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STATE CAPITOL
Phoenix, Arizona 85007

Robert H. Corbin

August 25, 1981

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ARIZONA ATTORNEY GENERAL

Mr. David M. Koutz
Deputy Pinal County Attorney
Post Office Box 887
Florence, Arizona 85232

Re: I81-096 (R81-103)

Dear Mr. Koutz:

Pursuant to A.R.S. § 15-253.B we decline to review your opinion dated June 30, 1981, to the Superintendent of the Casa Grande Elementary Schools concerning the search of student lockers by school district personnel.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

CWL:tm
0401F/8261F

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W. Dean Skaggs, Superintendent
Casa Grande Elementary Schools
District Office
1460 N. Pinal Avenue
Casa Grande, Arizona 85222

Dear Superintendent Skaggs:

Your office requested an opinion by the County Attorney
on the following question:

QUESTION: For what causes could we search an
individual student's locker without
prior consent?

ANSWER: See body of opinion.

OPINION: We have been unable to find any Arizona
authority in this area other than a 1972 opinion by
the Attorney General and a 1976 Court of Appeals case,
State v. Kappes, 26 Ariz.App. 567, 550 P.2d 121 (1976)
involving a dormitory search under a factual situation
that provides limited guidance.

In Kappes, the Northern Arizona University had a regu-
lation permitting university inspection of dormitory
rooms for cleanliness, safety, and to determine the
need for repairs and maintenance. University policy
was to inspect the rooms monthly upon posting of notice
twenty-four hours in advance of inspection.

If the school district has an established policy of
locker inspection, and the policy is clearly stated in
such a way that the students and/or their parents have
or should have knowledge of it, the district may continue
to perform their policy.

EDUCATION OPINION

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By opinion No. 72-29-L released on August 2, 1972, the Attorney General addressed a similar question: "What is the right of the school authority to search lockers?" In his reply, the Attorney General stated no authority but replied as follows:

"The right of the school to search students' lockers has not been settled by our courts. It is our opinion that lockers are not rented to students under the same terms as other property is rented. Should the court in the future find that this is a straight rental situation, the school would have no right to open a locker without the student's permission.

We feel, however, that the school does not act as a landlord in this situation. Because it is necessary for the school to have immediate access to all district property for the protection of its students and because traditionally the school has treated lockers as part of the district property, which the students are allowed to utilize, we feel that the school may inspect the lockers at will.

"We suggest that, to avoid any misunderstanding in the future, either the application forms or the receipts for the lockers spell out the school's right to inspect the lockers, including the right to remove the locks if the student is unavailable or uncooperative."

We feel that by the words "the school may inspect the lockers at will", the Attorney General meant that the school officials may search a locker for any reason in keeping with their rights, obligations and duties. We do not suggest, nor do we believe that a school official may search a student's locker for reasons that are arbitrary or capricious. Nor do we believe that a school official may search a student's locker on whim or to embarrass, humiliate, or harass the student. "The fourth amendment protects persons from unreasonable searches and seizures. State v. Kappes, 26 Ariz. App. 567, 569, 550 P.2d 121 (1976). It is well established that students do not lose their constitutional rights when they enter the school grounds. State v. McKinnon, 88 Wash. 2d 75, 558 P.2d 781, 783 (1977).

There are a few jurisdictions that have considered the question of a school official's right to search a student's locker. Their

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analysis, while not binding on Arizona courts, may be persuasive in determining a standard of reasonableness.

The Fourth Amendment provides, in part that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." The Fourth Amendment does not prohibit all searches, it prohibits only unreasonable ones. The question of reasonableness always involves balancing the governmental interests with the individual's right to be free from intrusions. Washington v. McKinnon, 88 Wash. 2d 75, 558 P.2d 781 (1977); Bilbrey v. Brown, 481 Fed.Supp. 26 (D. Oregon 1979). Students do not lose their constitutional rights when they enter the school grounds, Washington v. McKinnon, supra, but the amendment does not extend as far when a minor is involved. In Re W.App., 105 Cal.Rptr. 775. In Interest of L.L., 90 Wis.2d 585, 280 N.W.2d 343 (App. 1979), the Wisconsin Court of Appeals held that for purposes of a search of a student by a teacher a lower standard, than probable cause, was sufficient to satisfy the Fourth Amendment requirement of reasonableness. This reasoning would arguably apply to a locker search, which is a lesser intrusion than a search of a student's person as happened in In Interest of L.L.

