

301.

SCHOOLS—AGE AND SCHOOLING CERTIFICATE—SECTION 7763 AND 7767 G. C. CONSTRUED—INFANT MARRIED FEMALES NOT COMPELLED TO ATTEND SCHOOL.

COLUMBUS, OHIO, May 4, 1923.

SYLLABUS:

*Under section 7767, General Code, an age and schooling certificate could only be issued to a child over sixteen years of age, but under the provisions of section 7763, a child being an infant married female could be excused from the school on the ground of bodily condition; and further, in view of the law and arguments herein stated, it is not believed the compulsory school laws apply to compel infant married females to attend school.*

*The child in the instant case would not be entitled to an age and schooling certificate under the provisions of either sections 7766-6, 7769-9 or 7770-3 General Code, and therefore could not be employed in any of the employments mentioned in section 12993 G. C.*

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, as Director of Education, Columbus, Ohio.*

DEAR SIR:—A communication of recent date received from your department requests an opinion in answer to the following questions:

"1. May an age and schooling certificate be issued by the proper school authorities to a married infant female who is under sixteen years of age?

"2. In case of holding such an age and schooling certificate or not holding it, could such a person prior to the age of reaching sixteen be employed in any of those occupations which are forbidden under the provisions of Section 12993 G. C.?"

Your first question involves an analysis of the compulsory school statutes with reference to the law of Ohio relative to the marriage relation. Considering first the section of the Code relative to marriage, we find sections 11181 and 11181-1 G. C., which read as follows:

"Male persons of the age of eighteen years, and female persons of the age of sixteen years, not nearer of kin than second cousins, and not having a husband or wife living, may be joined in marriage. Male persons under the age of twenty-one years, and female persons under the age of eighteen years, must first obtain the consent of their fathers, respectively, or in case of the death or incapacity of their fathers, then their mothers or guardians."

"Provided, however, that when any such person is under age, and has no parents or no legal guardian, the judge of the Juvenile court of the county in which the said female resides, may, upon the application of both the contracting parties, an entry being made upon its journal, give consent and approbation in the probate court for the marriage; and provided

further that when the condition of the female is such as to imperatively impel the marriage relation by reason of approaching maternity, the matter shall be inquired into by the juvenile court, and if one or both the parties are made ward of the court and it is found proper, said court may, with consent of said wards, or their parents, if any are living, or of any guardian, give consent in the probate court, and the probate court may thereupon issue a license therefor, notwithstanding either or both the contracting parties for the marital relation is under the minimum age otherwise prescribed by law, but such license shall not issue until it is found beyond doubt it is a maternity case."

From the first section above (section 11181) it appears that the minimum age for marriage for a minor female is sixteen years, with the added restriction that a female person under eighteen years must first obtain the consent of her father or mother. The latter part of the second section further provides that notwithstanding either or both contracting parties for the marriage relation are under the minimum age above provided, if the condition of the female is such as to imperatively impel the marriage relation by reason of approaching maternity, the probate court, after due investigation by the Juvenile court, may issue a marriage license. From the provisions above set forth it would seem, as stated in your question, that the marriage of the infant female may have been occasioned because of approaching maternity.

The pertinent parts of the sections of the compulsory school law involved in your question are as follows:

Sec. 7762:

"All parents, guardians or other persons who have the care of children who are of compulsory school age as indicated in section 7763, General Code, and who are not employed on age and schooling certificates, shall instruct them, or cause them to be instructed \* \* \*"

Sec. 7762-5:

"All parents, guardians and other persons who have the care of children who are employed on age and schooling certificates shall cause them to attend a part-time day school or class for the full time that the school or class is in session whenever such part-time school or class shall have been established and is accessible to the child in the district where the child resides or is employed, unless the superintendent of schools determines that a given child has already completed the same work as or work equivalent to that taken up in such part-time schools or classes as may be available for the child to attend or that the *bodily or mental condition of the child does not permit* of his attendance at such school or class \* \* \*"

Sec. 7763:

"Every parent, guardian or other person having charge of any child of compulsory school age who is not employed on an age and schooling certificate must send such child to a public, private or parochial school for the full time the school attended is in session, which shall in no case be for less than thirty-two weeks per school year. Such attendance must

begin within the first week of the school term or within one week of the date at which the child begins to reside in the district or within one week after his withdrawal from employment.

*"But the child may be excused from attendance at school for the current school year upon satisfactory showing that the bodily or mental condition of the child does not permit of its attendance at school or that the child is being instructed at home by a person qualified to teach the branches specifically enumerated in section 7762, General Code, and if the stage of advancement of the child demands it, qualified to teach such additional branches as his needs may require \* \* \*"*

The latter part of section 7763 G. C. also fixes compulsory school age at six to eighteen years of age.

Section 7766 G. C. provides:

*"An age and schooling certificate may be issued only by the superintendent of schools and only upon satisfactory proof that the child to whom the certificate is issued is over sixteen years of age and has satisfactorily passed a test for the completion of the work of the seventh grade, provided that residents of other states who work in Ohio must qualify as aforesaid with the proper school authority in the school district in which the establishment is located, as a condition of employment or service."*

It appears from the sections above set forth that an age and schooling certificate can be issued only upon proof that the child is over sixteen years of age (7766 G. C.). In the instant case this section alone would seem to forbid the issuance of an age and schooling certificate for the reason that the child in question is not over sixteen years of age.

