



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

May 11, 1989

The Honorable Dale K. Patton
Navajo County Attorney
P.O. Box 668
Navajo County Governmental Center
Holbrook, Arizona 86025

Re: 189-036 (R89-039)

Dear Mr. Patton:

Pursuant to A.R.S. § 15-253(B), this office has reviewed your March 13, 1989 opinion letter to the Winslow Unified School District No. 1. We concur that a school district governing board has the authority to impose reasonable disciplinary rules on students who use alcoholic beverages on school property, on the way to and from school, or during extracurricular activities. We also concur that the school district governing board has the authority to impose reasonable disciplinary rules on students who use alcoholic beverages off school property during non-school activities so long as the rules are directly related to the orderly management and educational goals of the school district.

The school district's disciplinary rules prescribed pursuant to A.R.S. § 15-843 should be followed if a student is to be disciplined, suspended or expelled.

Sincerely,

A handwritten signature in cursive script that reads "Bob Corbin".

BOB CORBIN
Attorney General

RKC/LSP/amw



Navajo County Attorney

DALE K. PATTON JR.
COUNTY ATTORNEY

WARNER G. LEPPIN
CHIEF DEPUTY

NAVAJO COUNTY ATTORNEY OPINION #CAS-021

TO: WINSLOW UNIFIED SCHOOL DISTRICT NO. 1

FROM: DALE K. PATTON, JR., NAVAJO COUNTY ATTORNEY

DKP

DATE: MARCH 13, 1989

RE: POLICIES REGARDING THE USE OF ALCOHOLIC BEVERAGES IN AND AROUND SCHOOL PROPERTY

QUESTION PRESENTED:

May the Governing Board establish policies that prohibit the use of alcoholic beverages on school property, off school property but on the way to or from school, during extra curricular activities, or at other times but within the school year?

DISCUSSION:

The statutes and cases set out herein indicate that the Board does have the authority to establish policies regarding extra curricular activities and regarding the use of alcoholic beverages by students. The District may prohibit the use of alcoholic beverages on campus, on the way to or from school, during extra curricular activities, and at other times not covered by these categories if, in the sound discretion of the District Governing Board, it is determined that such conduct directly relates to and affects the management of the School District and its ability to provide an adequate education to its students.

Recognizing, first, that the District has only the authority specifically granted to it by the Legislature, Campbell v. Harris, 131 Ariz. 109, 633 P.2d 1355 (App. 1981), it must first review the statutory provisions granting authority to the District.

A.R.S. §15-341 provides that:

"The governing board shall:

1. Prescribe and enforce rules for the governance of the schools, not inconsistent with law or rules prescribed by the state board of education".

THOMAS L. WING
CHIEF PROSECUTOR

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Further, A.R.S. §15-341(A)(14) provides that the Governing Board shall:
"Hold pupils to strict account for disorderly conduct on school property".

Subparagraph (A)(15) provides that the Board shall:
"Discipline students for disorderly conduct on the way to and from school".

The District also has the overall responsibility to provide the education for the students in the District as set out in A.R.S. §15-341.

Additionally, however, the Legislature has specified other responsibilities of the Governing Board. Specifically A.R.S. §15-345 provides that the Governing Board shall adopt a chemical abuse prevention policy and procedures to implement the policy. A.R.S. §15-712 directs the Districts to include in the curriculum instruction on alcohol, tobacco, narcotic drugs, etc., and the effect of substance abuse. Further, the School District is specifically given the authority pursuant to A.R.S. §15-705 to adopt policies and procedures governing student participation in extra curricular activities.

Thus, it appears that the Governing Board does have the authority to adopt guidelines for extra curricular activities and would be permitted to include in those guidelines "other matters" as specified in A.R.S. §15-705(3)(3) and that the Board is also authorized and directed to establish substance abuse policies and policies regarding the instruction in substance abuse areas to students. *This is what I think Ed may do*

It seems clear from the statutory language provided by the Legislature that the District does have the authority to establish policies regarding the use of alcohol while on campus, while on the way to or from campus, and at extra curricular activities. The remaining question is whether the District has the authority to prohibit the use of alcohol at times not covered by these scenarios.

Although there are no Arizona cases which specifically provide guidance as to the extent

of the authority of the District to govern conduct that does not occur on the campus, on the way to or from campus, or during extra curricular activities, there is a substantial number of cases from other jurisdictions that attempt to lay out guidelines in this area.

