

SCHOOLS:

A Missouri school board may govern the appearance of students through specifically worded and narrowly drawn dress and appearance codes only if the district can factually justify such codes as being reasonably necessary to promote intelligent conduct and control of its schools and only if the district can factually justify such codes as being reasonably necessary to carry out the educational mission of the school district.

OPINION NO. 21

April 2, 1973

Honorable Hardin C. Cox  
Representative  
Seventy-eighth District  
300 Main Street  
Rock Port, Missouri 64882



Dear Representative Cox:

This official opinion is issued in response to your request for a ruling on whether a school board has the authority to prescribe dress and appearance codes for students.

Your request, prompted by inquiries that you have received from a student, a school superintendent, and a school board member in your district, does not contain any other facts. Although you have asked generally about dress and appearance codes, we will assume that the dress code about which you inquire contains regulations commonly found in such codes, e.g., hair length or style, length of skirts, whether or not pants may be worn by girls, etc.

Generally, each school board may make rules and regulations necessary for the government of a school district:

"The school board of each school district in the state may make all needful rules and regulations for the organization, grading and government in the school district. . . ." Section 171.011, RSMo 1969.

School board regulations governing the personal appearance of students attending the schools of the district have been the subject of two recent court decisions in Missouri. In Lawrence J. Kraus v. Board of Education of the City of Jennings, --- S.W.2d --- (Mo., March 12, 1973, No. 57597), the most recent of these decisions, the Missouri Supreme Court considered whether the trial court had properly considered itself bound by the decision in

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Bishop v. Colaw, 450 F.2d 1069 (8th Cir. 1971).<sup>1</sup> Relying on Bishop, the court below had ruled that the school board's rules and regulations dealing with hair length and style were unconstitutional and void. The Missouri Supreme Court reversed, stating:

". . . It would serve no useful or proper purpose for us to comment on the holding in the Bishop case. It is enough to say: (1) that we do not agree with it; and (2) that we agree with the position, *supra*, taken by the Ninth Circuit in the King case. The judgment must be reversed and the cause remanded with directions to dissolve the permanent injunction.

"We would hope that the controversies have now subsided and that it will not be necessary for the Board to again institute the dress code. If it does, and its action is contested, the trial court will follow Missouri law to the effect that the limits of the Board's discretion, in so acting, 'should extend no further than may be found reasonably necessary to promote the intelligent conduct and control of the school \* \* \*.' Wright v. Board of Education, 295 Mo. 466, 246 S.W. 43, 47 (1922). Of course, if by then the United States Supreme Court has spoken directly to the question, the trial court will follow the 'supreme law of the land' as declared by the Court."

Therefore, based on the Kraus decision, we must conclude that hair regulations and presumably other kinds of appearance regulations are valid under Missouri law if the regulations are "reasonably necessary to promote intelligent conduct and control of the school. . . ."

However, a school district which attempts to enforce a dress code may still be sued in federal court based on an alleged violation of a student's federal constitutional right. Although the Missouri Supreme Court ruled in Kraus that Missouri courts are

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1. In Bishop, the United States Court of Appeals for the Eighth Circuit held that the particular hair regulation before it violated the plaintiff student's constitutional rights. The decision will be discussed at greater length later in this opinion.

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not bound by the Eighth Circuit Court of Appeals' interpretation of what the Federal Constitution requires with reference to hair regulations, the Bishop decision has not been overruled by the Eighth Circuit Court of Appeals or by the United States Supreme Court. Therefore, any case challenging the constitutionality of hair regulations, which would be filed in a federal district court in Missouri, would presumably be governed by Bishop rather than Kraus. In Bishop, the Court had before it the question of whether Stephen Bishop should be readmitted to the public schools of St. Charles, Missouri from which he had been suspended because his hair style violated the provisions of the school dress code. Plaintiffs contended that the dress code regulations concerning hair length and style for male students violated personal rights guaranteed by the United States Constitution.

