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Degree of Discretionary Authority Possessed by University Officials in Student Disciplinary Matters - The Availability of Mandamus

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NOTES

Degree of Discretionary Authority Possessed by University Officials in Student Disciplinary Matters — The Availability of Mandamus

On January 8, 1966, Aldridge, a university[1] student, was apprehended on the campus of West Texas State University in possession of liquor. His conduct violated university rules,[2] and as disciplinary punishment he performed fifteen hours of duties in the university security office. Six days thereafter, Aldridge drove an automobile at a high rate of speed[3] near the university cafeteria during the supper hour when students were crossing the street to go for their evening meals. He was placed on disciplinary probation with the condition that he was not to operate any automobile on the campus or in the city of Canyon[4] during the period of probation. The next night Aldridge was apprehended for speeding in Canyon. After giving him an opportunity to state his case, the university disciplinary committee voted unanimously for indefinite suspension. Aldridge sought a writ of mandamus to compel university officials to reinstate him. The district court found that the punishment was unreasonable and issued the writ. *Held, reversed*: The officials of a university, in the exercise of discretion vested in them by the legislature, have the authority to invoke indefinite suspension of a student as a disciplinary action; therefore, a writ of mandamus will not be issued to reinstate the student unless there is a clear abuse of discretion or a violation of law. *Cornette v. Aldridge*, 408 S.W.2d 935 (Tex. Civ. App. 1966).

I. Degree of Discretionary Authority Vested in University Officials

The administration and control of a university is generally vested by statute in an administrative board, often called a board of regents or board of directors. The Texas legislature has vested the powers of government, control, and management of state universities in various boards[5]

[1] The term "university" is used throughout this Note to signify any state-supported college or university of higher learning unless otherwise indicated.

[2] Rules regulating the use of intoxicants and automobiles on campus were stated in the dormitory contract executed by Aldridge. Rules relating to intoxicants provided that intoxicants were unacceptable and that any student caught possessing or drinking them was subject to suspension. Rules relating to automobiles set forth the maximum legal speed limits on campus and provided that the registrant of an automobile was responsible for the safe operation and proper parking of that vehicle. Cornette v. Aldridge, 408 S.W.2d 935, 939-40 (Tex. Civ. App. 1966).

[3] Aldridge admitted that his speed was near 60 m.p.h., even though he was driving in a 20 m.p.h. zone. The maximum legal speed limit on campus was 30 m.p.h. He also admitted that he had been drinking during the afternoon prior to the incident and that the automobile was "fishtailing" as he drove at that speed. *Id.* at 940.

[4] Location of West Texas State University.

[5] *See* Tex. Rev. Civ. Stat. Ann. arts. 2584 (University of Texas, Board of Regents), 2610 (Texas A. & M. University, Board of Directors), 2615g (University of Houston, Board of Regents), 2619a (Pan American College, Board of Regents), 2623c (Midwestern University, Board of Regents), 2625 (Texas Woman's University, Board of Regents), 2628a (Texas College of Arts and Industries, Board of Directors), 2630 (Texas Technological College, Board of Directors), 2637b

whose members are appointed by the governor with the advice and consent of the senate. Since the administrative board of the university exercises authority delegated to it by the legislature, its rules and regulations have the force of statutes, and the board's official interpretation of a rule becomes a part of that rule.[6] The powers possessed by campus officials are derived from these statutes.

Even though the precise words of the statutes vary, they provide in essence that the administrative board of a university has authority to make rules "necessary for the successful management and government of the University."[7] In 1932 a Texas court distinctly emphasized that this authority is discretionary in nature and very broad in scope.[8]

Primarily for two reasons courts have been reluctant to interfere with university officials in the exercise of discretion in disciplinary actions. First, courts have realized that university officials and administrative boards possess broad discretionary authority delegated to them by the state legislature. Second, courts have regarded higher education as a task requiring the special knowledge and experience of an educator.[9] It is well established that courts will not interfere with the exercise of discretion unless the rules are unreasonable or the actions of officials are arbitrary

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(Lamar State College of Technology, Board of Regents), 2643b (Texas Southern University, Board of Directors), 2647 (State Teachers' Colleges and Universities, Board of Regents) (1965). The Board of Regents of the University of Texas and the Board of Directors of Texas A. & M. University each govern more than one university. Other states follow similar practice. *See* IDAHO CODE ANN. § 33-3003 (1963) (Idaho State University, Board of Trustees); NEB. REV. STAT. § 85-103 (1966) (University of Nebraska, Board of Regents); N.C. GEN. STAT. § 116-1 (1966) (University of North Carolina, Trustees).

[6] Foley v. Benedict, 122 Tex. 193, 55 S.W.2d 805 (1932). *Accord,* Newman v. Graham, 82 Idaho 90, 349 P.2d 716 (1960).

[7] TEX. REV. CIV. STAT. ANN. art. 2585 (1965). *See* IDAHO CODE ANN. § 33-3006 (1963) (for government of university); NEB. REV. STAT. § 85-106 (1966) (for government of university); N.C. GEN. STAT. § 116-10 (1966) (deemed necessary and expedient); TEX. REV. CIV. STAT. ANN. arts. 2613 (necessary and proper for government), 2615g (necessary for successful management and government), 2619a (necessary for successful management and operation), 2623c (president responsible for general management and success of university), 2627 (necessary to carry out purposes and objects of institution), 2632a (as deemed advisable), 2643b (necessary for successful management and government), 2647 (necessary for efficient administration) (1965).

[8] Foley v. Benedict, 122 Tex. 193, 200, 55 S.W.2d 805, 808 (1932), where the court said:

> The enjoyment of the right of attending the public schools is necessarily conditioned on compliance by pupils with the reasonable rules, regulations, and requirements of the school authorities, breaches of which may be punished by suspension or expulsion. Ordinarily the school authorities have the right to define the offenses for which the punishment of exclusion from school may be imposed, and to determine whether the offense has been committed, the limitation on this authority being that it must in both respects be reasonably exercised. The power of expulsion given to the directors is not limited to cases of infraction of such rules as they may have theretofore adopted, but extends to cases where they may have become satisfied that the interests of the school require the expulsion of a pupil on account of his gross misbehavior, and the discretion vested in school authorities in this respect is very broad, but they will not be permitted to be arbitrary.

The Supreme Court of Nebraska has reached a similar conclusion. *See* Board of Regents of the Univ. of Nebraska v. County of Lancaster, 154 Neb. 398, 48 N.W.2d 221, 223 (1951), where the court emphasized that, "A legislative enactment may properly confer general powers upon an administrative agency and delegate to the agency the power to make rules and regulations governing the details of the legislative purpose."

[9] Harker, *The Use of Mandamus To Compel Educational Institutions To Confer Degrees,* 20 YALE L.J. 341, 352 (1911), where the author said, "[Educators] know more about [students] . . . than the courts or any one else. [Therefore,] except in clear cases of abuse of discretion, courts should keep their hands off."

or unlawful, and therefore a clear abuse of discretion.[10] This judicial deference to university discipline has produced broad latitude in what the courts consider to be reasonable disciplinary action.[11]

Determination of the reasonableness of university rules and regulations is a question of law rather than fact,[12] and the courts "will not consider whether the regulations are wise or expedient, but merely whether they are a reasonable exercise of the power and discretion of the board."[13] Generally, university rules and regulations are upheld as long as they are germane to the purposes of the legislature in creating the university and delineating its authority. A student's dismissal has been held reasonable when invoked for writing bitter letters to the college president,[14] cheating on an examination,[15] selling final examination questions to fellow students,[16] and using an off-campus college residence as a place to hold parties at which liquor was served.[17] Only one case[18] was found in which an interpretation of a university rule was held to be unreasonable.