Further considering the compulsory school laws with the marriage laws of the state of Ohio in mind, it is not believed that the compulsory school laws apply to compel a married female under sixteen years of age to attend school. This has been well stated in a former opinion of this office, found in Opinions of the Attorney General for 1921, Vol. 2, p. 951, which is in part as follows:

*"The legal effect of marriage of those not yet of full age and the relative importance of that relation to the public schools must be somewhat considered. The marriage relation, it is perhaps unnecessary to observe, is well grounded in the broad principles of public policy and public morals. Marriage arises on contract. It is a much more ancient institution than is the public school. The building of a home and the rearing of children are perhaps the major reasons for its establishment and the zealous care the law has ever exercised in its maintenance and control.*

*"In Courtright v. Courtright, 36 Bull. 309, the court says:*

*"The right to marry is a natural one, recognized and regulated by the laws of all Christian countries."*

"Again, in 26 Cyc, 827, it is said:

"In truth, whatever contractual elements marriage may contain, are important only in its inception; for once entered upon it becomes a relation rather than a contract, and invests each party with a status toward the other and society at large, involving duties and responsibilities which are no longer matter for private regulation but concern the commonwealth. And in this aspect marriage is a civil or social institution, *publici juris*, being the foundation of the family and the origin of domestic relations of the utmost importance to civilization and social progress; \* \* \*

"It is in the concern of the state, the foundation of a family, the origin of domestic relations, that the answer to your question really centers, and it would seem that this public right or interest in the marriage relation transcends the effect of the compulsory educational laws and vitiates the right to compel an infant married woman to go to school, leaving it to her choice and her circumstances whether or not she shall use her right to attend.

"The wife takes the husband's name and domicile. She leaves the guardianship of her parents for that afforded by her husband. He is entitled to her services and society. He is bound to support her out of his means or by his labor, and if unable to do so the wife must assist him so far as she is able. Section 7997 G. C. The husband and wife contract toward each other obligations of mutual respect, fidelity and support. Section 7995 G. C."

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"The compulsory educational laws impose upon parents, guardians, etc., the duty of keeping children and wards in the schools regularly so that such children and wards may have opportunity to secure the education intelligent citizens of a state need for the good of the government and for their own well being. Such laws are not directed at the youth of the state, except as the beneficiaries of their proper observance. It is only in cases where the parent or guardian admits inability to comply with the compulsory educational laws that a youth is regarded as one with whom the juvenile court will deal; that is, incorrigible or delinquent youth are disposed of by said court.

"Infant married women are prospective parents. When they become such, when their children become of compulsory school age the compulsory educational laws apply to them. Prior to the time the children reach compulsory school age the infant wife and mother finds the rearing of her offspring, under ordinary circumstances, too absorbing of her entire attention to permit her attending public school.

"As before stated herein, marriage of an infant female releases her from the guardianship of her parents. They are no longer entitled to her services or required to support her,—that becomes the duty of her husband or of herself, as the case may be."

Attention is further directed to the provisions of section 7763 G. C., *supra*, wherein it is provided that the child may be excused from attendance at school for the current school year upon satisfactory showing that the bodily or mental condition of the child does not permit of its attendance at school. In view of this provision, it would seem that if the infant female, under sixteen years in the instant case entered the marriage relation because of approaching maternity (section 11181-1 G. C.), this would be sufficient to bring such infant female under the provisions of section 7763 G. C., and would be sufficient justification to excuse, if not exclude, such infant person from the schools.

Therefore, in answer to your first question, you are advised that under section 7766 G. C., an age and schooling certificate could only be issued to a child over sixteen years of age, but under the provision of section 7763, a child being an infant married female could be excused on the ground of bodily condition; and further, in view of the law and arguments herein stated, it is not believed the compulsory school laws apply to compel infant married females to attend school.

In answer to your second question, section 12993 of the General Code provides that no child under sixteen years of age shall be employed, permitted or suffered to work on or about the several places or employments mentioned in said section, except that said section shall not apply to holders of age and schooling certificates under sections 7766-6, 7769-9 or 7770-3 G. C. The child in the instant case would in no wise be entitled to an age and schooling certificate under the provisions of any of the last three mentioned sections, and therefore could not be employed in any of the employments mentioned in section 12993 G. C.

Respectfully,

C. C. CRABBE,  
*Attorney General.*

302.

BOARD OF EDUCATION—EMPLOYMENT OF MINOR SON OF BOARD MEMBER WOULD BE ILLEGAL UNDER SECTION 4757 G. C.—PRESUMPTION OF PECUNIARY INTEREST WOULD BE VIOLATION OF PENAL SECTION.

COLUMBUS, OHIO, May 4, 1923.

*SYLLABUS:*

*The general presumption is that the employment of a minor son of a member of a board of education is such an employment or contract as would be illegal under the provisions of section 4757 upon the ground that said parent, as a member of the board of education, would have a pecuniary interest in said contract.*

*Under penal section 12932 General Code, the employment by a board of education of a minor son of a member of said board of education would raise the same general presumption of pecuniary interest as in the first question under section 4757 and would be a violation of said penal section.*

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Yours of recent date received, in which you submit the following statement and inquiry: