

"It is not for the court to consider the propriety of a contract between the city of Ann Arbor and the board of regents for the city to furnish police or fire protection or other public facilities for State property within the corporate limits. . . ."

The board of governors also has authority to contract with the city for the disposal of sewage, as well as the joint construction and operation of a sewage disposal plant [M.C.L.A. § 17.74; M.S.A. 1969 Rev. Vol. § 4.194].

The council is vested with the authority to approve any such contract upon behalf of the city. Title 3, Chapter 1, § 13(b); Title 6, Chapter 7, §§ 1, et seq. However, as above pointed out, his duties and authority as clerk of the common council are limited to making and preserving the record of its proceedings. He is not a voting member of that body. Accordingly his office as city clerk is not incompatible with his office as member of the board of governors of Wayne State University.

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EDUCATION, STATE BOARD OF: Rule-making power.

SCHOOL DISTRICTS: Power of board of education to suspend or expel students.

State Board of Education is authorized to promulgate rules prescribing the procedural safeguards to be employed by local school boards in the process of suspending or expelling students.

State Board of Education may review decisions of local boards concerning suspensions and expulsions for misconduct and may adopt rules prescribing the manner for taking such appeals.

No. 4705

July 7, 1970.

Dr. John W. Porter
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You have requested my opinion on two questions which may be phrased as follows:

1. Does the State Board of Education possess the authority, either by constitutional grant or legislative enactment, to adopt rules governing the procedural safeguards to be employed by school boards in suspending or expelling students for misconduct?
2. Does the State Board of Education possess the authority, either by constitutional grant or legislative enactment, to review the decisions of school boards concerning student suspensions and expulsions for misconduct?

In answering your first question, it is necessary to examine Article VIII, Section 3 of the 1963 Michigan Constitution, which provides:

“Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. . . .”

A unanimous Michigan Supreme Court has held that, pursuant to Article VIII, Section 3 of the 1963 Michigan Constitution, the State Board of Education has the *constitutional* authority and responsibility to promulgate rules specifying the required length of a school day for elementary and secondary students. *Welling v. Livonia Board of Education* (1969), 382 Mich. 620. In so holding, the Court recognized the authority of the legislature to maintain and support a system of free public schools, as set forth in Article VIII, Section 2 of the same document, and as implemented by the school code of 1955, being Act 269, P.A. 1955, as amended, M.C.L.A. § 340.1 et seq.; M.S.A. 1968 Rev. Vol. § 15.3001 et seq.

It is clear that the State Board of Education, pursuant to Article VIII, Section 3, has constitutionally conferred rule-making power. *Welling*, supra. In addition, the legislature has conferred rule-making power on the State Board of Education.

In Act 287, P.A. 1964, as amended, being M.C.L.A. § 388.1001 et seq.; M.S.A. 1968 Rev. Vol. § 15.1023(1) et seq., the legislature has provided for the organization and functions of the State Board of Education. Section 9 of that statute provides:

“The state board of education has leadership and general supervision of all public education, including adult education and instructional programs of the state institutions, except as to institutions of higher education granting baccalaureate degrees. . . .”

Section 15 of the same act provides:

“The state board of education shall prescribe rules and regulations that it deems necessary to carry out the provisions of this act, . . .”

Thus, the legislature has, in plain and unambiguous terms, conferred rule-making authority upon the State Board of Education to implement its general supervisory power over public education. The State Board of Education may adopt and promulgate rules governing the procedural safeguards to be employed by school boards in suspending and expelling students for misconduct.

Section 731 of Act 269, P.A. 1955, as amended, supra, compels parents of children between the ages of 6 and 16 years to send such children to the public schools with exceptions not here pertinent. In Section 740 of the same statute the legislature has imposed criminal penalties for violations of the compulsory education requirements. Section 356 of the same act provides that all persons of requisite age have an equal right to attend school in the school district where they reside. Thus, it is clearly the public policy of this state that children attend school and that children have an equal right to such attendance.

This public policy is modified by Section 613 of Act 269, P.A. 1955, as amended, *supra*, which provides:

"The board may authorize or order the suspension or expulsion from school of any pupil guilty of gross misdemeanor or persistent disobedience, or one having habits or bodily conditions detrimental to the school, whenever in its judgment the interests of the school may demand it: . . ."