In striking the balance referred to in McKinnon and Bilbrey v. Brown, great stress is placed on the need to maintain discipline and order, and the school's obligation to protect the health and safety of the students.

"The students' interest in privacy must be balanced against the necessity of school officials to be able to maintain order and discipline in the school and to fulfill their duties under the in loco parentis doctrine to protect the health and safety of their students. To require school officials to obtain a warrant before ever searching a student would unduly hamper their effectiveness in performing their duties." Bilbrey v. Brown, supra.

"Education requires an orderly atmosphere which is free from danger and disruption. The introduction of dangerous or illegal items or substances into the school presents a hazard for teachers and students. A teacher cannot perform his educational function when he or his students feel threatened or when illegal substances distract the students."

"Finally, the realities of the classroom present few less intrusive alternatives to an immediate search for suspected dangerous or illegal items or substances.

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The safety of other students requires the prompt removal of dangerous items. The possession of certain items has been declared illegal because of the danger presented to the possessor and those around him. For example, it is illegal for anyone to possess marijuana and for minors to possess alcohol. Because of the possibility of destruction or distribution of illegal items and substances, there will rarely be time to contact police and obtain a warrant once the school official has a reasonable basis to believe that a student has an illegal item or substance." Interest of L. L., supra.

"The school officials, as a body and individually, have a responsibility for maintaining order upon the school premises so that the education, teaching and training of the students may be accomplished in an atmosphere of law and order."

"School authorities have a duty to supervise at all times the conduct of children on the school grounds." In Re Donaldson, 75 Cal. Rptr. 260 (App. 1969).

"The law recognizes that elementary school students have not yet achieved the maturity of adults. For this reason, school officials are charged not only with furthering the education of students but also with protecting the health and safety of students while they are at school. These responsibilities obligate school officials to control students' behavior and the items they are allowed to possess on the premises." Bilbrey v. Brown, supra.

"The school authorities have an obligation to maintain discipline over the students. It is recognized that, when large numbers of teenagers are gathered together in such an environment, their inexperience and lack of mature judgment can often create hazards to each other. Parents, who surrender their children to this type of environment, in order that they may continue developing both intellectually and socially, have a right to expect certain safeguards." People v. Overton, 20 N.Y. 2d 360, 299 N.E. 2d 596 (1967.)

"The university has an obligation to provide a safe and studious environment for those in attendance. It must be solicitous of the health,

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welfare and safety of its students, many of whom are experiencing life away from home for the first time." State v. Kappes, supra.

"Indeed, it is doubtful if a school would be properly discharging its duty of supervision over the students, if it failed to retain control over the lockers. Not only have the school authorities a right to inspect, but this right becomes a duty when suspicion arises that something of an illegal nature may be secreted there. People v. Overton, supra."

"Certificated school personnel are given the authority and indeed have the duty to maintain good order and discipline in the schools. State v. McKinnon, supra. See also Interest of L. L., supra.

A number of courts have also placed into the balance the lack of exclusive control of the locker by the student and the student's reduced expectation of privacy.

"Although a student may have control of his school locker as against fellow students, his possession is not exclusive against the school and its officials. State v. Stein, 203 Kan. 638, 456 P.2d 1 (1969)."

"Second, when a child enters the school he is required to attend, there is not the same reasonable expectation of privacy that he would have in other situations. . . their (school officials) position in loco parentis, in the eyes of the minor student, puts them in a position of authority similar to a parent. In a school, each student's security depends upon a certain amount of restraint upon the activities of the students. Whether for security or disciplinary purposes, this restraint is assumed and expected by all students. Faced with such authority in a setting requiring control of his behavior, the child cannot reasonably expect to have the same amount of privacy as he would outside of the school. Interest of L. L., supra."

Other cases in which the Court discussed the non-exclusive nature of the student's control of the locker include People v. Overton, 20 N.Y. 2d 360, 229 N.E. 2d 596 (1967), 24 N.Y.2d 522, 249 N.E. 2d 366 (1969), In Re. Donaldsen, 75 Cal. Rptr. 220 (1969), State v. Stein, 203 Kan. 638, 456 P.2d 1 (1969),

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People v. Lanthier, 97 Cal.Rptr. 297, 488 P.2d 625 (1971), and State v. Kappes (involving a dormitory room rather than a locker), 26 Ariz.App. 567, 550 P.2d 121 (1976).

