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FILE NO. S-889

**SCHOOLS AND SCHOOL DISTRICTS:
Authority of School District
to Post No Trespassing Notice**

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**Honorable Donald E. Irvin
State's Attorney, Jefferson County
P. O. Box 595
Mt. Vernon, Illinois 62864**

Dear Mr. Irvin:

I have before me your recent letter wherein you request my opinion as follows:

"May I have your opinion on the following issue.

Whether it is lawful for a School District to post its lands and other property with the following notice:

> **No persons other than student, parent of student, or member of staff of School District may enter on this land (or into this building) unless he has obtained proper authorization from the Superintendent of Township High School.**

> If you determine that the above is lawful, does Chapter 38, Illinois Revised Statutes, Section 21-3 apply to entry on such land or property?"

The notice to which you refer is in the nature of a preventative measure enacted under the powers granted school districts to control school buildings and school real property by sections 10-22.10 of the School Code (Ill. Rev. Stat. 1973, ch. 122, par. 10-22.10), which states:

> "Control and supervision of school houses and school grounds. To have the control and supervision of all public schoolhouses in their district, and to grant the temporary use of them, when not occupied by schools, for religious meetings and Sunday schools, for evening schools and literary societies, and for such other meetings as the board deems proper; to grant the use of assembly halls and class rooms when not otherwise needed, including light, heat and attendants, for public lectures, concerts, and other educational and social interests, under such provisions and control as they may see fit to impose; to grant the use of school grounds under such provisions and control as they may see fit to impose and to conduct, or provide for the conducting of recreational, social and civic activities in the school buildings or on the school grounds or both." (Emphasis added.)

and section 16-8 of the School Code (Ill. Rev. Stat. 1973, ch. 122, par. 16-8), which provides:

> "Supervision--Personnel--Police control. The school board of any such school district acquiring real estate and equipping, operating and maintaining it for the purposes provided in Section 16--7 shall have supervision over such playgrounds, recreation grounds or athletic fields, may employ play leaders, playground directors, supervisors, recreation superintendents or athletic directors therefor, and may take such steps to provide for the protection, sanitation, care and management thereof as it deems appropriate.
>
> If real estate so acquired lies partly or wholly outside and within 1 mile of the corporate limits of any city, village or incorporated town situated in such district, such city, village or incorporated town shall exercise police control and protection over such real estate and its equipment in the same manner and to the same extent that such city, village or incorporated town would exercise police control and protection thereover if such real estate were situated within the corporate limits thereof."

The above cited sections are designed to grant school authorities powers in the supervision, protection and care of school real estate and equipment. They provide school administrators with means by which to control activities on or about school premises which are unrelated to legitimate school purposes and are being carried out by unauthorized individuals not associated with the school's academic community. In short, they

are to be exercised in controlling ingress and egress to school facilities so far as necessary to maintain a functioning educational environment.

The Constitution of the State of Illinois, article X, section 1, requires the General Assembly to provide a thorough and efficient system of free schools wherein all children of this State may receive a good common school education. It is a fundamental goal of the people of the state of Illinois that all persons have the opportunity to develop educationally to the limits of their capacity. Article X of the present Constitution reflects the earlier provisions of article VIII, section 1, of the Constitution of 1870 which was designed to compel the General Assembly to maintain the then existing system of free schools. (See Debates of Constitutional Convention, 1869 to 1870, pages 1733, 1734.) Following the adoption and ratification of the 1870 Constitution, the General Assembly passed "AN ACT to establish and maintain a system of free schools" (Laws of 1871, 1872, p. 700) which was a complete enactment repealing all former acts concerning schools and providing for a complete public school system, designed to furnish the young with a good fundamental education.

Certainly, no rational person conversant with the long and noteworthy history of public education in Illinois would argue against the right of school authorities to protect school property and preserve the moral and physical well being of students from the depredations occasioned by the intrusion onto school grounds of vagrants, vandals, dope peddlers, pornographers and other interlopers who might indiscriminately impede the proper functioning of the educational system. It is clear that in seeking to maintain a functioning school system, capable of providing the young people of Illinois with a sound, meaningful and proficient education, a school administrator may restrict the uses to which school property may be put by those unaffiliated with school operation and administration. (People v. Johnson, 6 N.Y. 2d 549, 190 N.Y.S. 2d 694, 161 N.E. 2d 9, (1959); People v. Sprowal, 49 Misc. 2d 806, 268 N.Y.S. 2d 444, aff'd 17 N.Y. 2d 884, 271 N.Y.S. 2d 310, 218 N.E. 2d 343, appeal dismissed, 385 U.S. 649, 87 S. Ct. 768, 17 L. Ed. 2d 670, (1966); State v. Starr, 57 Ariz. 270, 113 Pac. 2d 256 (1941).) While the public schools are supported, endowed and operated by taxpayer's money, it has never been maintained that any member of the public may use such property for