II. Due Process in University Disciplinary Proceedings and the Availability of Mandamus

In the past few years, the judiciary has become increasingly aware of the constitutional problems involved in university disciplinary proceedings. The major point of concern has been an attempt to define the nature of due process required in such proceedings.[19]

In considering the university-student relationship, early courts followed the approach that the student's will was necessarily subservient to that of university officials who were his masters for the time being,[20] or that university officials stood *in loco parentis* concerning the educational training of students.[21] Today, however, this approach is not widely used. Modern concern centers upon the question of the nature of the hearing—whether the student has been given a fair opportunity to state his case. In one early

[10] Sherman v. Hyman, 180 Tenn. 99, 171 S.W.2d 822 (1942), *cert. denied*, 319 U.S. 748 (1943); Ingersoll v. Clapp, 81 Mont. 200, 263 P. 433 (1928), *cert. denied*, 277 U.S. 591 (1928); Woods v. Simpson, 146 Md. 547, 126 A. 882 (1924).

[11] There is also a presumption "in favor of reasonableness and propriety of a rule or regulation duly made." Foley v. Benedict, 122 Tex. 193, 200, 55 S.W.2d 805, 808 (1932).

[12] Foley v. Benedict, 122 Tex. 193, 55 S.W.2d 805 (1932). *Accord*, Newman v. Graham, 82 Idaho 90, 349 P.2d 716 (1960).

[13] Foley v. Benedict, 122 Tex. 193, 200, 55 S.W.2d 805, 808 (1932). *See also* Board of Trustees of the Univ. of Miss. v. Waugh, 105 Miss. 623, 62 So. 827 (1913), *aff'd*, 237 U.S. 589 (1915).

[14] Steier v. New York State Educ. Comm'r, 271 F.2d 13 (2d Cir. 1959), *cert. denied*, 361 U.S. 966 (1960).

[15] *In re* Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

[16] Sherman v. Hyman, 180 Tenn. 99, 171 S.W.2d 822 (1942), *cert. denied*, 319 U.S. 748 (1943).

[17] Ingersoll v. Clapp, 81 Mont. 200, 263 P. 433 (1928), *cert. denied*, 277 U.S. 591 (1928).

[18] Newman v. Graham, 82 Idaho 90, 349 P.2d 716, 717 (1960), where a state college had the following rule: "Any person who is properly classified as a non-resident student [for fee purposes at the time he entered college] retains that status throughout continuous regular term attendance at any institution of higher learning in Idaho." The court held that the rule as interpreted by the State Board of Education was unreasonable when the effect was to deny a student the opportunity to show a change of residential or domiciliary status.

[19] Note, *The College Student and Due Process in Disciplinary Proceedings*, 1962 Ill. L. Forum 438.

[20] North v. Trustees of the Univ. of Ill., 137 Ill. 296, 27 N.E. 54 (1891).

[21] Gott v. Berea College, 156 Ky. 376, 161 S.W. 204 (1913).

case a formal hearing similar to an actual trial was required.[22] However, this requirement was disapproved as "destructive" in a case[23] in which the court emphasized that an informal hearing was sufficient if the student was informed of the charges and given an opportunity to deny them and make a statement. Fourteen years later the Supreme Court of Tennessee made it clear that a fair hearing for a student did not contemplate a formal trial as in a chancery court or a court of law.[24]

In the more recent case of *Dixon v. Alabama State Board of Education*[25] students were expelled from a state college without an opportunity for a hearing. The students were reinstated because they had been deprived of due process of law guaranteed by the fourteenth amendment. The court set forth the "rudimentary elements of fair play"[26] which should be accorded a student before he is dismissed from a university for misconduct: a statement of the specific charges, the grounds for the charges, and an opportunity to present a defense at a fair hearing.[27] In a case of misconduct, it seems that due process requires that the student at least be given the benefit of these elements.

