

Honorable T. J. S. Waxter, Director, Department of Public Welfare (cont'd)

disciplinary powers, as mentioned in Section 112.

There do not seem to be any Maryland cases on the specific subject of the scope of the School Board's authority to suspend or expel pupils, but there are a number of decisions from other states which furnish a clear guide. The generally accepted principle as set out in American Jurisprudence - Schools - under Title X - Pupils - is that a School Board suspending or expelling pupils for disciplinary breach in good faith, and without malice, is simply carrying out its duty and is not subject to suit in tort or contract. The underlying theory, as stated in American Jurisprudence being that

"free schooling furnished by the State is not so much a right granted to the pupils but a duty imposed upon them for public good."

Under the sub-title "Discipline and Punishment, Suspension and Expulsion," it is made clear that conduct outside of the school grounds may be grounds for suspension or expulsion when the continuance of the child in school would have a bad moral effect on the other children in attendance. The leading cases cited are:

Tantor v. Kenney (1924) 226 Mich. 245, 197 N.W. 510 - Suspension of a girl student upheld who had smoked on public streets, been seen embracing in public and defied school authorities in the press.

Kenny v. Gurley (1923) 208 Ala. 623, 95 SO 34 - Suspension of a girl student upheld when shown that she had contracted a venereal disease.

Sherman vs. Charlestown (1851) 8 Cushing (Mass.) 160 - Girl student expelled for immoral and licentious conduct outside of school.

Although it would not necessarily follow that every school girl under sixteen years who has had a baby would create immoral hazards for her classmates, still such a situation would appear to give the Board of Education grounds upon which to deny re-admittance. Or to state the position of the Board of Education in its legally correct framework, the Board could suspend or expel a girl under the circumstances outlined, but in the absence of any suspension or expulsion the child must attend school until the age of sixteen.

If the School Board should decide that a particular girl is not desired back at school, the matter might also be handled under the provisions of Section 212, as recently amended, if the child is fourteen years of age. That is, rather than enter an