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Constitutional Law--Dismissal of Public School Teacher for Claiming Privilege before Senate Sub-Committee

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wording it so as to conform to the old rules, but will instead be able to give the trier of the facts a complete mental picture of the accused. Perhaps situations in which the *M'Naghten* formula were stretched to the extreme will be avoided.¹⁶

BERNARD LEVINE

**CONSTITUTIONAL LAW — DISMISSAL OF PUBLIC SCHOOL
TEACHER FOR CLAIMING PRIVILEGE BEFORE
SENATE SUB-COMMITTEE**

The petitioner had been employed for a number of years as a teacher to serve "at discretion"¹ in the public schools of Boston. When called before a duly authorized subcommittee of the United States Senate, he declined to answer questions relating to his affiliation with the Communist Party on the ground of self-incrimination.² Subsequently, the respondent School Committee after notice, charges, a hearing and the recommendation of the superintendent, voted to dismiss the petitioner for "conduct unbecoming a teacher."³ The Supreme Judicial Court of Massachusetts held that the petitioner was not entitled to a writ of mandamus to compel his reinstatement.⁴

The petitioner contended that his dismissal was unconstitutional because it was in derogation of the privilege against self-incrimination contained in the Fifth Amendment to the Federal Constitution; and consequently, in violation of the Due Process Clause of the Fourteenth Amendment and of Article Ten of the Declaration of Rights of the Massachusetts Constitution.

The Court stated that the petitioner may have had a constitutional right not to incriminate himself, but he had no such constitutional right to be a school teacher. The Court felt that, in principle, Mr. Justice Holmes had settled the issue when he held that even though a petitioner may have had a constitutional right to talk politics, he had no such right to be a policeman.⁵

This same principle has been applied in other jurisdictions to sustain similar consequences to public employees⁶ exercising constitutional rights deemed inconsistent with obligations voluntarily assumed in connection with their public employment.⁷

In *Joyce v. Board of Education of Chicago*,⁸ the court held that the right of free speech did not save a teacher from dismissal for writing a letter to a student congratulating him on his refusal to register for selective service thereby inviting and encouraging the violation of the law. And in recent decisions in New York⁹ and California,¹⁰ it has been held that a teacher who

¹⁶ DAVIDSON, FORENSIC PSYCHIATRY 18 (1952).

insisted upon his right not to incriminate himself before a Federal legislative committee with respect to communist affiliation had forfeited his position under a provision of the city charter or state code. In the principal case the Court stated that seemed to make no constitutional difference whether a teacher is dismissed because of statutory provisions expressly providing for such dismissal, or by an order of a public board acting within its statutory authority.

In the Federal field, the question has been settled by the case of *United Public Workers of America v. Mitchell*¹¹ where The Supreme Court held that the Hatch Act¹² in prohibiting government employees generally from exercising their constitutional rights to take an active part in political management or political campaigns is constitutional. The Massachusetts

¹ MASS. ANN. LAWS c. 71 § 41. Under this section the discretion of the School Committee denotes freedom to act according to honest judgment and includes every element in the service thus established save as otherwise specified by statute. *Paquette v. Fall River*, 278 Mass. 172, 179 N.E. 588 (1932); *Corrigan v. New Bedford*, 250 Mass. 334, 145 N.E. 530 (1924).

² Questions were whether he was then a member of the Communist Party, whether while teaching in various Boston schools he had tried to recruit students or others into the Communist Party, whether he had ever made an effort to recruit a fellow teacher into the Communist Party, and whether he had attended any secret meetings of the Communist Party.

³ MASS. ANN. LAWS c. 71 § 42.

⁴ *Faxon v. School Committee of Boston*, — Mass. —, 120 N.E.2d 772 (1954).

⁵ *McAuliffe v. New Bedford*, 155 Mass. 216, 29 N.E. 517 (1892).

⁶ The court felt that the cases of *In re Holland*, 377 Ill. 346, 36 N.E.2d 543 (1941), and *In re Grae*, 282 N.Y. 428, 26 N.E.2d 963 (1940), in which the right of attorneys not to incriminate themselves was upheld, were distinguishable.

⁷ *Pockman v. Leonard*, 39 Cal. 2d 676, 249 P.2d 267 (1952) (teacher; refusal to take oath); *Christal v. Police Commissioner of San Francisco*, 33 Cal. App.2d 564, 92 P.2d 416 (1939) (police officers; self-incrimination); *Drury v. Hurley*, 339 Ill. App. 33, 88 N.E.2d 728 (1949) (police officers; self-incrimination); *East Chicago v. Sigler*, 219 Ind. 9, 36 N.E.2d 760 (1941) (teacher; political activity); *Scholl v. Bell*, 125 Ky. 750, 102 S.W. 248 (1907) (police officers; self-incrimination); *Canteline v. McClellan*, 282 N.Y. 166, 25 N.E.2d 972 (1940) (police officers; self-incrimination); *People ex rel Clifford v. Scannel*, 74 App. Div. 406, 66 N.E. 1114 (1903) (fireman; political activity); *Souder v. Philadelphia*, 305 Pa. 1, 156 Atl. 245 (1931) (police officers; self-incrimination); *Brownell v. Russell*, 76 Vt. 326, 57 Atl. 103 (1904) (police officers; political activity).

⁸ 325 Ill. App. 543, 60 N.E.2d 431 (1945).

⁹ *Daniman v. Board of Education of New York*, 306 N.Y. 532, 119 N.E.2d 373 (1954); *Koral v. Board of Education*, 197 Misc. 221, 94 N.Y.S.2d 378 (1950); *Goldway v. Board of Higher Education of New York*, 178 Misc. 1023, 37 N.Y.S.2d 34 (Sup. Ct. 1942).

¹⁰ *Board of Education of Los Angeles v. Wilkinson*, 125 Cal. App.2d 127, 270 P.2d 82 (1954).

¹¹ 330 U.S. 75, 67 Sup. Ct. 556 (1947).

¹² 5 U.S.C. § 1181 (1952).

court reasoned that the loss of the right not to incriminate oneself is of no greater constitutional significance.

The long established principle that because of public interest, governmental employees may be required to surrender certain of their rights as a condition of public employment¹³ has been extended to cover teachers by the Massachusetts court.¹⁴

ROBERT C. WEBER

¹³ See note 7 *supra*.

¹⁴ Comment, *Right of an Employer to Discharge an Employee for Refusal to Testify before a Congressional Committee on the Ground of Self-Incrimination*, 38 MARQ. L. REV. 8 (1954).