "An act to abolish and prohibit Greek letter fraternities and sororities . . . among students at the University of Mississippi and all other educational institutions supported in whole or in part by the state." In

order to implement the provisions of this statute the trustees of the University of Mississippi required applicants for admission to sign a pledge that they did not belong to a fraternity and that they would not subsequently join a fraternity. Plaintiff refused to sign such a pledge and was therefore denied admission to the University. He thereafter brought an action alleging violations of the state constitution and the Fourteenth Amendment to the Constitution of the United States. In holding that there had been no abridgment of any constitutional privileges the Court stated at pages 830, 831:

“The Fourteenth Amendment to the Constitution of the United States was never intended to act as an accomplice to any young man who wanted to take advantage of the gratuitous advantages offered the youths to obtain an education, and yet refuse to obey and submit to the disciplinary regulations enacted by the Legislature for the welfare of the institutions of learning. The right to attend the educational institutions of the state is not a natural right. It is a gift of civilization, and benefaction of the law.”

The decision of the Supreme Court of Mississippi was subsequently appealed to and affirmed by the Supreme Court of the United States in *Waugh v. Board of Trustees*, 237 U.S. 589, 35 S. Ct. 720, 59 L. ed. 1131, (1915). On appeal the appellant contended that the statute was void and that its application by the Board of Trustees was invalid because it did not apply equally to all students at the University of Mississippi. The Board of Trustees provided in its order that the statute was not to be construed “to apply to students already entered and who

conduct themselves with that decorum always expected of Southern Gentlemen." The Supreme Court of the United States held that this provision in the order did not render it invalid and that the statute in question was not unconstitutional and affirmed the decision of the Supreme Court of Mississippi which had held there was no violation of constitutional guarantees and particularly no violation of the Fourteenth Amendment the Constitution of the United States. The Supreme Court of the United States answered appellant's contentions as follows:

"This order is assailed by Plaintiff as "a clear discrimination between the 'ins' and the 'outs', between those in the University, and those who were not on that date members of the student body, and who might be desired to be admitted as such." The contention is made much of by counsel and the order is denounced as irrational and arbitrary. But counsel overlook that it is an obvious principle of construction, and sometimes of justice, that laws are not to be construed retrospectively. The trustees regarded and followed the principal and left undisturbed the students already in the University, admonishing, however, that their honor right or indulgence. And whether it was a right or an indulgence, it was based on an obvious and rational distinction, and the Supreme Court (of Mississippi) sustained its competence.

In reaching this decision the Court recognized that however laudible and commendable were the aims and objectives of the fraternal organizations, it was still a matter within the discretion of the legislature and trustees as to how they wished to deal with them.

There is inherent in our governmental system, a repugnance to adopting any rule, regulation, statute or ordinance affecting the rights or status of individuals retrospectively. It is the very basis of good government that all such enactments shall operate prospectively, i.e. upon those who thereafter act in derogation of newly established policies.

While there are no rights involved in this rule relating to those who aspire to be student officers or to wrestle on the school team, there was involved a proper example for the Board of Education to exemplify governmental procedure; and the Board was wholly justified in distinguishing between those who take an action affecting their eligibility with full knowledge as to what the result will be and those who have already taken the step when it would not affect their eligibility.

In drawing a parallel between the *Waugh* case and the matter now before the Court, it is noted that the Board of Education of the Davis County School District chose to implement the Resolution in much the same manner as did the Board of Trustees of the University of Mississippi. The Board of Education deemed it to be manifestly more fair, equitable and just to allow those students who were presently participating in extracurricular activities to continue doing so until their graduation rather than pre-emptorily to deprive them of these functions without having given prior notice. However, as in the *Waugh* case, this continued participation was not unqualified in that the Resolution provides: "This continued participation in either the holding of office or in activities will be subject to good behavior and proper

execution of duty as determined by the school officials concerned.” In choosing this manner in which to implement the provisions of the Resolution, the Board of Education thereby assured that all students not then married would have knowledge of the new rule and be aware of the fact that they would be subject to its provisions should they subsequently marry.

A number of other cases have supported similar resolutions of local boards of education. In *Holroyd v. Eibling*, 188 N.E. 2d 208, (Ohio, 1961), the court was called upon to consider a Board of Education regulation making membership in certain high school fraternities a bar to participation in high school sponsored extracurricular activities including athletics, service, scholastic and honor activities, which were conducted incidentally to regular school work. In upholding this regulation the Court said:

“It must be borne in mind that under this regulation, no student will be expelled from school or denied a public education; nor will they be subject to penal fine; they are simply required to choose between school sponsored office and club affiliation.”