In State v. Stein, supra the Court stated that:

"We deem it a proper function of school authorities to inspect the lockers under their control and to prevent their use in illicit ways or for illegal purposes. We believe this right of inspection is inherent in the authority vested in school administrators and that the same must be retained and exercised in the management of our schools if their educational functions are to be maintained and the welfare of the student bodies preserved.

In determining whether the search is reasonable under the Fourth Amendment the courts have tended to look at two things: 1) whether the search was within the scope of the school's duties, and 2) whether the search was reasonable under the facts and circumstances of the case.

"In cases where the lower standard applies, there must still be an articulable basis for the search. That basis must be related to removal of a dangerous or illegal item or substance and derived from reliable information or personal observations indicating that a student is in violation of school safety rules or the law. L. L., supra

Nearly all the jurisdictions which have decided this question have permitted such searches to be conducted when a school official has reasonable cause to believe a student has violated school policy. Bilbrey v. Brown, supra.

So long as a school is pursuing its legitimate interest in maintaining the order, discipline, safety, supervision and education of students, the Fourth Amendment does not require that a warrant be obtained before searching a student. Such searches are reasonable under the first clause of the Fourth Amendment. op cit.

A balancing of these interests shows that a limited search for dangerous or illegal items

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or substances is a proper means of protecting the interests of education without unreasonably interfering with the student's privacy interest. Accordingly, we hold that a warrantless search by a teacher or school official is reasonable if it is based upon a reasonable suspicion that a student has a dangerous or illegal item or substance in his possession. Interest of L. L., supra.

The high school principal is not a law enforcement officer. His job does not concern the discovery and prevention of crime. His duty as the chief administrator of the high school includes a primary duty of maintaining order and discipline in the school. In carrying out this duty, he should not be held to the same probable cause standard as law enforcement officers. Although a student's right to be free from intrusion is not to be lightly disregarded, for us to hold school officials to the standard of probable cause required of law enforcement officials would create an unreasonable burden upon these school officials. Maintaining discipline in schools oftentimes requires immediate action and cannot await the procurement of a search warrant based on probable cause. We hold that the search of a student's person is reasonable and does not violate his Fourth Amendment rights, if the school official has reasonable grounds to believe the search is necessary in the aid of maintaining school discipline and order." McKinnon, supra.

"We believe that the appropriate test for searches by high school officials is two-pronged. The first requirement is that the search be within the scope of the school's duties. The second requirement is that the action taken, the search, be reasonable under the facts and circumstances of the case. Although in loco parentis is applicable, the Fourth Amendment limits that power to acts that meet above requirements. In this case, prevention of the use of marijuana is clearly within the duties of school personnel, and the action taken, the verification of the report, was reasonable. The evidence was properly admitted. In Re. W., 25 Cal.App.3d 777, 105 Cal. Rptr. 775.

The New York, New Mexico and Washington courts listed four factors to be used in determining whether reasonable grounds existed: (1) the child's age, history and school record, (2) the prevalence and seriousness of the problem in the school to which the search was directed, (3) the exigency requiring the search without delay, and (4) the probative value and reliability of the information used as a justification for the search. We feel that an additional factor, related to the child's history and school record is the teacher's prior experience with the student. Because of his training and repeated contacts with the student, the teacher can use previous incidents and behavior as part of a reasonable basis to believe that an immediate search is necessary." Interest of L. L., supra. Also see People v. D., N.Y.2d 483, 358 N.Y. S.2d 403, 315 N.E.2d 466 (1974); Doe v. State, 88 N.M. 347, 540 P.2d 827 (1975); and State v. McKinnon, supra.

The cases discussed in this opinion arose in a variety of ways. Overton involved an invalid search warrant. Interest of L. L. involved teacher observation of suspicious activities and involved a body search. In Re. W. and In Re. Donaldson involved information reported by other students. Stein involved a request by police officers, the high school principal giving consent. Lanthier involved an offensive odor coming from a locker in a university library. The Court had no trouble finding the search to be justified. The search was required by the emergency created by the offensive odor. McKinnon involved information supplied by police, but here there was no request by the police to search or have the locker searched. Kappes involved marijuana found in plain view during a routine dormitory inspection.