his own personal objectives. It is well established that a board of education may require that persons who ask to use school property state, that to the best of their knowledge, the intended use is a legal one, without occasioning an unconstitutional abridgment of the rights of free speech and public assembly. The school board has both the right and the duty to pre-determine that school premises will not be used in contravention of the law. Requiring applicants to state that they do not knowingly intend to use school property in an illegal manner is a logical method of fulfilling that duty. (American Civil Liberties Union v. Board of Education, 28 Cal. Rptr. 700, 379 Pac. 2d 4 (1963).) A school board will be granted wide discretion in exercising its responsibilities in this area. McCollum v. Board of Education of School District No. 71, 396 Ill. 14, Reversed on other grounds, 68 S. Ct. 461, 393 U.S. 203, 92 L. Ed. 648, 2 A.L.R. 2d 1338 (1947).

At issue in the instant case, however, it is more than the authority and responsibility of the school district to protect the educational viability of the public schools. At issue also is the reasonableness and thereby the Constitutionality of the notice in question as drawn and as enforced. While it is clear

that the notice is specifically designed to prohibit disruptive elements from intruding onto school property it must; nevertheless, meet certain Constitutional standards. An otherwise valid statute, making a particular course of conduct illegal, may run afoul of the Constitution where a chilling effect upon First Amendment rights is occasioned by the restraints imposed upon the condemned conduct. Consequently, the notice here in question must be evaluated in light of the potential imposition upon enjoyment of First Amendment rights to freedom of speech, communication and assembly which may result from its enforcement. At issue, therefore, is whether the particular notice which has been posted is sufficiently definite in its sanctions and sufficiently limited in its scope to withstand close First Amendment scrutiny. If the notice meets these two criteria then it is clear that section 21-3 of the Criminal Code of 1971 (Ill. Rev. Stat. 1973, ch. 38, par. 21-3), which states:

> "Criminal Trespass to Land.)
> (a) Whoever enters upon the land or any part thereof of another, after receiving, immediately prior to such entry, notice from the owner or occupant that such entry is forbidden, or remains upon the land of another after receiving notice from the owner or occupant to depart, commits a Class C misdemeanor.

(b) A person has received notice from the owner or occupant within the meaning of Sub-section (a) if he has been notified personally, either orally or in writing, or if a printed or written notice forbidding such entry has been conspicuously posted or exhibited at the main entrance to such land or the forbidden part thereof.

(c) This Section does not apply to any person, whether a migrant worker or otherwise, living on the land with permission of the owner or of his agent having apparent authority to hire workers on such land and assign them living quarters or a place of accommodations for living thereon, nor to anyone living on such land at the request of, or by occupancy, leasing or other agreement or arrangement with the owner or his agent, nor to anyone invited by such migrant worker or other person so living on such land to visit him at the place he is so living upon the land."

or alternatively section 21-5 of the Criminal Code of 1971 (Ill. Rev. Stat. 1973, ch. 38, par. 21-5), which provides:

"Criminal Trespass to State Supported Land.
(a) Whoever enters upon land supported in whole or in part with State funds, or Federal funds administered or granted through State agencies or any building on such land, after receiving, immediately prior to such entry, notice from the State or its representative that such entry is forbidden, or remains upon such land or in such building after receiving notice from the State or its representative to depart, and who thereby interferes with another person's lawful use or enjoyment of such building or land, commits a Class A misdemeanor.

> (b) A person has received notice from the State within the meaning of sub-section (1) if he has been notified personally, either orally or in writing, or if a printed or written notice forbidding such entry to him or a group of which he is a part, has been conspicuously posted or exhibited at the main entrance to such land or the forbidden part thereof."

may be applied in determining appropriate sanctions to levy upon those who trespass upon school property. If the notice is found not to meet these two criteria anyone charged under the above cited statutory sections for criminal trespass could successfully maintain that the notice was unconstitutional on its face for vagueness and/or overbreadth. Coates v. Cincinnati, 402 U.S. 611 (1971); Dombrowski v. Pfister, 380 U.S. 479; Kunz v. New York, 340 U.S. 290 (1951).

