

Finally, the school district contends that the Appellant's appeal should be barred by laches because (1) she failed to request a standard professional employee contract in 1968 or any time after that; (2) she failed to request a part-time contract; (3) she accepted a lower salary scale of those generally deemed professional employees, and (4) she failed to demand a professional listing by the District Superintendent.

There was ample evidence in the record that the Appellant was concerned about her salary scale and had indeed tried to be paid on schedule. She was refused in this request out of hand. Further, the school district's own witness, Harry B. Gorton, Superintendent of the District, testified that he had been receiving calls (and knew of others) from the Department of Education asking why the Appellant was not in the list of professional employees submitted to the Department. Accordingly, we feel that the Appellant made consistent and timely efforts to ascertain and improve her professional status. Her appeal, then, is not barred by laches.

Therefore, it is our opinion that the decision of the school board to terminate the Appellant's position without a hearing is in contravention to Section 1127 of the School Laws of Pennsylvania and violated the Appellant's rights as a professional employee.

Accordingly, we make the following:

ORDER

AND NOW, this 16th day of March, 1976, it is hereby Ordered and Decreed that the Appeal of Elizabeth Parsons from the decision of the Board of School Directors of the Avon-Grove School District be and is hereby sustained and that the school district is hereby ordered to forthwith reinstate the Appellant without loss of pay.

* * * *

Appeal of Richard C. Baker, a
Professional Employee, from a
Decision of the Board of School Directors of
the School District of the City of Allentown,
Lehigh County, Pennsylvania

In the Office of the Secretary of Education,
Commonwealth of Pennsylvania, at
Harrisburg, Pennsylvania

No. 279

OPINION

John C. Pittenger
Secretary of Education

Richard C. Baker, Appellant herein, has appealed from the decision of the Board of Directors of the School District of the City of Allentown, terminating his contract and dismissing him as a professional employee on the grounds of incompetency and immorality.

FINDINGS OF FACT

1. The Appellant is a professional employee. He began his employment in the School District of the City of Allentown in September of 1961 as a teacher. During approximately ten years of Appellant's employment with the school district, he also served as head wrestling coach but was not so engaged at the time of his termination. During the year immediately prior to Appellant's termination, he was a teacher of health and physical education. Appellant held his position of teacher until his contract was terminated in October, 1975.
2. During the autumn of 1974, Appellant was indicted for violation of Title 18 U.S. Code, Section 1955 and Section 2 and Title 18 P.S. Section 4607. The indictment stated as follows:

"That from or about August 21, 1972 and continuing thereafter up to and including October 31, 1972, in the Eastern District of Pennsylvania, JOHN C. PARENTI, PHILIP GUNSBERG, DONALD R. HILBERT, RICHARD C. BAKER, ROBERT P. BEAR and other persons known and unknown to the Grand Jury, did knowingly, wilfully and unlawfully conduct, finance, manage, supervise, direct and own or cause to be conducted, financed, managed, supervised, directed and owned all or part of an illegal gambling business, to wit: an illegal sports and horse race bookmaking business, which involved five or more persons who conducted, financed, managed, supervised, directed and owned all or part of such business which had a gross revenue in excess of \$2,000 on one or more single days and which was conducted in violation of Title 18, Purdon's Pennsylvania Statutes Annotated, Section 4607.

"All in violation of Title 18, United States Code, Section 1955 and 2."

3. On August 27, 1975, Appellant appeared before the Honorable Raymond J. Broderick of the United States District Court for the Eastern District of Pennsylvania and entered a plea of nolo contendere to the offense of operating an illegal gambling business in violation of 18 U.S. Code, Section 1955 and Section 2.

4. On August 27, 1975, Appellant was sentenced before the Honorable Raymond J. Broderick, Judge of the United States District Court for the Eastern District of Pennsylvania. Appellant was placed on probation for three years. The court's order stated as follows:

"Defendant is placed on probation for a period of THREE (3) YEARS upon the following terms and conditions: (1) that defendant obey all local, state and federal laws; and (2) that defendant comply with the rules and regulations of the Probation Department."

