October 1967

Constitutional Law - Freedom of Speech - Dismissal of Teacher Who Published Letter Critical of School Officials within Power of School Board

Edward A. Hoffman

Follow this and additional works at: https://scholarship.kentlaw.iit.edu/cklawreview

Part of the Law Commons

Recommended Citation


Available at: https://scholarship.kentlaw.iit.edu/cklawreview/vol44/iss2/17

This Article is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact dginsberg@kentlaw.iit.edu.
action evidenced an intention to abide by the will. While this line of reasoning may be sound where circumstances remain constant, it is fallacious where the testator married and is aware of statutory provisions revoking the will. The more logical assumption is that upon learning of the revocation of the will, the testator relied on intestate succession.

The court's decision can best be considered as an advocacy of the principle that a testator acts in light of knowledge of both the law then in effect, and the important circumstances which he foresees. Certainly, this guarantees the certainty under which the testator believed he drafted his will and rejects the theory that renders a will an amorphous entity susceptible to future fluctuations.

CHARLES W. STAUDENMAYER

CONSTITUTIONAL LAW—FREEDOM OF SPEECH—DISMISSAL OF TEACHER WHO PUBLISHED LETTER CRITICAL OF SCHOOL OFFICIALS WITHIN POWER OF SCHOOL BOARD.—In the recent case of Pickering v. Board of Education, 36 Ill. 2d 568, 225 N.E.2d 1 (1967), the Supreme Court of Illinois was confronted with the issue of whether a local Board of Education must continue to employ a teacher who published in a local newspaper misleading and untrue statements which reflected upon the credibility and sincerity of his superintendent and Board and which were reasonably believed to be detrimental to the best interests of the school. The court held that apart from whatever freedom a private individual might possess to harm school administrators by misuse of speech, the special position which the teacher occupies in relation thereto dictates that he be no more privileged to injure his school by speech than by immorality, brutality, incompetence, or other conduct. Consequently, such behavior furnishes cause for dismissal, in the absence of a showing that the Board acted capriciously, arbitrarily, or contrary to the manifest weight of the evidence.

Marvin Pickering was a teacher in Township High School District 205, Will County. In February and December of 1961, school bond issue proposals were submitted to the voters of the school district. The February proposal was defeated; the December proposal was approved. In 1964, proposals to increase the educational and transportation tax rates were twice rejected. Five days after the second defeat, a local newspaper published a letter written by Pickering to the editor of the paper. The letter consisted of a series of complaints which its author had against the district school superintendent and Board of Education. Pickering charged that funds procured through the referendum in December of 1961 had been used to construct athletic fields and an auditorium in two local high schools although the Board had promised that no money would be expended for such facilities. He further alleged that school lunch prices were unnecessarily
high because free lunches were supplied to athletes on days of athletic contests; that $200,000 per year was spent on varsity sports while the needs of teachers were suffering; that football fields were being sodded on borrowed money while teachers' salaries could not be met; that the Board was "trying to push tax-supported athletics down our throats with education"; and that the teachers at the high school lived in a "kind of totalitarianism," exemplified by the fact that letters previously published by teachers in the newspaper were required to have the approval of the superintendent.

Following publication of the letter, the Board of Education dismissed Pickering in accordance with the procedures provided by the School Code of Illinois\(^1\) on grounds that the interests of the schools required such action.\(^2\) Desiring reinstatement, Pickering sought review of the Board's decision in the Circuit Court of Will County.\(^3\) On review the Circuit Court affirmed the Board's ruling. Pickering appealed directly to the Supreme Court of Illinois, claiming that a constitutional question was involved.\(^4\)

The evidence presented revealed that many of the statements and accusations in the Pickering letter could reasonably have been found to be misleading or altogether untrue. It was also shown that the disgruntled teacher had never presented any of the charges to his superiors prior to publication of the letter.

Section 24-11 of the School Code of Illinois\(^5\) provides:

> Any teacher who has been employed in any district as a full-time teacher for a probationary period of 2 consecutive school terms shall enter upon contractual continued service unless given written notice of dismissal stating the specific reason therefore, by registered mail by the employing board at least 60 days before the end of such period.\(^6\)

This provision, as well as the entire School Code, was adopted in an effort to give the teacher more security in his job. Section 24-12, for example, establishes a well-defined procedure to be followed in cases where school boards seek to dismiss a teacher.\(^7\)

Although the School Code does lend more stability to teaching posi-

---

2. Ill. Rev. Stat. ch. 122, § 10-22.4 (1965), provides that the school board shall have the power "to dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause and to dismiss any teacher, whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it . . ."
3. Ill. Rev. Stat. ch. 122, § 24-16 (1965), provides that decisions of school boards are subject to judicial review in accordance with the procedures of the "Administrative Review Act of May 8, 1945."
4. Ill. Const. art. VI, § 5 (1870), provides for direct appeal to the Supreme Court in cases arising under the Constitution of the United States or of the state.
tions, it also enables school boards to dismiss teachers in appropriate cases. Section 10-22.4 provides that the school board shall have the power:

- to dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause and to dismiss any teacher, whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it. . . .