Even though principles of contract enter into the relationship between the student and a state university in the form of catalogue requirements and various documents which the student signs upon registration, the ultimate consideration is that the university is an agency of the state performing a state function. Therefore, state university disciplinary proceedings constitute state action within the due process provision of the fourteenth amendment.[28]

The relationship between a student and a private university is principally one of private contract.[29] In the absence of state action, the federal due process provision is not necessarily applicable to a private university, although the due process provision of the state constitution may be. A recent case indicates that perhaps the distinction between a public and a private university for purposes of constitutional law is becoming much less pronounced.[30] Persuasive reasons have been asserted for applying the

[22] Hill v. McCauley, 3 Pa. County Ct. 77 (1887).

[23] Ingersoll v. Clapp, 81 Mont. 200, 263 P. 433 (1928), *cert. denied*, 277 U.S. 591 (1928).

[24] Sherman v. Hyman, 180 Tenn. 99, 171 S.W.2d 822 (1942), *cert. denied*, 319 U.S. 748 (1943).

[25] 294 F.2d 150 (5th Cir. 1961), *cert. denied*, 368 U.S. 930 (1961).

[26] *Id.* at 159.

[27] *Id.* at 158-59. One may query whether these requirements are equally applicable to the private university.

[28] *See* Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961). Due to the limited scope of this Note, no attempt is made to discuss the concept of state action or the problems related to defining its limits. The concept is mentioned in order to point out a distinction between the public and the private university. For a discussion of the concept of state action, see Note, *Protection of Fourteenth Amendment Rights Under Section 241 of the United States Criminal Code*, 20 Sw. L.J. 913 (1966).

[29] Texas Military College v. Taylor, 275 S.W. 1089 (Tex. Civ. App. 1925); Rogers v. Council, 266 S.W. 207 (Tex. Civ. App. 1924); Casteberry v. Tyler Commercial College, 217 S.W. 1112 (Tex. Civ. App. 1920), *appeal dismissed*.

[30] *See* Guillory v. Administrators of Tulane Univ., 203 F. Supp. 855 (E.D. La. 1962), where it was emphasized that since a private university performs the work of the state, often in the place of the state, it is in effect a state agency subject to the constitutional requirements of the fourteenth amendment. It is important to note, however, that even though Tulane is termed a private university, it is not a purely private institution. Tulane University began as a state university, and presently its ties with the state of Louisiana have not been completely broken.

fourteenth amendment to private as well as state universities.[31] However, the judiciary is more reluctant to interfere with actions taken by private universities than with those taken by state universities.

The student who has been dismissed from a university for disciplinary reasons generally desires to be reinstated; therefore, he seeks the remedy of mandamus. However, mandamus is often not available to him in view of the broad discretion accorded university officials and the nature and purpose of the remedy.

Mandamus is used primarily to compel the performance of a ministerial duty, as distinguished from a discretionary act, when the facts show that this duty should be performed.[32] This remedy does not lie to control acts of discretion or to compel the exercise of discretion in a specific manner,[33] and it is not available when another adequate legal remedy exists.[34] However, the general rule denying mandamus with respect to discretionary matters is not unlimited. Where there has been a clear abuse of discretion or a violation of law and no adequate remedy by appeal exists, a writ of mandamus may be issued.[35]

III. CORNETTE V. ALDRIDGE

In *Cornette v. Aldridge* the court had no difficulty in establishing the source of discretionary authority vested in the Board of Regents and campus officials of West Texas State University.[36] The state legislature clearly had vested the Board with broad authority to control and manage the university and establish rules and regulations necessary for its efficient administration.[37] Therefore, the principal question before the court was whether the university officials' indefinite suspension of Aldridge for violating established rules of conduct was an unreasonable and arbitrary exercise of discretion requiring the issuance of a writ of mandamus to compel his reinstatement as a student.

