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ATTORNEY GENERAL OPINION NO. 80- 246

David W. Andreas
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Re: Infants--Period of Minority--Effect of Marriage Upon

Schools--Compulsory School Attendance--Truancy

Synopsis: The marriage of a minor child does not act to confer full rights of adulthood except as provided by statute. Thus, by operation of K.S.A. 1979 Supp. 38-101, a married minor is considered as having the rights of an adult only in matters relating to contracts, property rights and the capacity to sue and be sued, and only if the minor is 16 years old or older. However, the Kansas compulsory school attendance statute (K.S.A. 1979 Supp. 72-1111), applies by its terms to children who are between 7 and 16 years-old and who are under the control or charge of a parent, guardian or other person. As marriage has the effect of emancipating a child, thereby severing such authority, a married minor who is 15 cannot be reported as a truant for failure to attend or be enrolled in school. Cited herein: K.S.A. 1979 Supp. 23-106, 38-101, 72-1111, 72-1113.

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Dear Mr. Andreas:

On behalf of Unified School District No. 465 in Winfield, Kansas, you request our opinion on a question concerning the applicability of the Kansas truancy statute, K.S.A. 1979 Supp. 72-1113. Specifically, you ask whether a 15 year-old individual who is married can

be considered a truant for failing to attend school, and, if so, who is the proper party to receive legal notice of any action. Although you do not so state, we assume this latter query concerns the question of whether the minor's parents or spouse are required to receive notice. However, our conclusion as to your first inquiry renders this second point moot.

The situation you present to us involves a conflict between the Kansas compulsory school attendance statute (K.S.A. 1979 Supp. 72-1111) and the effect which marriage has upon the legal status of a minor. On the one hand, the statute states that:

> "Every parent, guardian or other person in the state of Kansas, having control over or charge of any child who has reached the age of seven (7) years and is under the age of sixteen (16) years, shall require such child to attend continuously a public school or a private, denominational or parochial school taught by a competent instructor, each school year, for such period as the public school of the school district in which the child resides is in session."

Oddly enough, however, a failure on the part of the parents, guardian, etc., to have a child attend school does not result in legal sanctions being applied against them. Rather, the child may be determined to be a truant by virtue of K.S.A. 1979 Supp. 72-1113, and is subject to the jurisdiction of the district court under the Juvenile Code (K.S.A. 1979 Supp. 38-801, et seq.).

Theoretically, marriage in Kansas is open to persons of any age, although persons under the age of 18 need the consent of their parent(s), guardian(s), or, if neither of the former are present, a judge of the district court. Even if such parental or guardian consent is obtained, however, the additional approval of a district court judge is required (K.S.A. 1979 Supp. 23-106). The effect which marriage has upon the legal status of a minor is two-fold. The first is statutory in nature and concerns the application of K.S.A. 1979 Supp. 38-101. Under that provision, the minor is now treated as an adult for purposes of contract, property rights, liabilities, and the capacity to sue and be sued. The statute is limited in its effect to married minors who are 16 or 17 years-old, and extends only to those rights which are specifically named, thus leaving the status of the minor unchanged for the purposes of other

statutes or common-law disabilities. Landsberg v. Wyandotte County Examiners, 129 Kan. 196, 197 (1929), 43 C.J.S. Infants §116, p.382. In the situation you posit, this statute would be of no effect at all, due to the age of the individual involved (15).

Were this the only effect of marriage upon a minor, we would not hesitate to conclude that the compulsory attendance statute would control. However, marriage has an additional effect at common-law, in that it gives rise to a new relationship inconsistent with that of parent-child. As such, it works an emancipation as to the parents' right of custody to the child as well as severing their duty to provide support. 59 Am.Jur.2d Parent and Child §96, p. 196-197. Given the way in which the attendance statute is worded (i.e., "[e]very parent . . . having control over or charge of any child"), it is our conclusion that marriage has the effect of ending this control, and so leaves the child no longer "required by law to attend school." (K.S.A. 1979 Supp. 72-1113). Hence, he or she cannot be a truant.

This result has been reached in three of the four reported cases we have been able to discover which have dealt with this question. The first of these, State v. Priest, 210 La. 389, 27 So.2d 173 (1946), held that:

> "The marriage relationship, regardless of the age of the persons involved, creates conditions and imposes obligations upon the parties that are obviously inconsistent with compulsory school attendance or with either the husband or wife remaining under the legal control of parents or other persons. Though young, the husband is none the less required to support his wife and family. The wife, in the event there should be a child in the family, could hardly be expected to attend school during the weeks preceding or following its birth." 27 So.2d at 174.

In a second Louisiana case, In re Goodwin, 214 La. 1062, 39 So.2d 731 (1949), the court reaffirmed Priest, and went on to note of the girl in question:

> "[A]lthough until she reaches the age of 18 she is not relieved of all of the disabilities that attach to minority by this emancipation,

> she is relieved of parental control and, as was held in the Priest case, is no longer amenable to the compulsory school attendance law of this state."

In the third such case, In re Rogers, 36 Misc.2d 680, 234 N.Y.S.2d 172 (1962), the court weighed the unquestioned advantages of attendance with the "harmful effects, if any, of forcing the association of a married fifteen-year-old female with school children of young and impressionable ages, especially when the former is not disposed to attend," and concluded the latter interests should prevail. 234 N.Y.S.2d at 173.

The one case which reaches the opposite result, State v. Gans, 168 Ohio St. 174, 151 N.E.2d 709 (1958), is distinguishable on two important grounds from that fact situation presented here. First, the court construed the Ohio marriage statute to forbid marriage by persons under the specified age limits (18 for men, 16 for women). As a result, there was no valid marriage, and thus nothing to prevent the operation of the Ohio compulsory school attendance law. Secondly, it is likely that the extremely young age of the girl involved (11 at the time of the marriage, 14 at the time of the appellate decision) led the court to invoke public policy considerations which are not so crucial here, given the age of the minor involved (15).

While it is the opinion of this office that the truancy statute cannot be invoked to require the minor in question here to attend school, we should add a caveat concerning the reverse situation, namely, where a married minor desires to attend school. It has long been the public policy of this state that no one within school age should be denied the privilege of attending school unless the public interest clearly requires such. Nutt v. Bd. of Education, 128 Kan. 507 (1929). Marriage, even motherhood, were held insufficient reasons to bar a student's attendance there, and this opinion in no way suggests any other result be reached. In any event, such a move would be difficult to uphold under the modern-day statutes on suspension and expulsion. K.S.A. 72-8901 et seq.

In conclusion, the marriage of a minor child does not act to confer full rights of adulthood except as provided by statute. Thus, by operation of K.S.A. 1979 Supp. 38-101, a married minor of at least 16 years of age is considered as having the rights of an adult only in matters relating to contracts, property rights and the capacity to sue and be sued. However, the Kansas compulsory school attendance

statute (K.S.A. 1979 Supp. 72-1111), applies by its terms to children who are between 7 and 16 years-old and who are under the control or charge of a parent, guardian or other person. As marriage has the effect of emancipating a child, thereby severing such authority, in our opinion a married minor who is 15 cannot be reported as a truant for failure to attend or be enrolled in school.

Very truly yours,

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RTS:BJS:JSS:phf