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ATTORNEY GENERAL OPINION NO. 89- 38

The Honorable Rick Bowden
State Representative, 93rd District
State Capitol, Room 281-W
Topeka, Kansas 66612

Re: Constitution of the State of Kansas -- Bill of Rights -- Liberty of Press and Speech; School Newspapers

Synopsis: Under the United States Supreme Court decision in Hazelwood School District v. Kuhlmeier, local public school officials and administrators may exercise reasonable control over activities sponsored by a public school such as publications, theatrical productions and other expressive activities so long as the educators' actions are reasonably related to legitimate pedagogical concerns and there is no intent to create a public forum. Also, Section 11 of the Kansas Bill of Rights does not provide an absolute right to freedom of speech and expression. Students in private, accredited schools are subject to reasonable school regulations. The Hazelwood decision applies to public schools on its facts, and does not apply to non-public schools. Cited herein: Kans. Const., B. of R., § 11; U.S. Const., Amend. I, XIV.

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Dear Representative Bowden:

As Representative for the ninety-third District, you request our opinion concerning the application of the decision rendered by the United States Supreme Court in Hazelwood School District v. Kuhlmeier, 484 U.S. _____, 98 L.Ed.2d 592, 108 S.Ct. _____ (1988). Specifically, you inquire whether, through the application of the Hazelwood decision, local public school boards or local public school administrators can censor articles or stories appearing in sanctioned school newspapers, or works of journalism classes, yearbooks, or articles written by students in writing classes. Also, you ask whether Section 11 of the Kansas Bill of Rights conflicts with the above decision and grants students uncensored freedom of speech and/or press. Lastly, you ask how the Hazelwood decision and the Kansas Constitution apply to students in accredited non-public schools.

We will first address the implications of the Hazelwood decision and whether local school boards or school administrators may censor school newspapers, journalism classwork, yearbooks, or articles written in writing classes. In Hazelwood, former high school students who were staff members of a high school newspaper filed suit against the school district and school officials. They alleged that their First Amendment rights of freedom of speech and expression had been violated by a deletion from a certain issue of the paper of two pages that included an article describing school students' experiences with pregnancy and another article discussing the impact of divorce on students at the school. The newspaper was written and edited by a journalism class, as part of the schools' curriculum. The United States Supreme Court reversed the holding of the Court of Appeals from the Eighth Circuit which had held that school officials were entitled to censor articles only if publication could have resulted in tort liability to the school.

The Supreme Court held that the students' First Amendment rights were not violated by the deletion of certain articles in the school newspaper. Citing Bethel School District No. 403 v. Fraser, 478 U.S. _____, 92 L.Ed.2d 549, 106 S.Ct. 3159 (1986), the Court recognized that the First Amendment rights of students in public schools are not automatically coextensive with the rights of adults in other settings. 98 L.Ed.2d at 602. The school newspaper in this case was not a public forum for public expression. School facilities may be deemed to be public forums only if school authorities have by

policy or by practice opened the facilities for indiscriminate use by the general public, or by some segment of the public, such as student organizations. If the facilities have been reserved for other intended purposes, no public forum has been created, and school officials may impose reasonable restrictions on the speech of students, teachers and other members of the school community. 98 L.Ed.2d at 603. In this case, the newspaper's production was a part of the educational curriculum and there was no intent to open the paper's pages to indiscriminate use by the students. Therefore, the school officials were entitled to regulate the paper's content in reasonable manner. 98 L.Ed.2d at 605.

The Court concluded that:

"educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their activities are reasonably related to legitimate pedagogical concerns." 98 L.Ed.2d at 606.

The Court's holding allows local public school officials and administrators the discretion to reasonably censor activities affirmatively sponsored by the public school without violating students' First Amendment rights. Where there is no intent of the officials and administrators to create a public forum, educators may exercise reasonable control over student speech sponsored by a school. School-sponsored expressions include school publications, theatrical productions, and other expressive activities "that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school." 98 L.Ed.2d at 605. Therefore, included within the scope of the test whereby school-sponsored activities may be regulated (as long as the educators' actions are reasonably related to legitimate pedagogical concerns) are school newspaper articles and any articles written in classes for that publication. Also, because yearbooks can be seen as school-sponsored expression, they may also be subject to control by educators if the yearbook was not intended to be a public forum.

You also inquire as to whether Section 11 of the Kansas Bill of Rights grants students uncensored freedoms of speech. Section 11 provides in pertinent part:

"The liberty of the press shall be inviolate; and all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights. . . ."

This section is generally considered coextensive with the First Amendment. State v. Russell, 227 Kan. 897, 899 (1980). The Kansas Supreme Court has construed the meaning of Section 11 of the Kansas Bill of Rights:

"The First Amendment to the United States Constitution states that the Congress shall make no law abridging the freedom of speech. Section 11 of the Kansas Constitution Bill of Rights states that each person may freely speak, write, or publish their sentiment on all subjects, 'being responsible for the abuse of such rights.' Both the United States Supreme Court and this court has recognized that freedom of speech and press is not without certain limitations." In re Johnson, 240 Kan. 334, 336 (1986). (Emphasis added).

Section 11 of the Kansas Bill of Rights does not appear to grant students free speech liberties beyond those guaranteed by the First Amendment, as limited by Hazelwood.

Finally, we address the issue of whether, in light of Hazelwood and Section 11 of the Kansas Bill of Rights, students in accredited non-public schools have the same freedom or restrictions with respect to free expression as do students in public schools. Hazelwood provides guidance to public school educators and administrators on controls that may be imposed without violation of the First Amendment as applied through the Fourteenth Amendment. The Kansas Constitution is a limitation on state governmental power. Lemmons v. Noller, 144 Kan. 813, 817 (1936).

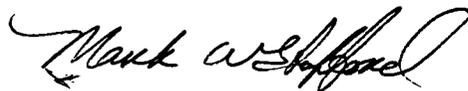
The Kansas statutes do not require private schools to be accredited. In re Sawyer, 234 Kan. 436, 440 (1983). There is nothing which indicates that accreditation of a non-public school by the state transforms the non-public school into a governmental entity. Therefore, the conduct of students in a non-public school is regulated by reasonable

rules of the school. Private schools have the authority to adopt suitable rules and regulations for the management of the schools and pupils. 78 C.J.S. Schools and School Districts, § 11 (1952). Therefore, in determining the free expression rights of students in non-public schools, the test is whether restrictions are reasonable, and not whether the restrictions violate the United States and Kansas Constitutions.

In conclusion, it is our opinion that under the U.S. Supreme Court decision in Hazelwood School District v. Kuhlmeier, local public school officials and administrators may exercise reasonable control over activities sponsored by a public school such as publications, theatrical productions and other expressive activities so long as the educators' actions are reasonably related to legitimate pedagogical concerns and there is no intent to create a public forum. Section 11 of the Kansas Bill of Rights does not provide an absolute right to freedom of speech and expression. Students in a private, accredited schools are subject to reasonable school regulations. The Hazelwood decision applies to public schools on its facts, and does not apply to non-public schools.

Very truly yours,


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