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[31] Goldman, *The University and the Liberty of Its Students—A Fiduciary Theory*, 54 KY. L.J. 643, 650 (1966), where the author said, "Private universities require state license or charter, generally receiving special tax treatment and unquestionably perform an essential public service. It requires no great expansion of accepted concepts of constitutional law to find that the guarantees secured by the fourteenth amendment are applicable in measuring the legality of the conduct of a private university."

[32] Turner v. Pruitt, 161 Tex. 532, 342 S.W.2d 422 (1961); United Prod. Corp. v. Hughes, 137 Tex. 21, 152 S.W.2d 327 (1941); Wortham v. Walker, 133 Tex. 255, 128 S.W.2d 1138 (1939).

[33] Morton's Estate v. Chapman, 124 Tex. 42, 75 S.W.2d 876 (1934); McDowell v. Hightower, 111 Tex. 585, 242 S.W. 753 (1922).

[34] Iley v. Hughes, 158 Tex. 362, 311 S.W.2d 648 (1958); Industrial Accident Bd. v. Gleen, 144 Tex. 378, 190 S.W.2d 805 (1945); Palmer Pub. Co. v. Smith, 130 Tex. 346, 109 S.W.2d 158 (1937).

[35] Womack v. Berry, 156 Tex. 44, 291 S.W.2d 677 (1956); City of Houston v. Adams, 154 Tex. 448, 279 S.W.2d 308 (1955); Stakes v. Rogers, 139 Tex. 650, 165 S.W.2d 81 (1942).

[36] TEX. REV. CIV. STAT. ANN. art. 2647 (1965) provides that the Board of Regents of the state teachers' colleges and universities, including West Texas State University, "shall have power to formulate and establish such rules for the *general control and management* [of such colleges and universities] . . . *as in their opinion may be necessary for the efficient administration of such schools*" (emphasis added).

[37] Cornette v. Aldridge, 408 S.W.2d 935 (Tex. Civ. App. 1966).

In *Heaton v. Bristol*[38] certain women sought a writ of mandamus to compel the Board of Directors of Texas A. & M. University to admit them as students. The court noted that the university had been operated and universally recognized as a school for the training and education of men since its founding in 1876. In interpreting the statute[39] conferring discretionary authority upon the university's Board of Directors, the court held that the legislature had entrusted the Board with broad authority to make rules and regulations deemed necessary for governing the university, and, therefore, the Board had legal authority to refuse admission to women.[40]

Heaton may be distinguished from *Cornette* because in the former case the women had not been suspended or expelled from the university. However, they are analogous in that both cases involved an application for a writ of mandamus challenging the exclusion of potential university students. In addition, the courts in both cases were concerned with the interpretation of similar statutes.[41] If the reasonable exercise of discretion by the Board of Directors of Texas A. & M. University included a denial of admission to women because the university had been established for men, then a fortiori the reasonable exercise of discretion by the Board of Regents of West Texas State University included the indefinite suspension of a student for palpable violation of university rules and regulations.

In concluding that university officials possessed very broad discretionary authority, the court in *Cornette* was in agreement with the view expressed in the earlier case of *Foley v. Benedict*.[42] In *Foley* medical students had been excluded from a branch of the University of Texas for failing to meet scholastic standards[43] established by the Board of Regents of the university. In reviewing the application for mandamus, the court held that the action of university officials in automatically excluding the students for scholastic deficiency and denying them readmission was not an unreasonable exercise of discretionary authority.

In *Cornette* the rules and regulations had been established for the efficient administration of the university. Aldridge had an opportunity to become familiar with the rules and regulations governing the use of intoxicants and of automobiles on the campus.[44] In view of the sequence of events culminating in Aldridge's suspension, it is apparent that he was

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[38] 317 S.W.2d 86 (Tex. Civ. App. 1958), *error ref., cert. denied*, 359 U.S. 230 (1959).

[39] TEX. REV. CIV. STAT. ANN. art. 2613 (1965) provides that, "The board shall . . . make such . . . rules and regulations for the *government* of said College *as they may deem necessary and proper for that purpose* . . . ." (emphasis added).

