OPINION NO. 71-046

Syllabus:

The board of education has power to exclude a pregnant student, either married or unmarried, from participating in commencement exercises and extracurricular activities, to the same extent as it may exclude other students, where it reasonably finds in the exercise of sound judgment that there would be a danger to the student's physical health or well-being or where her presence is clearly a substantial disruptive influence upon the government of the school.

To: Roy H. Huffer, Jr., Pickaway County Pros. Atty., Circleville, Ohio
By: William J. Brown, Attorney General, September 1, 1971

Your request for my opinion reads as follows:

> "What authority, if any, does a School Board have to exclude an unmarried pregnant girl from commencement or other extracurricular activities?"

The necessary authority of a board of education of a local school district to adopt rules and regulations is found in Section 3313.20, Revised Code, which reads, in part, as follows:

> "The board of education shall make such rules and regulations as are necessary for its government and the government of its employees and the pupils of the schools.* * *"

Also, Section 3313.47, Revised Code, reads in part:

> "Each city, exempted village, or local board of education shall have the management and control of all of the public schools of whatever name or character in its respective district.* * *"

There is ample authority for the proposition that, in the exercise of the foregoing statutory powers, boards of education have been granted a wide area of discretion with which the courts will not interfere in the absence of a showing of an abuse of discretion. The Supreme Court has held that the authority conferred upon a board of education to adopt rules and regulations to carry out its statutory functions vests in the board a wide discretion; Greco v. Roper, 145 Ohio St. 240, 243 (1945); provided, of course, that specific statutory limitations on the board's authority are not exceeded, Verberg v. Board of Education, 135 Ohio St. 246 (1939). "The school laws must be liberally construed in order to carry out their evident policies and conserve the interests of the school youth of the state and any doubt must be resolved in favor of the construction that will provide a practical method for keeping the schools open and in operation." 48 O. Jur. 2d 677; Rutherford v. Board of Education, 127 Ohio St. 81, 83 (1933).

This principle has been applied recently to similar or related questions to that posed by your request. In State ex rel. Idle v. Chamberlain, 39 Ohio Op. 2d 262 (1961), the Common Pleas Court of Butler County, Ohio, said that the adoption of a regulation requiring a pregnant student to withdraw from school attendance does not constitute an abuse of discretion on the part of the board of education. In examining the reasonableness of the regulation, the Court emphasized the fact that the evidence showed that the student's further school attendance was denied in the interest of her physical well-being and not as a punitive measure. An excerpt from an Opinion of the Attorney General was quoted to point out that the "typical rough-and-tumble characteristic of children in high school might present a danger which a board of education might wish to avoid." Opinion No. 2147, Opinions of the Attorney General for 1961. Furthermore, the Court held that it would be reasonable for a board, having in mind that it serves the entire student body, to consider the effect that continued presence of a pregnant student in the classroom might have upon her fellow students.

In State ex rel. Baker v. Stevenson, 27 Ohio Op. 2d 223 (1963), the Butler County Court of Common Pleas held that a school board rule precluding married students from engaging in extracurricular activities is not arbitrary, unreasonable, or an abuse of discretion.

Your question has also been considered by two of my predecessors since the time of the Chamberlain case, supra, decision. Opinion No. 2998, Opinions of the Attorney General for 1962, stated, at pages 348 and 349, as follows:

> "While pregnancy is a natural corollary to the married state, pregnancy in an unmarried student obviously presents a different situation. Where the unmarried student is concerned, the board of education might reasonably consider that the presence of the student could create an adverse effect on the morale of the student body, and might interfere with the proper discipline and government of the students. In such a case, I would consider it within the discretion of the board to adopt a rule barring such unmarried pregnant student from the activities here concerned, or from other activities of the school for that matter."

