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ATTORNEY GENERAL OPINION NO. 89-39

George Anshutz
Superintendent
Wabaunsee East U.S.D. No. 330
P.O. Box 158
Eskridge, Kansas 66423-0158

Re: Schools -- General Provisions -- High School Activities Association; Policies

Synopsis: It is our opinion that the Kansas State High School Activities Association is authorized by statute to make reasonable rules regarding activities. In effect, such rules become a civil contract between the members of the association, and are valid if reasonable and not in contravention of the law. Those subject to the rule include the high schools and their employees, as well as students. A rule, as interpreted by the association, which defines sportsmanship, is constitutional and not violative of First Amendment rights so long as it is enforced only when conduct materially disrupts the school activity or involves substantial disorder or invasion of the right of others. Student expression may be restricted to the extent of reasonable time, place and manner regulations imposed to conform with the forum's basic requirements. Cited herein: K.S.A. 72-130; 72-133; U.S. Const. Amend. I

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Dear Mr. Anshutz:

At the request of the Board of Education and as Superintendent of Unified School District No. 330, you have requested our opinion concerning the legality of a regulation that was recently adopted by the Kansas State High Schools Activities Association (KSHSAA). Rule 52 addresses sportsmanship and, as interpreted by the association, describes desirable and unacceptable behavior in school athletic events. Specifically you ask whether Rule 52 is within the authority of the association, whether the association has the authority to establish desirable and undesirable behavior, whether the rule and interpretations can be enforced on the general public and people not actually attending school, and whether the rule and its interpretations violate the free speech provisions of the First Amendment to the United States Constitution [U.S. Const. Amend I].

Your first questions relate to the authority of the association to make rules which establish desirable and undesirable behavior. The legislature has exercised its power of regulating school activities by enacting K.S.A. 72-130 et seq. These statutes govern high school activities associations, describe their internal structures, and provide for an appeal process for their decisions. By its terms, the act applies to:

> "Any association with a majority of the high schools of the state as members and the purpose of which association is the statewide regulation, supervision, promotion, or development of any of the activities referred to in this act and in which any public high school of this state may participate directly or indirectly. . . ." K.S.A. 72-130.

The term "activities" is defined under K.S.A. 72-133(a) as "school activities and contests in the fields of athletics . . . and any other interschool extracurricular activities by students enrolled in the grades from seven (7) to twelve (12), inclusive."

The KSHSAA is sanctioned and regulated by state law pursuant to K.S.A. 72-130 et seq. Gilpin v. Kansas State High Schools Activities Association, Inc., 377 F.Supp. 1233, 1237 (D. Kan. 1974). The association is a voluntary nonprofit corporation created to regulate, promote, and develop interscholastic activities among the secondary schools of the state of Kansas. Its "funds come from membership dues

derived, in large part, from gate receipts generated by games between members, the majority of which are held in state-owned and state-supplied facilities; it exercises general control over all activities and contests between member schools; . . . it is authorized to conduct investigations and to assess penalties against member schools for violation of the rules. . . . ." Gilpin, 377 F.Supp. at 1237. The board of directors is responsible for exercising the association's legislative authority. K.S.A. 72-130(b). Rule 52 encourages sportsmanship among grades 7 through 12 and is a regulation of a school activity in the field of athletics. Therefore, the regulation complies on its face with the statutory scope of authority delegated to the board of directors of the association by the legislature.

A voluntary association may adopt rules and bylaws which will be controlling as to all questions of discipline, doctrine, or internal policy. It may interpret and administer such rules and regulations. See 6 Am. Jur. 2d Associations and Clubs, § 5 (1963). The rules and bylaws of a voluntary association, knowingly assented to, are in effect a civil contract between the parties. Radio Station KFH Company v. Musicians Association, Local No. 297, 169 Kan. 596, 602 (1950). The rights and duties of members of voluntary associations are governed by contract law as manifested in the association's constitution and bylaws. Cunningham v. Independent Soap and Chemical Workers, 207 Kan. 812, 818 (1971). The courts will enforce the articles of the agreement as long as they are not immoral or contrary to public policy or contrary to the law of the land. Radio Station KFH Company, 169 Kan. at 602. Therefore, Rule 52 is valid assuming it is not immoral or contrary to the public policy or the law of the state.

Assuming that the rule is not in contravention of law, we turn to the question of to whom Rule 52 applies. The statutes imply that the association may regulate and supervise the member public high schools. K.S.A. 72-130. Rule 52 itself states that it applies to students in grades 7 through 12. In Stone v. Kansas State High School Activities Ass'n, Inc., 13 Kan.App.2d, 71, 72 (1988), the court stated that the association's rules are binding on the member schools and on students of member schools. However, the association's executive board's interpretations of Rule 52 appear to include within its reach fans, as well as coaches, players and school administrators. We find no express or implied authority in the statutes giving the association the power to regulate the behavior of non-members. Therefore, the quasi-legislative activity of the association is not binding on non-members unless the local board of education adopts the rule as its own rule of conduct on school property.

Finally, we consider the issue of whether Rule 52 impermissibly impinges on freedom of speech. In effect, the association acts as a government body. Stone, 13 Kan.App.2d at 75 (1988). The United States District court of Kansas has confirmed the view that the association acts under color of state law, and therefore is amenable to judicial intervention for a deprivation of constitutional rights. Gilpin, 377 F.Supp. at 1237. Students do not shed their constitutional right to free speech when they enter the schoolhouse doors. Tinker v. Des Moines Community School Dist., 393 U.S. 503, 21 L.Ed.2d 731, 737, 89 S.Ct. 733 (1969). Speech which is not protected by the First Amendment includes fighting words, libel, obscenity, and incitement. U.S.D. No. 503 v. McKinney, 236 Kan. 224, 234 (1984).

In the school setting, expression may not be flatly banned, but may be regulated so that the basic educational function of the school is not disturbed. Expression in a semi-public forum may be regulated to preserve the tranquility which the forum's basic purposes require. Grayned v. City of Rockford, 408 U.S. 104, 33 L.Ed.2d 222, 231, 92 S.Ct. 2294 (U.S. 1972). In Grayned, a demonstrator on school grounds was convicted of violating a city ordinance which prohibited disturbing a school session by willfully making a noise or diversion while on adjacent public or private grounds.

In upholding the validity of the ordinance, the court noted that the anti-noise ordinance did not impermissibly permit punishment for the expression of an unpopular point of view, and it contained no broad invitation to subjective or discriminatory enforcement. Expressive activity may certainly be restricted, but only if the forbidden conduct materially disrupts class work or involves substantial disorder or invasion of the rights of others. 33 L.Ed.2d at 233. The court also stated that "reasonable time, place and manner regulations may be necessary to further significant governmental interests, and are permitted . . . the nature of a place, the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable. Although a silent vigil may not unduly interfere with a public library, making a speech in the reading room almost certainly would. . . ." 33 L.Ed.2d at 233.

In Haverkamp v. Unified School District, 689 F.Supp. 1055 (D. Kan. 1986), the court stated that local school boards have a legitimate and substantial community interest in promoting respect for authority and traditional values, but that the discretion of local school boards in manners of education must be exercised in a manner consistent with the student's First Amendment rights. 689 F.Supp. at 1058, 1059.

In U.S.D No. 503 v. McKinney, 236 Kan. 224 (1984), the Court stated that only in those instances where unbridled speech threatens a significant state interest is the state allowed to restrict an individual's exercise of a right guaranteed by the Constitution. 236 Kan. at 235. In Blaine v. Board of Education of Haysville v. School Dist. No. 261, 210 Kan. 560 (1972), the court held that a high school dress code providing for length restrictions on male students' hair was constitutionally permissible.

> "In measuring the appropriateness and reasonableness of school regulations against the personal rights of the individual student, courts should give full credence to the role and purposes of the schools as well as the nature of the problems inherent in the public education of our youth." 210 Kan. at 570.

We believe Rule 52 is not facially in violation of the First Amendment. Interpretations by the Association are guidelines, and may be enforced to the extent conduct addressed by the Rule materially disrupts the school activity or involves substantial disorder or invasion of the rights of others. While the interpretations include specific words and phrases which are said to be unacceptable behavior, it is the manner in which the words are spoken that may result in discipline. The rule does not purport to restrict all conversation between opponents or fans.

Two recent United States Supreme Court cases upheld regulation by school boards in light of First Amendment claims. In Bethel School District No. 403 v. Fraser, 478 U.S. 675, 92 L.Ed.2d 549, 106 S.Ct. 3159 (1986), school officials suspended a student for two days for making sexually suggestive remarks at a high school assembly. The remarks were part of a speech in which the student nominated a fellow student for a student government office. The court noted that the pervasive sexual innuendo in the speech was plainly offensive to both teachers and students, and the "speech could well be seriously damaging to its less mature audience, many of whom were only 14 years old and on the threshold of awareness of human sexuality." 478 U.S. at 683, 92 L.Ed.2d at 558. In Hazelwood School District v. Kuhlmeier, 484 U.S. ___ 98 L.Ed.2d 592, 108 S.Ct. ___ (1988), the United States Supreme Court held that a school-sponsored student newspaper, which was part of the school curriculum, was subject to editorial control over the style and content of the newspaper by supervising faculty members. The court distinguished between two free-speech issues: one in which a school must tolerate speech, and a second which requires a school to affirmatively promote particular speech. "Educators

are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school." 98 L.Ed.2d at 605.

In conclusion, it is our opinion that the Kansas State High School Activities Association is authorized by statute to make reasonable rules regarding activities. In effect such rules become in effect a civil contract between the members of the association, and are valid if reasonable and not in contravention of the law. Those subject to the rule include the high schools and their employees, as well as students. A rule, as interpreted by the association, which defines sportsmanship, is constitutional and not violative of First Amendment rights so long as it is enforced only when conduct materially disrupts the school activity or involves substantial disorder or invasion of the rights of others. Student expression may be restricted to the extent of reasonable time, place and manner regulations imposed to conform with the forum's basic requirements.

Very truly yours,

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