In relation to vagueness, an enactment will be deemed void for vagueness where its prohibitions are not clearly defined. (Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972); Cramp v. Board of Public Instruction, 368 U.S. 278, 287 (1961); United States v. Harriss, 347 U.S. 612, 617 (1954); Jordan v. DeGeorge, 341 U.S. 223, 230-232 (1951); Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939); Connelly v. General Construction Co.,

269 U.S. 385, 391 (1926); United States v. Cohen Grocery Co., 255 U.S. 81, 89 (1921); International Harvester Co. v. Kentucky, 234 U.S. 216, 223-224 (1914).) It is my opinion that the notice here in question is not vague on its face in that it is sufficiently clear and definite in its terms to offer fair warning as to the extent and nature of the conduct prohibited by its application, the entering onto school property of persons other than students, parents of students or members of the staff of the school district without proper prior authorization from the superintendent.

In relation to the vagueness of the notice as applied, where an enactment grants so much objective discretion to enforcement authorities as to permit resolution on only an ad hoc basis it must be considered vague. (Edwards v. South Carolina, 372 U.S. 236 (1963).) In the present case, if enforcement of the notice occurs merely on a piece meal basis, such enforcement may be challenged as unconstitutional. Where, however, the application of an enactment is limited by a compelling State policy it will not be deemed vague as applied. In Grayned v. City of Rockford, 408 U.S. 104 (1971), the Supreme Court in

sustaining an ordinance promulgated by the city of Rockford prohibiting noise or diversion which might disturb or tend to disturb the peace or good order in public schools held the ordinance not to be vague as applied stating:

> "The ordinance does not permit people to 'stand on a public sidewalk ..... only at the whim of any police officer' rather there must be demonstrated interference with school activity. As always, enforcement requires the exercise of some degree of police judgment but, as confined that degree of judgment here is permissible." (408 U.S. at 114)

It is, consequently, my opinion that a notice if posted by the school district and enforced by the superintendent in accordance with the legitimate State interest in preserving a functioning school environment would not be overbroad as applied. A denial of access to school property or ground where such access would prove detrimental to effective operation of the school system would occasion no Constitutional violation. If persons denied entry upon this basis, trespassed onto school grounds actions could be brought against them, under sections 21-3 and 21-5 of the Criminal Code of 1971 (Ill. Rev. Stat. 1973, ch. 38, pars. 21-3 and 21-5) as cited above, by school authorities.

In relation to overbreadth, it is my opinion that the notice, where enforced in furtherance of valid State educational goals, would constitute a reasonable "time, place and manner" regulation necessary to further the significant governmental interest in protecting the environment of our public schools. (Grayned v. City of Rockford, supra, at 112.) As such it is not subject to attack as overbroad if applied in a reasonable manner as to time, place and conduct. As the Supreme Court stated in Grayned, supra:

> "Although a silent vigil may not unduly interfere with a public library (Brown v. Louisiana, 383 U.S. 131 (1966)), making a speech in a reading room almost certainly would. That same speech should be perfectly appropriate in a park. The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." (408 U.S. at 116)

and

> "But we nowhere suggested that students, teachers, or anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for his unlimited expressive purposes. * * * It is well to well to keep in mind that this holding in no way impairs the State's right to use criminal statutes to prohibit the interference with educational activities and good order on the premises of educational institutions. However, the statutes must be narrowly directed at objections of legitimate concern to the State." (408 U.S. at 117)

It is, therefore, my opinion that the notice in question if applied by the superintendent to prohibit entry onto school property of persons whose presence upon school grounds would have, or tend to have, a detrimental effect upon operation of the school system would not be unconstitutionally overbroad in its' scope. Reasonable "time, place, and manner" regulations upon conduct or speech with First Amendment content will be sustained where necessary to further significant governmental interests. (Shuttlesworth v. Birmingham, 394 U.S. 147 (1969); Food Employees v. Logan Valley, 391 U.S. 308 (1968); Adderly v. Florida, 385 U.S. 39 (1966); Cox v. Louisiana, supra; Poulous v. New Hampshire, 345 U.S. 395 (1953); Kunz v. New York, supra; Cox v. New Hampshire, 312 U.S. 569 (1941).) Such regulations must be clearly articulated to those granted the privilege of using school facilities as well as to those denied the privilege.

It is, therefore, my conclusion that if the notice is enforced by the superintendent in accordance with the interest of the school district in maintaining a school environment conducive to learning that it may be enforced without occasioning any Constitutional violation and further that persons trespassing upon

school grounds wilfully and without approval by school authorities may be properly subjected to appropriate criminal sanctions.

Very truly yours,

ATTORNEY GENERAL