[40] 317 S.W.2d at 96. *Accord*, Allred v. Heaton, 336 S.W.2d 251 (Tex. Civ. App. 1960), *error ref. n.r.e., cert. denied*, 364 U.S. 517 (1960).

[41] *See* notes 36 and 39 *supra* and accompanying text.

[42] *See* note 8 *supra* and accompanying text.

[43] The rule provided: "Students who fail to make satisfactory grades . . . in two major subjects where the general average is less than 70, shall be automatically dropped from the roll and shall not be readmitted." 55 S.W.2d at 806. The faculty had construed the rule to mean that if a student failed two major subjects with a general average of less than 70 per cent in all courses for the year, he should be dropped from the rolls of the institution.

[44] *See* note 2 *supra*.

not an innocent violator of university regulations.[45] The court's conclusion that the indefinite suspension of Aldridge under the circumstances was not an unreasonable exercise of discretion by university officials represented a logical extension of the principles announced in *Foley* to the case of gross misconduct of the student.[46]

An important aspect not specifically mentioned by the court was that Aldridge had not completely exhausted his available remedies before seeking the writ of mandamus. The possibility existed that Aldridge could have appealed to the Board of Regents through the University President, Cornette.[47] Since mandamus is not available if there is another adequate legal remedy,[48] the potential appeal supported the court's decision that the writ should not have been issued.[49]

In adhering to the principle that a fair hearing does not contemplate a formal trial,[50] the court in *Cornette* raised the significant question of due process of law. This question was not actually at issue and appears to have been raised by the court on its own volition. There is no indication in the opinion of the court that Aldridge contested the sufficiency of the opportunity given to him by university officials to present his side of the story. In fact, Aldridge had ample opportunity to present his case. Before he was placed on probation for the speeding incident near the cafeteria, he was called before a university official to discuss the matter;[51] before his indefinite suspension became final, "he was brought before the disciplinary committee . . . and given an opportunity to state his case."[52] In view of the "rudimentary elements of fair play" developed in *Dixon*,[53] the court in *Cornette* was justified in concluding that under the circumstances due process had been accorded Aldridge. The court emphasized this position when it said, "The student should be given every fair opportunity of showing his innocence . . . . When they [the disciplinary committee] have done this . . . they have done all the law requires them to do."[54]

IV. Conclusion

The decision of the court of civil appeals in *Cornette v. Aldridge* is sound. The court applied well-established principles of law which delineate the relationship of the remedy of mandamus to the exercise of discretion. In determining that the writ of mandamus should not have

[45] Aldridge was punished for violating regulations governing the use of intoxicants, placed on probation for driving an automobile on campus at excessive speed in conscious disregard for the safety of fellow students, and finally suspended indefinitely for consciously violating a condition of his probation by driving his automobile at excessive speed near the campus.

[46] *See* note 8 *supra* and accompanying text.

[47] Brief for Appellants at 35, Cornette v. Aldridge, 408 S.W.2d 935 (Tex. Civ. App. 1966).

[48] Callahan v. Giles, 137 Tex. 571, 155 S.W.2d 793 (1941).

[49] Appeals to administrative agencies have been held to be adequate remedies. Cobb v. Harrington, 144 Tex. 360, 190 S.W.2d 709 (1945); Palmer Pub. Co. v. Smith, 130 Tex. 346, 109 S.W.2d 158 (1937).

[50] Sherman v. Hyman, 180 Tenn. 99, 171 S.W.2d 822 (1942), *cert. denied*, 319 U.S. 748 (1943).

[51] Brief for Appellants at 5, Cornette v. Aldridge, 408 S.W.2d 935 (Tex. Civ. App. 1966).

[52] 408 S.W.2d at 941.

[53] *See* notes 25-27 *supra* and accompanying text.

[54] 408 S.W.2d at 942.