The Court, in Bishop, pointed out that there are conflicting decisions on the constitutionality of dress code regulations among the various federal circuit courts and the federal district courts. The Court determined that "Stephen possessed a constitutionally protected right to govern his personal appearance while attending public school." Id. at 1075. The Court commented as follows in support of its conclusion concerning Stephen's constitutional right:

". . . The common theme underlying decisions striking down hairstyle regulations is that the Constitution guarantees rights other than those specifically enumerated, and that the right to govern one's personal appearance is one of those guaranteed rights.

\* \* \*

"We believe that, among those rights retained by the people under our constitutional form of government, is the freedom to govern one's personal appearance. As a freedom which ranks high on the spectrum of our societal values, it commands the protection of the Fourteenth Amendment Due Process Clause. See Crews v. Cloncs, 432 F.2d 2169 (7th Cir. 1970); Richards v. Thurston, 424 F.2d 1281 (1st Cir. 1970). The importance attached to such personal freedom has been long recognized. Writing in 1891, Justice Gray said:

"No right is held more sacred, or is more carefully guarded, by the common law, than the right of every

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individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. As well said by Judge Cooley, 'The right to one's person may be said to be a right of complete immunity: to be *let* alone.' [Union Pacific Railway Company v. Botsford, 141 U.S. 250, 251, 11 S.Ct. 1000, 1001, 35 L.Ed. 734 (1891)]" Id. at 1075.

Having determined that Stephen possessed a right to govern his personal appearance, the Court then pointed out that personal freedoms are not absolute and must yield when they intrude upon the freedoms of others:

". . . Personal freedoms are not absolute; they must yield when they intrude upon the freedoms of others. Our task, therefore, is to weigh the competing interests asserted here. In doing so, we proceed from the premise that the school administration carries the burden of establishing the necessity of infringing upon Stephen's freedom in order to carry out the educational mission of the St. Charles High School. See Crews v. Cloncs, 432 F.2d 1259 (7th Cir. 1970). Since our decision must turn on the regulations, we review the evidence adduced in their support." Id. at 1075-1076.

The Court then analyzes whether the district had established a factual necessity for its regulation of hair length and concluded that it had not. Id. at 1077. Therefore, the regulation was invalid and its terms unenforceable. Circuit Judge Lay, in a concurring opinion, concluded as follows:

"The question confronting us is whether there exists any real educational purpose or societal interest to be served in the discipline the school has adopted. After due consideration I fail to find any rational connection between the health, discipline or achievement of a particular child wearing a hair style which touches his ears or curls around his neck, and the child who does not. The gamut of rationalizations for justifying this restriction fails in light of reasoned analysis. . . ." Id. at 1078.

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Certain general conclusions can be drawn from Bishop and Kraus which can be applied to the question you ask. According to Bishop, no restriction on a student's constitutional right to govern his personal appearance while attending public school will be permitted unless the school administration can establish that the regulation is necessary in order to carry out the educational mission of the school. The school district must have factual support for its conclusion that such a restriction is necessary. Under Kraus, a Missouri board of education may, under its general rule-making power, promulgate appearance regulations which are reasonably necessary to promote intelligent conduct and control of the schools in the district. Assuming that the board of education of the school district can factually support its decision that specific, narrowly drawn appearance regulations are reasonably necessary to carry out the board's responsibility for governing its school district, the regulations would probably pass muster under both Bishop and Kraus.

#### CONCLUSION

Therefore, it is the opinion of this office that a Missouri school board may govern the appearance of students through specifically worded and narrowly drawn dress and appearance codes only if the district can factually justify such codes as being reasonably necessary to promote intelligent conduct and control of its schools and only if the district can factually justify such codes as being reasonably necessary to carry out the educational mission of the school district.

The foregoing opinion, which I hereby approve, was prepared by my Assistant D. Brook Bartlett.

Very truly yours,



John C. Danforth  
Attorney General