Thus, it is clearly seen that competency or the lack thereof is not the sole criterion of a teacher's qualification to teach. In this respect, the School Code is in accord with the rules adopted in other states which have advanced various grounds in justification of teacher dismissals. Some of the more common grounds for dismissal, in addition to incompetency, have been insubordination, immorality, mistreatment of pupils, unseemly conduct, and the marriage of a female teacher.

The Illinois case law in this area reveals that wide latitude is allowed school boards in deciding whether or not a teacher should be dismissed. In *Meridith v. Board of Education*, a teacher in the agricultural department of the school district challenged his dismissal by the defendant Board. The Board charged that Meridith's involvement in his private grain enterprise had progressed to such an extent as to interfere with the performance of his teaching duties. The Appellate Court upheld the dismissal, stating:

> The best interests of the schools of the district is the guiding star of the Board of Education and for the courts to interfere with the exercise of the powers of the Board in that respect is unwarranted assumption of authority and can only be justified in cases where the Board has acted maliciously, capriciously, and arbitrarily.

In *Jepsen v. Board of Education*, a teacher and ex-football coach was dismissed, in part because he had on more than one occasion told administrators and teachers from other schools that an allegedly ineligible football player at the high school where Jepsen taught had actively participated in football games, even though the school coach and principal were aware of his ineligibility. Prior to this disclosure, Jepsen had never protested the situation to his superiors. Once again the Appellate Court affirmed the dismissal because no malice, compulsiveness, or capriciousness on the part of the Board had been shown.

---

12 State v. Board of School Directors, 14 Wis. 2d 243, 111 N.W.2d 198 (1961).
14 Id. at 477, 130 N.E.2d 5 (3d Dist. 1955).
15 Id. at 486, 130 N.E.2d at 10.
17 Id. at 211, 153 N.E.2d at 420.
DISCUSSION OF RECENT DECISIONS

In Keyes v. Board of Education, a school superintendent was dismissed because for a period of years he had been a center of controversy in the district due to his constant imbroglios with the Board. The court upheld the dismissal, stating that the wisdom of the Board's decision was not to be considered by the court and that the scope of review was limited to determining whether that decision was supported by the evidence. Discretionary power was vested in the Board and the court was not authorized to interfere with the exercise of such power unless the determination upon which it rested was manifestly contrary to the weight of the evidence.

In the instant case, however, Pickering raised a point which had there-tofore not been considered in the earlier decisions. He contended that his comments in the newspaper were protected by the right of free speech. In support of reversal of the judgments of the Board and Circuit Court he relied mainly on two recent decisions of the United States Supreme Court, namely, New York Times Co. v. Sullivan and Garrison v. Louisiana.

The New York Times case involved a civil libel suit initiated by a commissioner of the City of Montgomery, Alabama, against the defendant newspaper and certain persons whose names appeared in an advertisement published therein. The Court in that case held that in order for a civil libel suit instituted by a public official for a defamatory falsehood relating to his official conduct to be actionable, it must be shown that the defamatory statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not."

The Garrison case involved a criminal defamation proceeding against the District Attorney of Orleans Parish, Louisiana, following remarks which he made at a press conference disparaging the judicial conduct of eight local criminal court judges. The Court held that in a criminal defamation action it must be proven not only that the alleged defamatory statement is untrue, but also that it was made with knowledge of its falsity or with reckless disregard of whether it was true or false.

Applying the logic of these two cases to his own case, Pickering argued that since his accusations were not "knowing" or "reckless" falsehoods, the Board lacked authority to dismiss him. In disposing of Pickering's contention, the Supreme Court of Illinois decided that the New York Times and Garrison cases could be distinguished from the instant case. In New York Times no right of employment was involved. Moreover, the school officials in the case at bar were not seeking damages for libel. Regarding Garrison,

19 Id. at 514, 156 N.E.2d at 768.
20 Ibid.
23 Supra note 21, at 279-80, 84 Sup. Ct. at 726.
24 Supra note 22, at 73, 85 Sup. Ct. at 215.
25 36 Ill. 2d 568, 576-577, 225 N.E.2d 1, 6 (1967).
the court stated that the issue in the present case was not whether the Board and superintendent might be subjected to false accusations, but whether the Board must continue to employ one who publishes misleading and untrue statements reasonably believed to be detrimental to the schools.