Further, Section 614 of the same statute authorizes boards of education to make reasonable rules and regulations necessary for the proper management of the public schools. The Michigan Supreme Court has ruled that students may be suspended or expelled for gross misconduct, not amounting to criminal conduct, and for persistent disobedience of the reasonable rules of the school. *Holman v. Trustees of School District No. 5, Township of Avon* (1889), 77 Mich. 605, 608, 609.

In Sections 613 and 614 of Act 269, P.A. 1955, as amended, *supra*, the legislature has authorized school boards to make reasonable rules necessary for the management of the schools and to suspend or expel students for persistent disobedience of such reasonable rules or for other misbehavior constituting gross misconduct. These statutory sections are silent on the content of procedural rules applicable to the process of student suspension or expulsion. However, the statutory grant of authority contained in Sections 613 and 614 obviously carries with it the authority to adopt procedural rules relating to the process of student suspension or expulsion.

Every word of a statute must be given effect, if possible, so that no portion will be inoperative. *King v. Second Injury Fund* (1969), 382 Mich. 480, 492. In addition, repeals by implication are not permitted if, by any reasonable construction, the two statutory provisions may be reconciled so that each provision serves some purpose. *Valentine v. Redford Township Supervisor* (1963), 371 Mich. 138, 144.

These statutory provisions may be harmonized in the following manner. Any procedural rules promulgated by the State Board of Education to effectuate its general supervisory rule-making power, establish a minimum standard of procedural due process and, to that extent, are binding upon school boards in the process of student suspensions and expulsions for misconduct. However, boards of education, under Sections 613 and 614 of Act 269, P.A. 1955, as amended, *supra*, may adopt procedural rules that afford greater procedural safeguards if they so desire. Moreover, in the absence of procedural rules by the State Board of Education on any given aspect of procedure, the rules adopted by the school board are controlling.

Your second question concerns whether the State Board of Education, pursuant to either the Michigan Constitution or statute, is authorized to review the decisions of school boards concerning student suspensions or expulsions for misconduct. It is clear that the State Board of Education has constitutionally conferred power in the exercise of its general supervision over public education to review the decisions of local school boards concerning the suspension or expulsion of students. *Welling*, *supra*. Further, the authority to review such decisions has been reposed in the State Board of Education by legislative enactment.

In Sections 9 and 15 of Act 287, P.A. 1964, as amended, supra, quoted above, the legislature has declared that the State Board of Education has general supervision over public education and authorized the State Board of Education to prescribe rules it deems necessary to carry out the provisions of the statute. Pursuant to these statutory sections, the State Board of Education may review decisions of school boards on suspensions and expulsions for misconduct under Section 613 of Act 269, P.A. 1955, as amended, supra, and, to that end, may adopt rules prescribing the manner for taking such appeals. In this way the State Board of Education may exercise its power of general supervision in the area of student suspensions and expulsions for misconduct and effectuate any procedural rules it may adopt in this area.

However, in the adoption of rules authorizing appeals from school board decisions, it must be observed that, pursuant to Section 613 of Act 269, P.A. 1955, as amended, supra, school boards have discretionary authority in the matter of suspending or expelling students for misconduct. In reviewing discretionary acts of school boards, courts do not substitute their judgment for that of the school officials. Rather, review is limited to ascertaining whether the school board has abused its discretion. *Hiers v. Detroit Superintendent of Schools* (1965), 376 Mich. 225, 234, 235. Here, also, the *general* supervisory power of the State Board of Education in the area of reviewing student suspensions and expulsions by school boards on the merits should be used to ascertain whether the local board of education has abused its discretion in either its finding of student misconduct or its imposition of the penalty for such misconduct.

In summary, it is the opinion of the Attorney General that, the State Board of Education may promulgate rules prescribing the procedural safeguards to be employed by local school boards in the process of suspending or expelling students for misconduct under Section 613 of Act 269, P.A. 1955, as amended, supra. Further, the State Board of Education may review decisions of local school boards concerning student suspensions or expulsions for misconduct, and to that end, may adopt rules prescribing the manner for taking such appeals.

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