The most important of those cases seems to be the Bunger v. Iowa High School Athletic Association, 197 N.W.2d 555 (1972). That case is the lead case cited in the 53 A.L.R. 3rd 1110 annotation. In the Bunger case, the District had adopted a policy providing that a student athlete would not be on good conduct if found to be present in a vehicle where alcoholic beverages were present even though there was no evidence that the student had possessed, transported or used said alcohol.

The Court reviewed the facts of a case where a student on the football team had ridden in a vehicle where alcoholic beverages were present. There was no evidence, however, that the student had personally participated in the use of the alcohol nor was there any evidence that he had possessed or transported the alcohol, but only that he was present in the vehicle where alcohol was present.

The Court rejected the rule as unreasonable indicating that there must be some "closer relationship between the student and the beer". The Court specifically held, however, that the District does have the right to adopt policies to prohibit the use of alcohol and that it would not be an overboard policy to prohibit the possession or transportation of alcohol by a student. The Court indicated that the Board may consider a lot of factors in determining whether a policy of exclusion from extra curricular activities may be the punishment for alcohol use, possession or transportation. It recognized that the District may clearly disqualify a student from being involved in athletics if he drinks alcoholic beverages during the football season or at any other time "during the school year". The Court also recognizes that the use of alcohol by a student athlete may set an undesirable example for the other students and for that reason the conduct may be prohibited. The Court also provided that the District can

But these were rules affecting student athletes & their participation in extra curricular activities

place additional requirements on eligibility for particular extra curricular activities.

However, the Court indicated that there must be a nexus between the school and the situation in question which must have a direct bearing on the operation of the school and its ability to perform its educational mission.

However, it cautioned that the Districts not attempt to reach out beyond its authority into areas that would not have the direct impact or a nexus with the interests of the District.

The above cited annotation in the A.L.R. also contains numerous other cases wherein some rules were upheld.

In the Nebraska case of Braesch v. DePasquale, 205 N.W.2d 842 (1973), it holds that:

"Rules prohibiting use of alcoholic liquor or drugs by participants in interscholastic athletics are clearly appropriate".

The Court further held that so long as the rule is "reasonable" that the District may in fact exclude athletes from participation in extra curricular activities based upon consumption of alcohol. The Court then recognized that:

"The expediency of a rule adopted by a school board and the motive prompting it are not open to judicial inquiry, where it is within the administrative power of that body".

The Court went on to say that "
"Rules governing the conduct of participants in interscholastic athletics duly and regularly adopted by school authorities ought to be valid and enforceable unless they are clearly arbitrary and unreasonable and serve no legitimate end of educational athletic policy".

The policy must serve "a legitimate rational interest and directly [affect] the discipline of student athletics".

The Court also noted as did Bunger, supra, that some sort of due process must be provided before an expulsion.

In Clements v. Board of Education of Decatur Public School District No. 61, 478 N.W.2d 1203

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(Ill. App. 4 Dist. 1985), the Court held that policies adopted by the District for disciplining of students for the use of alcohol would not be overturned unless they were arbitrary or capricious. In Clements, the conduct was the attendance by a female member of the school softball team at a party where alcoholic beverages were being consumed. There was no evidence that the student actually consumed the alcoholic beverages but there was evidence that she was aware that the beverages were being served at that location. The Court held that a policy prohibiting "anti social behavior" was sufficient to permit the District to exclude the student from further participation in the school softball team.

CONCLUSION:

Pursuant to the statutory citations set out above, the Governing Board does have the authority to impose disciplinary rules on students for the use of alcoholic beverages while on school property, while on the way to or from school property and during extra curricular activities.

It is further apparent that the District does have the authority to impose other requirements pursuant to the other statutory citations set out above and pursuant to the case law cited here in so long as the rule does have a nexus with and is related to the efficient operation and administration of the District and to the accomplishment by the District of its educational goals. The policy should be established by the District and should be reasonable in nature. It may include to the best of the ability of the District standards supported by the mores of the community. If the student is to be expelled as a result of the conduct prohibited by the policy, some due process opportunity to be heard is required.



Navajo County Attorney

DALE K. PATTON JR.
COUNTY ATTORNEY

March 13, 1989

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CHIEF DEPUTY

Office of Attorney General
1275 W. Washington
Phoenix, Arizona 85007

289 039

Revol

Re: Navajo County Attorney Opinion
No. CAS-021

Gentlemen:

Please find enclosed Navajo County Attorney Opinion
#CAS-021 for your review pursuant to A.R.S. §15-253.

Very truly yours,

Dale K. Patton, Jr.

Dale K. Patton, Jr.
Navajo County Attorney

DKP:dt

Enclosure

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*Admission
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