
OPINION NO. 77-001

Syllabus:

All children of compulsory school age, whether married or single, are subject to the compulsory attendance provisions of R.C. Chapter 3321 unless exempted or excused from attendance for one or more of the statutory reasons set forth therein.

To: Donald L. Lane, Preble County Pros. Atty., Eaton, Ohio
By: William J. Brown, Attorney General, January 18, 1977

I have before me your request for my opinion as to whether married students of compulsory school age may be compelled to attend school.

As you note in your request, one of my predecessors, in 1921 Op. Att'y Gen. No. 2495, examined the compulsory school attendance statutes then in effect and concluded that married minor females could not be compelled to attend school even if of compulsory school age. That opinion considered the duties of compulsory education imposed in 1921 by former G.C. 7762 and 7763 and concluded that the duty of school attendance created therein was placed upon the parents or guardian of a child of compulsory school age. After analyzing the emancipating effect of marriage, my predecessor determined that the parents of a minor female who married were, after such marriage, no longer subject to the provisions of G.C. 7762 and 7763 and that, consequently, married minor females could not be compelled to attend school under the compulsory school attendance law.

In light, however, of the changes which have occurred since 1921 both in the compulsory attendance statutes and in the public policy they reflect, I am constrained to disagree with this conclusion. For the reasons set forth in the following analysis, it is my opinion that the duty of school attendance rests upon each child of compulsory school age, whether or not married, unless he is subject to one of the specifically enumerated statutory exceptions.

While it is true that the provisions of R.C. 3321.01, et seq., do place a responsibility upon the parents of a child of compulsory school age to see that such child attends school, today's statutes also impose a duty of attendance upon each child of compulsory school age. R.C. 3321.02 specifies that every child actually resident in the state shall be amenable to the laws relating to compulsory education. Further, R.C. 3321.03 requires school attendance as follows:

"Except as provided in this section, the parent, guardian, or other person having the care of a child of compulsory school age which child has not been determined to be incapable of profiting substantially by further instruction shall cause such child to attend a school which conforms to the minimum standards prescribed by the state board of education for the full time the school attended is in session, or shall otherwise cause him to be instructed in accordance with law. Every child of compulsory school age who has not been determined to be incapable of profiting substantially by further instruction shall attend a school which conforms to the minimum standards prescribed by the state board of education until one of the following occurs:

(A) The child receives a diploma granted by the board of education or other governing authority indicating such child has successfully completed the high school curriculum.

(B) The child receives an age and schooling certificate as provided in section 3331.01 of the Revised Code.

(C) The child is excused from school under standards adopted by the state board of education pursuant to section 3321.04 of the Revised Code."

(Emphasis added.)

As discussed by the Supreme Court of Ohio in State v. Gans, 168 Ohio St. 174 (1958), this statutory requirement places a duty not only upon the parents or guardians of a child of compulsory age, but also upon the child himself, since a failure to so attend may constitute habitual truancy, which is a ground for a finding of delinquency under R.C. 2151.02. On this point see R.C. 3321.22 which provides:

"If the parent, guardian, or other person in charge of a child, upon complaint for a failure to cause the child to attend school or a part-time school or class, proves inability to do so, then such parent, guardian, or other person in charge of a child shall be discharged, and thereupon the attendance officer shall make complaint before the judge of the juvenile court of the county that the child is a delinquent child or dependent child within the meaning of section 2151.02 or 2151.04 of the Revised Code. . . ."

The parents in the Gans case, who had actively participated in enabling their eleven year old daughter to marry, were further found to have performed acts tending to cause the child to become delinquent, in that the marriage seemed likely to result in truancy.

The Supreme Court, in the Gans decision at p. 181, supplied

the following discussion of Ohio's compulsory education statutes and the public policy they reflect:

After providing, in section 3321.01, Revised Code, that "a child [male or female] between 6 and 18 years of age is of 'compulsory school age,'" the General Assembly, in Section 3321.03, went on to provide that "every child of compulsory school age who is not employed under an age and schooling certificate and has not been determined to be incapable of profiting substantially by further instruction shall attend a school which conforms to the minimum standards prescribed by the State Board of Education, under the conditions prescribed by law.

The General Assembly then stated, in Section 3321.04, that it is the duty of every parent to see that a child between 6 and 18 does in fact attend school unless excused therefrom for one or more of the reasons set out in the latter part of the statute. A close examination of those reasons fails to disclose that marital duties, such as house cleaning, cooking, washing, caring for infants, etc., are among them.

These sections of the Code exemplify another public policy of this state, which is that our free civilization in this country and in this state will maintain itself and advance only as its members become educated so as to be able to add their knowledge to that of their forefathers and thus progress.

. . . We do not mean to imply that a high school education provides a modern person with world-shaken tools of knowledge such as those of the scientists who work with atomic energy. It seems beyond argument to this court, however, that a child who is not at least exposed to his own potentialities by a high school education (that contemplated by the statutes here under consideration) can hardly be expected to realize his potential either to himself or to his community, regardless of his basic or natural intelligence.

The court notes that a high school education is an absolute prerequisite to obtaining most jobs nowadays, and that it is most likely that Kay will need or want a job at sometime in the future.

These are obviously the reasons for the public policy of this state regarding compulsory school attendance, as set out in Chapter 3321 of the Revised Code, and we are in wholehearted agreement therewith. (Emphasis added.)

The right of school age children to attend school has been discussed in 1968 Op. Att'y Gen. No. 68-061 and 1971 Op.

Att'y Gen. No. 71-046. As a corollary to the right of every youth to attend school, Ohio's compulsory education statutes require such attendance unless exempted from this requirement by virtue of a statutory exception. While the emancipation of a minor, whether by marriage or otherwise, may terminate parental obligation to see that a child attends school, it does not abrogate the child's duty to attend school unless he is otherwise excused or exempted by one of the reasons statutorily set forth.

While in certain circumstances, the marriage of a minor child may give rise to a situation where one of the statutory exemptions or excuses from the requirement of school attendance occurs, the marriage of a minor per se is not among the statutory exceptions to the requirement that a child of compulsory school age attend school. Further, as discussed by the Ohio Supreme Court in State v. Gans, supra, the statutory reasons which excuse a child from school attendance do not include marital duties, so that a married minor stands upon the same footing as any other child of compulsory school age in respect to the requirement of school attendance.

In specific answer to your question, it is my opinion, and you are so advised, that all children of compulsory school age, whether married or single, are subject to the compulsory attendance provisions of R.C. Chapter 3321 unless exempted or excused from attendance for one or more of the statutory reasons set forth therein.