

## THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of  
TOM C [REDACTED] by the Board of Education,  
School District of Lake Holcombe

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OPINION  
AND  
ORDER

## THE NATURE OF THE CASE

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Wis. Stats., from the May 16, 1983 decision of the Lake Holcombe School Board expelling the appellant, Tom C [REDACTED], from school for the remainder of the 1982-83 school year. This appeal was filed on May 23, 1983. In accordance with the provisions of Wis. Admin. Code s. PI 1.04(3), this decision is based on a review of the record of the school board hearing. Both parties were offered an opportunity to submit written arguments regarding the merits of this appeal and have done so.

## FINDINGS OF FACT

Tom C [REDACTED], a tenth grade student at Holcombe High School in the School District of Lake Holcombe, was expelled by the Lake Holcombe Board of Education for repeated violations of school rules after a hearing held by the School Board on May 16, 1983. The expulsion was for the remainder of the 1982-83 school year.

The May 10, 1983 Notice of Expulsion Hearing sent to Tom and his parents contained the following alleged violations of school rules:

Tom has been charged with two minor referrals: (1) Swearing and talking back to a staff member, 12-1-82, (2) Using the junior high bathroom--staff member smelled smoke, 1-19-83.

Tom has been charged with four major referrals:  
(1) Smoking in the junior high bathroom, 1-20-83/

Step #5, (2) Smoking, 3-22-83/Step #6, (3) Stealing milk money from school, 5-2-83/Step #7, and (4) Smoking, 5-4-83/Step #8.

Tom and his parents appeared before the Board at the expulsion hearing held on May 16, 1983 where Tom admitted the correctness of the allegations against him except for the charge of stealing milk money from the elementary school.

Tom and his parents were informed of Tom's expulsion by telephone at the conclusion of the board's meeting on May 16. A written decision containing findings of fact and conclusions of law was prepared and mailed to Tom and his parents on May 23, 1983.

The basis for this appeal, which was filed on May 23, 1983, is that the evidence did not support the Board's conclusion that Tom stole the milk money and that the expulsion procedures followed by the school district and the Board were deficient as a matter of law.

#### CONCLUSIONS OF LAW

School districts are limited purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. Iverson v. Union Free High School District, 186 Wis. 342 (1925). School boards have been granted the authority to expel students in accordance with the provisions of sec. 120.13(1)(c), Wis. Stats. In addition to specifying several alternative grounds for expulsion, the statute expressly accords students charged with expellable offenses certain procedural rights including notice of hearing, entitlement to counsel, the option to close the hearing to the public, the preservation of a record of the proceedings, written notification of the expulsion order, and the right to appeal the board's expulsion to the State Superintendent of Public Instruction.

In a recent Wisconsin Court of Appeals decision involving the State Superintendent's review of an expulsion appeal, the Court made the following observation:

While our decision is founded solely upon an error of law of the state superintendent, we point out, obiter dicta, that the superintendent's review of a board's expulsion hearing would appear to be limited by the statute which created that appeal, namely, sec. 120.13(1)(c), Stats. The superintendent's review then, would be one to insure that the school board followed the procedural mandates of subsection (c) concerning notice, right to counsel, etc. Racine Unified School District v. Thompson, 107 Wis. 2d 657 (1982).

Despite the appellant's contentions to the contrary, the record reflects that the appellant was afforded all of the procedural rights due him under sec. 120.13(1)(c), Wis. Stats. In accordance with general rules of statutory construction, the five day notice required by that section refers to calendar days, not school days. Similarly, sec. 120.11(1), Wis. Stats., specifies that a majority of the elected school board members constitute a quorum at a regular or special school board meeting. Since a quorum of the Lake Holcombe Board (three members) was present, it was appropriate for the Board to conduct the hearing and render a decision.

Appellant also contends that he was unlawfully suspended from school for eight consecutive school days. Tom was initially suspended for three days as the result of the theft of the milk money. After the smoking violation on May 4, 1983, a second suspension was imposed. Because the Administration decided to recommend Tom's expulsion to the Board as a consequence of that most recent incident, Tom was suspended for seven additional days pending the expulsion hearing in accordance with the provisions of sec. 120.13(1)(b), Wis. Stats. Consequently, this claim is also without merit.

The appellant's final contention is that the district has failed to establish his guilt for the theft of the milk money. Despite the appellant's

denial of guilt, the evidence in the record adequately supports the school board's conclusion that "the clear weight and preponderance of the evidence indicates that" Tom committed the theft in question.

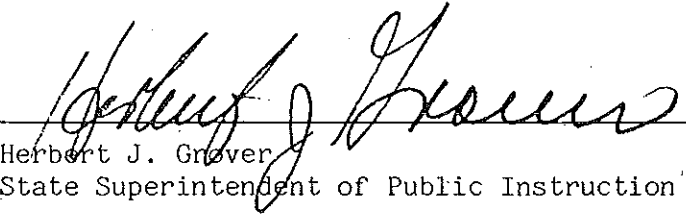
Tom has also suggested that the School Board's imposition of expulsion for the remainder of the school year was unfair, too harsh, and not in the best interest of either Tom or the school because it resulted in the loss of an entire semester of credit towards graduation. The School Board contends that the fact that the legislature specifically provided in sec. 120.13(1)(b), Wis. Stats., that a student subject to suspension "shall not be denied the opportunity to take any quarterly, semester or grading period examinations missed during the suspension period," but failed to include similar protective language for students subject to expulsion, carries with it the strong implication that the legislature did not intend to protect such students. We agree.

Section 120.13(1)(c), Wis. Stats., specifies that a school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey rules and is satisfied that the interest of the school demands the pupil's expulsion. Tom C. [REDACTED] has repeatedly violated the School District of Lake Holcombe's rules relating to student conduct. These repeated violations of school rules, in spite of the imposition of less drastic disciplinary measures, support the School Board's conclusion that the interests of the school demanded Tom's expulsion.

The Board's decision to expel the appellant from school for repeated violations of school rules is adequately supported by the record in this matter. The record also reflects that appellant was accorded all of the procedural rights due him under sec. 120.13(1)(c), Wis. Stats.

IT IS THEREFORE ORDERED that this appeal be and hereby is denied.

Dated and mailed this 18<sup>th</sup> day of October, 1983.

  
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Herbert J. Grover  
State Superintendent of Public Instruction