It goes without saying that school officials are to cooperate with the police whenever called upon to do so. There is a danger, however, that when police are involved in a school search without having a valid warrant, that the evidence may be rendered inadmissible in court under the exclusionary rule. While the admissibility or inadmissibility of the results of a search is of only secondary importance to a school official, it is of primary importance to the police officers involved. While we urge cooperation with all law enforcement authorities, we would suggest, in the name of cooperation, that the school official point out the danger of inadmissibility to the officers, and in all appropriate cases urge them to obtain a warrant.

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"For over a half century the rule has stated that, as a matter of federal constitutional law, evidence is not rendered inadmissible in a criminal case because it was obtained through an illegal search and seizure by a private individual. This rule stands in stark contrast to the basic exclusionary rule that evidence illegally seized by law enforcement agents will not be admitted into evidence in a criminal trial.

Thus, the major question presented in this annotation is whether a school official is a private person for purposes of the exclusionary rule, or is to be grouped with law enforcement officials for this purpose. One important distinction in these cases is whether the search was conducted by school officials acting alone, or whether they were acting with law enforcement agents.

A number of courts have taken the position that school officials, acting alone, are private persons for purposes of the exclusionary rule. These courts generally reason that the Fourth Amendment prohibition against unreasonable searches and seizures requires the exclusion of evidence only where the unreasonable search is made by a law enforcement officer; and thus, if no law enforcement official was involved in a particular search conducted by school officials, the exclusionary rule is inapplicable." 49 A.L.R.3d 980-1.

Some courts have held that school officials are governmental officials for Fourth Amendment purposes but subject to a lesser standard than probable cause. Arizona has not yet ruled on this issue.

It is, however, quite likely that if a search is conducted in conjunction with or under the direction of local police the standard likely to be applied is the stricter "probable cause" normally applied to police searches rather than "reasonable suspicion" normally applied to school officials. We believe, however, that school officials may accept and act upon information provided by local law enforcement agencies in the same

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manner as they receive and act upon information received by others without subjecting themselves to the stricter "probable cause" standard.

CONCLUSION:

Based on the foregoing it is the opinion of this office that school officials may search a student's locker so long as the requirements of the following two-pronged test are met:

1. That the search be within the scope of the school's duties.
2. That the search be reasonable under the facts and circumstances of the case.

Reasonableness is to be determined by applying the reasonable suspicion standard.

The following five factors may be helpful in determining whether a reasonable suspicion exists:

1. The child's age, history and school record.
2. The prevalence and seriousness of the problem in the school to which the search was directed. We would argue that a search would be reasonable even if the particular problem had not yet appeared in the particular school, if it has been a problem elsewhere in the area or district.
3. The exigency requiring the search without delay.
4. The probative value and reliability of the information used as a justification for the search.
5. The teacher's or school official's prior experience with his students.

We recognize that there may be and probably are many other factors indicating the reasonableness of a particular search. We rely on experience to reveal them to us.

Based on the foregoing we hold that a locker search may be conducted without the student's prior consent in the following cases:

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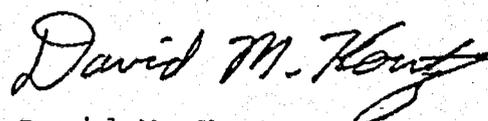
1. Where there is reasonable suspicion that a student has a dangerous or illegal item or substance in his possession.
2. Where there is reasonable suspicion that a student is in violation of school safety rules or the law.
3. Where there is reasonable suspicion that a student has or is violating school policy.
4. In an emergency situation such as:
 - a) Offensive odors coming from a locker.
 - b) Noise coming from a locker.
 - c) Smoke and/or fire coming from a locker.
 - d) Something pouring or dripping out of a locker.
 - e) Anything emanating from a locker that is or reasonably could be offensive to others in the area or is or reasonably could disrupt the education process.
5. Where there is reasonable grounds to believe the search is necessary in the aid of maintaining school order, discipline, safety, supervision, and the educational process.

This list is not intended to be all inclusive, but is provided by way of general guidance as to when a search is proper. There may well be other situations, not fitting under the above categories, where a search is both necessary and proper.

We hope the foregoing has answered your questions and will give you a background that will assist you in reaching the almost instantaneous decisions often required in this area. Please call us if we can be of any further assistance.

Very truly yours,

ROY A. MENDOZA
Pinal County Attorney



David M. Koutz
Deputy County Attorney