In determining that this was a valid regulation, the Court made note of the fact that no student would be expelled from school or denied a public education. This is the exact situation in the matter now before the court. The Respondent Board of Education makes no attempt and has no desire to expell any student from school or to interfere with his education by virtue of the Resolution or in any other manner. It is the purpose and function of

the school system to provide students with a basic education and to do so in the most desirable and efficient manner with the welfare of the students and community foremost in the minds of the school administrators. It was with these aims and objectives in mind that the Board of Education adopted the Resolution of January 8, 1962.

Similar resolutions have been upheld by the courts in *Webb v. State University of New York*, 125 F. Supp. 910, (1954) and *Wilson v. Abilene Independent School District*, 190 S.W. 2d 406. In the latter case the Board of Education passed a resolution requiring that all junior and senior high school students sign a pledge that they did not belong to a fraternity and that they would not join one. Failure to comply with the resolution resulted in the suspension of all extracurricular activities. In upholding the resolution the court stated:

“In pursuance of this provision (one almost identical to 53-6-20, Utah Code Annotated, 1953), the Legislature proceeded to establish a system of schools, composed of various types of common and independent districts, with boards of trustees to administer them. It cannot be doubted that the constitutional provision quoted invested in the Legislature full power and authority to do whatever is necessary to establish and maintain an “efficient” system of public free schools, and since it was necessary to establish and maintain school districts to effectuate the provision, the Legislature has the undoubted power and authority as may be necessary to accomplish the end intended.

Such a ruling again withstood constitutional attack in *Isgrig v. Srygley*, 197 S.W. 2d 39, (Ark., 1946). The

court there held that rules of a school board making high school students who participated in fraternities or sororities ineligible for specified extracurricular activities and honors, did not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States and such rules were authorized by constitutional provisions for maintenance of "efficient system of free schools" and statute charging directors with duty of doing all things necessary and lawful for conduct of efficient public schools. The language used there with reference to the delegation of power and authority to the local board bears striking resemblance to the language of Section 53-6-20, Utah Code Annotated, 1953, by which the Legislature of the State of Utah has delegated to the local Boards of Education the power and authority to do all things needful for the maintenance and prosperity of the schools and to make and enforce all needful rules and regulations for the control and management of the public schools of the district.

The legislatures of the various states have recognized that local school administrators must have wide latitude and discretion in administering the public school system and have accordingly conferred broad discretionary powers upon such local boards. The courts have also recognized the importance of these principles and have refused to interfere with such administrative decisions and have, in doing so, made every effort to carry forth this legislative intent.

The privilege of wrestling or playing baseball, or ushering or being a class officer, or otherwise to engage in extracurricular activities, is not one of the rights pro-

tected by the Constitutions of Utah or the United States.

There are certain rights which cannot be abridged but the right to play ball or to be a class officer or otherwise represent the school in its extracurricular activities, is not such a right.

Only such rights, privileges and immunities as are the common right of all citizens are within the Constitutional guarantee.

This Court, in the case of *Logan City School District v. Kowallis*, 94 U. 342, 77 P. 2d 348, has expressly stated what those constitutional rights are so far as the schools of this State are concerned. In discussing the constitutional and statutory provisions involved herein this Court said:

“The provision for being open does not apply to matters financial; it does not mean they must be free. *It simply means that all children must have equal rights and opportunity to attend the grade or class of school for which such child is suited by previous training or development.*” (Italics ours)

* * *

“... A review of all the statutory enactments from the beginning shows a recognition of the policy that the children must attend school within the district in which they reside, whenever there is provided within such district, schools of proper grade and class to meet their needs and requirements. *When their home district provides a school suitable in its curriculum, faculty, and facilities for their state of educational growth and development, free and open to them, and reasonably convenient for attendance, they are given all the Constitution assures or provides for them.* To secure to every child in the state the maximum

benefit of the school system, the assignment of children to particular schools is often essential. Economy and efficiency in school operation and administration, as well as effectuating and making possible the harmonious development and growth of all school children, would be seriously impaired were students permitted to shift or change, at their own volition, from one school to another.” (Italics ours)

It is not difficult to take some words out of context and try to make the Constitutional guarantee apply to everything embraced within the broad educational program for children and adults alike, as plaintiff is seeking to do; but this Court has clearly recognized the distinction and, as was discussed by this Court in the *Beard* case, where extracurricular activities were expressly held to be within the broad aspects of the authority of the Board, but not a part of the school curriculum required by the Constitution.