In Opinion No. 120, Opinions of the Attorney General for 1963, the question of the extent to which a school board could prohibit an unwed mother from participating in extracurricular activities by rule or regulation was considered. The Syllabus of that Opinion reads as follows:

> "Students' morals may properly be the basis for rules and regulations by a board of education for the government of the students, and the following extracurricular activities may be the subject of such rules and regulations: athletic competition, musical organizations, dramatics organizations and productions, social activities, class and school trips, cheerleading, class and school elective office, literary activities, military activities, service activities, scientific activities, scholastic activities, honor societies and honor organizations."

The question was also mentioned in Opinion No. 68-061, Opinions

of the Attorney General for 1968. That Opinion was primarily concerned with the right of a board of education to expel an unmarried pregnant girl, and it concluded, after a review of the compulsory school laws, that the only statutory ground for expulsion of such a student is that continued attendance would be detrimental to her physical safety and well being. The Opinion did, however, refer to the authority of a board to place restrictions on regular attendance of such a student at classes and extracurricular affairs as expressed in Opinion No. 2998, supra, and Opinion No. 120, supra, and it approved of the holdings of those prior Opinions in the following language: "Thus it has been established that a school can control and restrict the extra-curricular activities of a pregnant student."

In 1968, the Supreme Court of the United States decided the closely related cases of Levy v. Louisiana, 391 U.S. 68 (1968) and Glona v. American Guarantee Co., 391 U.S. 73 (1968). Although those cases dealt with the rights of illegitimate children, their language and rationale are very helpful here. Mr. Justice Douglas, writing for the majority, addressed himself to the problem of the reasonableness of discretion. He condemned the Louisiana statutes in question by pointing out that, in effect, they relegated the illegitimate child to the status of a "nonperson" and continued by stating that "while a state has broad power when it comes to making classifications it may not draw a line which constitutes an invidious discrimination against a particular class."

Those two opinions were carefully worded so as to leave no doubt that "reasonable classifications" become "invidious discriminations" only when no rational basis exists to connect the regulation and the end to be served.

The Ohio court in the Chamberlain case, supra, recognized this, and the considerations due physical health and well-being were there completely and correctly divorced from the category of punitive denial of rights.

That is not to say, however, that the mother's rights are the only ones involved. The board is charged with the duty to provide education and concurrent with that duty possesses the right to consider, as mentioned above, adverse effects upon the morale, discipline, government, and morals of the students under its jurisdiction and may promulgate rules and regulations necessary to control the same in order that it may carry out its duties.

The extent of the discretion of the board of education in these matters was discussed in Tinker v. Des Moines Independent Community District, 393 U.S. 503, 89 S. Ct. 733 (1969). In that case, the Supreme Court noted that a disruptive influence in the school may properly be the subject of regulation. But the Court pointed out that "disruptive influence" means more than an action which does no more than arouse a controversy. It connotes actions or conditions which would clearly interfere with the work of the school, or impinge upon the rights of other students.

Thus, a board has authority to adopt reasonable regulations. But it cannot adopt an arbitrary regulation, and it cannot enforce an otherwise reasonable regulation in an unreasonable manner. The Supreme Court said in the Tinker case, supra, as follows:

"* * *The Court has repeatedly emphasized the

> need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.* * * (Page 507)
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> "* * * * * * * * *
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> "[However] where there is no finding and no showing that engaging in the forbidden conduct would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,' the prohibition cannot be sustained.* * * (Page 509)
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> "* * * * * * * * *
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> "If a regulation were [arbitrary and unreasonable], it would be obvious that the regulation would violate the constitutional rights of students,* * *." (Page 513)

If the board adopts such a regulation, the board must determine that such regulation serves the purpose reasonably and, in acting pursuant thereto, it must determine whether enforcement of the regulation is reasonable under the particular facts involved.

In specific answer to your question, it is my opinion that the board of education has power to exclude a pregnant student, either married or unmarried, from participating in commencement exercises and extracurricular activities, to the same extent as it may exclude other students, where it reasonably finds in the exercise of sound judgment that there would be a danger to the student's physical health or well-being or where her presence is clearly a substantial disruptive influence upon the government of the school.