Noting the particular status of Pickering as a teacher, the court commented:

Whatever freedom a private critic might have to harm others by the use or misuse of speech, the plaintiff here is not a mere member of the public. He holds a position as a teacher and is no more entitled to harm the schools by speech than by incompetency, cruelty, negligence, immorality, or any other conduct for which there may be no legal sanction. By choosing to teach in the public schools, plaintiff undertook the obligation to refrain from conduct which in the absence of such position he would have an undoubted right to engage in. While tenure provisions of the School Code protect teachers in their positions from political or arbitrary interference, they are not intended to preclude dismissal where the conduct is detrimental to the efficient operation and administration of the schools of the district.26

Upon examining the facts in the case, the court upheld the decision of the Board and Circuit Court, stating:

The administration of the schools is within the domain of the school board, and courts do not interfere with the exercise of its powers unless it is shown to be capricious or arbitrary.27

In a vigorous dissent to the majority opinion, Mr. Justice Schaefer criticized the statutory scheme which vested such wide powers in school boards:

A legislative system which, as in this case, casts them in the role of aggrieved the victims who formulate, prosecute and punish charges based on their grievances is not, in my opinion, compatible with present standards of due process.28

It would appear, however, that Justice Schaefer’s criticism is unsound. Generally, with regard to administrative agencies, both the federal and state case law reject the argument that the combination of adjudication with prosecuting or investigating functions constitutes a denial of due process.29

It is an old common law maxim that one should not be the judge of his own cause due to his inherent self-interest. On the administrative level, however, it is common for an administrative agency to perform a variety of functions including investigation, prosecution and adjudication. This

26 Id. at 577, 225 N.E.2d at 6.
27 Id. at 578, 225 N.E.2d at 7.
28 Id. at 585, 225 N.E.2d at 10.
DISCUSSION OF RECENT DECISIONS

A combination of functions has been tolerated as not violative of due process largely for the practical reason that any separation of the functions would require a complete change of the entire administrative system.

For example, to help insure fair hearings on the federal level, the Federal Administrative Procedure Act, §5 provides for internal separation, that is, while the agency itself performs all the aforementioned functions, the subordinate agency personnel who act as deciders of a particular case are to have no part in its investigation and prosecution.

Thus, it is quite clear that the principles adopted by the majority in deciding the Pickering case conform to those postulated in the earlier decisions. The courts are loath to interfere with the actions of local school boards and will apparently do so only when they are convinced that a school board has acted arbitrarily in a particular case. The court was unimpressed with the free speech argument which Pickering attempted to raise and as such suggested that a teacher's freedom might, of necessity, have to be compromised in favor of the broader social need of an efficient and harmonious school system. As has so often been true, the court was confronted with a situation wherein it had to resolve a clash between the interests of the individual and those of the larger community. This writer believes that the court correctly chose to protect the greater community interest.

EDWARD A. HOFFMAN

HUSBAND AND WIFE—MARITAL RIGHTS—VOLUNTARY CONVEYANCE OF REAL PROPERTY BY EITHER PARTY TO A MARRIAGE CONTRACT WITHOUT KNOWLEDGE OF OTHER IS FRAUD AND CONVEYANCE WILL BE SET ASIDE AS VOID. In Michna v. May, 80 Ill. App. 2d 281, 225 N.E.2d 391 (Ist Dist. 1967), the Appellate Court for the First District of the State of Illinois was presented with the question of whether a voluntary conveyance of real property by the prospective husband without knowledge of the prospective wife was a fraud on the marital rights of the prospective wife. The court held the conveyance was a fraud on the wife's marital rights and was without effect.

The plaintiff-widow was engaged to be married on December 19, 1955. On January 10, 1956, her intended husband executed a land trust, whereby the trustee held title to the real estate for the benefit of the grantor for life and, on his death, the remainder would go to his sisters, the defendants. The parties were married on January 23, 1956, and lived together until May 6, 1961, when the husband died, leaving a will naming the plaintiff as his sole beneficiary and executor. Upon learning of the trust agreement, the plaintiff filed a complaint seeking to set the agreement aside on grounds of