Common sense calls for that result. To hold otherwise could only lead to absurdity.

That which is not a common right for all cannot be the subject of the Constitutional guarantee of equality. *Utah Mfrs. Assn. v. Stewart*, 82 U. 198, 23 P. 2d 229.

The privilege of wrestling on the school team is in the same category as the right to sell liquor, so far as Constitutional guarantees are concerned, which this Court said in the *Stewart* case is not one of the rights guaranteed by either the State or Federal Constitution.

The leading case on this subject is *McAuliffe v. City of New Bedford* 29 N.E. 517 (Mass.).

As was said by Mr. Justice Holmes in that case when he was a member of the Massachusetts Court concerning the claim of a policeman who was removed from his job for engaging in political activities:

“The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman.”

So here students may have a constitutional right to attend school and to get married, but they have no constitutional right to hold class office or be on the wrestling or baseball team.

VI.

THE DISTRICT COURT DID NOT ERR IN DISMISSING THE COMPLAINT OF PLAINTIFF JAMES HAROLD STARKEY ON THE GROUND THAT SAID PLAINTIFF IS OVER EIGHTEEN YEARS OF AGE.

The Legislature of the state of Utah has provided in Section 53-4-7, Utah Code Annotated, 1953, that “In each school district the public schools shall be free to all children between the ages of six and eighteen years who are residents of said district.” The record clearly shows that Plaintiff James Harold Starkey is over eighteen years of age, in that he was born on October 20, 1944. The Statute quoted above is explicit in requiring the Board of Education to furnish free education only to those students between the ages of six and eighteen years. Should there be any question as to the meaning of the phrase “between the ages of six and eighteen years,” Respondent refers the Court to the following cases in which it was held that such language means that period

of time between the sixth anniversary of the child's birth and the eighteenth anniversary of a child's birth:

Gibson v. People, 99 P. 333

Knott v. Rawlings, 96 N.W. 2d 900 (Iowa)

Bay Trust Company v. Agricultural Life Insurance Company, 271 N.W. 749 (Michigan)

Green v. Patriotic Order Sons of America, 87 S.E. 2d 14, (North Carolina)

In *Bay Trust Company v. Agricultural Life Insurance Company*, *Supra*, the Justice writing the opinion had a rather unique way of expressing the Court's interpretation of similar language when he said:

“A year is a unit of time, a foot a unit of distance, and a pound a unit of weight. The deceased had lived over, beyond, above or in excess of age of 60 calendar years, that is, sixty years two months and ten days when he came to his death. The record does not show his height and weight. It would involve strange reasoning to assure that if he were 5' 10½" tall that he was not over five feet, or that he weighed 175 pounds that he did not tip the scales any point over 100 pounds. If this opinion with respect to the claim of the beneficiary is 1,975 words, it would be likewise strange to claim that it is not over 1,000 words in length.”

The Statute is thus clear in its indication that the Board of Education has no duty or obligation to furnish a free education to those persons who have celebrated the eighteenth anniversary of their birth. *This does not, however, mean that the Legislature has provided no means for their education, nor does it mean that the*

Board of Education may not permit such persons to remain in school until such time as they may graduate. Here again Plaintiff has erected a “strawman”. Neither the Resolution nor the Board of Education nor the Legislature nor the Court has so construed the action of the Board of Education so as to preclude plaintiff from attending school to the end of the school year and the Legislature has expressly endowed the Board of Education with authority to provide for the education of plaintiff and others similarly situated by either continuing them in their present status till the end of the school year or by enrolling in the Adult Education Program as set forth in Title 53, Chapter 30, Utah Code Annotated, 1953.

Section 53-3-3 of the Act provides that every district may raise and appropriate funds for adult education and hire teachers and establish and maintain classes for adult education. Section 53-30-10 defines the term “Adult” as “A person of 18 years of age or over, or any person who has completed a high school course as prescribed by the state department of public instruction.” The Respondent Board of Education has established an Adult Education Program pursuant to the Legislative directive found in Title 53, Chapter 30, Utah Code Annotated, 1953, and the Plaintiff James Harold Starkey, or any other person who is an adult within the meaning of the Adult Education Law, may provide for and continue his education under the adult education program. The Legislature has made adequate provision for the continued education of persons over 18 years of age. In reading Section 53-4-7, Utah Code Annotated, 1953, in conjunction with the provisions of the Adult Education

Law, Plaintiff James Harold Starkey, might be required to continue his education in the Adult Education Program. This has not, however, been the policy of the Board of Education as will be pointed out below.

Notwithstanding the emancipation of plaintiff under the provisions of Section 15-2-1, Utah Code Annotated, 1953, by virtue of his marriage, and notwithstanding plaintiff having reached an age beyond the statutory guarantee of free education, the Board of Education was nevertheless vested with discretionary power to extend plaintiff's education in the regular school to the date of his graduation, which it did, and plaintiff was not deprived of any constitutional or statutory right entitling him to free education. Plaintiff's argument on this point is pure sophistry.

Plaintiff asserts on page 12 on his brief that to allow the Board of Education to furnish education or facilities free of charge to children who have celebrated their eighteenth birthday may constitute a misappropriation of public funds.

The Board of Education denies that this would so constitute a misappropriation of public funds. The statute provides for education of children between the ages of six and eighteen years and also provides for the appropriation of funds to cover the Adult Education Program. In implementing this statutory provision, the Board of Education may allow five year old children to enter the first grade provided they reach their sixth birthday within a few weeks or months after the beginning of school. Should Plaintiff's reasoning be adopt-

ed this would mean that the Board of Education was misappropriating public funds by allowing these five year old students to enter school before their sixth birthday. This line of reasoning has not been adopted by the Courts. The right to establish a so-called "cut-off date" has been recognized and approved by the Courts. See *Harkins v. School District No. 4*, 288 P. 2d 777, (Arizona, 1955). And *State ex rel. Ronish v. School District No. 1*, 348 p. 2d 797, (Montana, 1960). The latter case is annotated along with other cases supporting the proposition that a School Board has the authority to admit students who have not yet attained six years of age. The annotation is found at 78 A.L.R. 2d 1021.

The foregoing authorities sustain the proposition that it is discretionary with the Board of Education as to whether or not it will admit students who have not yet attained six years of age and, conversely, it is discretionary with the Board of Education as to whether or not it will allow and permit students to remain in regular school after they have celebrated their eighteenth birthday.

CONCLUSION

We respectfully submit:

1. Writs of Prohibition or Mandate are basically inapplicable to activities involving discretionary powers;
2. Adoption of the resolution was not arbitrary or capricious, nor an abuse of discretion; nor a violation of any Federal or State constitutional right or privilege of plaintiff. On the contrary, it was a reasonable exer-

cise of discretion by the Board in its efforts to carry out its responsibilities and the directions and mandates of the Legislature as to the objectives to be accomplished for the happiness and well-being of all of the students;

3. Under the Constitution and the Statutes of Utah the ultimate responsibility for the educational result on the students, and for the impact on the community as a whole is on the Board of Education. This Court should sustain, not vitiate, the action of the Board in its efforts to meet its responsibilities.

In conclusion we commend to this Court the language of the Supreme Court of Oregon in *Burkitt v. School Dist. No. 1*, 246 P. 2d 566 (1952), in sustaining the action of the School Board in suppressing social clubs, wherein the Court was speaking of the relative rights, duties, and responsibilities of students, parents, Boards and the Courts, in the following words:

“When they avail themselves of that opportunity they must, in the nature of things, submit to the discipline of the schools and to regulations reasonably calculated to promote such discipline and the high purpose for which the schools are established — the education of youth, which is not limited to the imparting of knowledge, but includes as well the development of character and preparation for the assumption of the responsibilities of citizenship in a democracy. To attain these ends not the least in value of the lessons to be learned are the lessons of self-restraint, self-discipline, tolerance, and respect for duly constituted authority. In this regard parents and the schools have their respective rights and duties, which complement one another, and may

be exercised and discharged in cooperation for the welfare of the child and the state.

“Here, as it seems us, for the court to interfere with the action of the school authorities now challenged would be little less than to constitute ourselves a school board for all the schools of the state. This is something we have neither the right nor the inclination to do.”

Respectfully submitted,

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