5. On August 28, 1975, the School District of the City of Allentown adopted a resolution that proceedings be instituted to terminate the employment of Appellant as a professional employee of the Allentown School District. Said resolution stated as follows:

"Resolved, that proceedings be instituted to terminate the employment of Richard C. Baker as a professional employee of the Allentown School District, upon the following statement of charges:

"That said Richard C. Baker has entered a plea of nolo contendere to the offenses of illegal gambling business, in violation of 18 United States Code, Section 1955 and 2."

6. On September 30, 1975, a hearing was held wherein Appellant and the School District of the City of Allentown presented evidence before the Board of School Directors. On October 9, 1975 seven school board directors who had attended the September 30, 1975 hearing voted unanimously that the employment of Appellant be terminated. The Appellant received notice of this decision on or about October 15, 1975.

7. On October 31, 1975, the Appellant filed his petition of appeal in the Office of the Secretary of Education. A hearing on the appeal was held on December 16, 1975. On December 24, 1975 Appellee filed a post-hearing brief. On January 2, 1976 Appellant also filed a post-hearing brief.

DISCUSSION

This first issue to be decided on this appeal is whether the school board of the City of Allentown has sufficient evidence to sustain the dismissal of the Appellant on a charge of

immorality under Section 1122 of the Public School Code, 24 P.S. Section 11-1122. In a number of related contentions Baker, the Appellant herein, argues that the charge of immorality is not supported by evidence sufficient to warrant the termination of his employment. We disagree. The entire record before us indicates the charge was supported with competent evidence. Accordingly, the Appellant's dismissal is sustained and his appeal is denied.

The school board's charge of immorality is based on Appellant's involvement in an illegal gambling operation, which resulted in his indictment and conviction under both state law (18 P.S. Section 4607) and federal law (18 U.S.C. Section 1955 and Section 2). Since the school board's charge brought against the Appellant was immorality we must decide whether illegal gambling is encompassed within the definition of immorality under Pennsylvania law and within the meaning of the School Code. Immorality is a very comprehensive word but we need only be concerned with its legal meaning.

As yet, we do not have a case in Pennsylvania which holds that a conviction for illegal gambling *per se* constitutes immorality within the meaning of Section 1122 of the School Code. However, cases dealing with immorality under Section 1122 make the reaching of such a conclusion reasonable.

Immorality as the term is used in Section 1122 of the School Code of 1949 has been defined by our courts as such a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals the teacher is supposed to foster and elevate. *Horosko v. Mt. Pleasant Township School District*, 335 Pa. 369, 6 A.2d 866 (1939). See also *Appeal of Flannery*, 406 Pa. 515, 178 A.2d 751 (1962). The court in *Horosko* also stated that conduct to be considered immoral need not pertain exclusively to sexual misconduct. Rather, it may constitute social misconduct of almost any nature. *Horosko*, *supra* at 372. The school teacher dismissed in the *Horosko* case was married to the proprietor of a restaurant in which beer was sold and a pinball and slot machine were maintained. The school teacher tended bar and gambled with customers in the presence of school children who were pupils she tutored. Her dismissal for immorality under the School Code was upheld by the Pennsylvania Supreme Court.

In another case, a teacher perjured herself by making false statements in an application she submitted to the Pennsylvania Liquor Control Board. The court found this conduct immoral and upheld the school board's action to dismiss her. *Appeal of Batrus*, 148 Pa. Super. 587, 26 A.2d 121 (1942). In the *Appeal of Flannery*, 406 Pa. 515, 178 A.2d 751 (1962) the Supreme Court of Pennsylvania held that the misappropriation of school-administered funds "is contrary to ethical conduct and inconsistent with the rules and principles of morality," *Id.* at 754 and upheld the school board's decision to dismiss the teacher based on a charge of immorality.

The cases cited above tell us that the Supreme Court of this state believes that a charge of immorality can be sustained if a teacher gambles and serves liquor in the presence of children, misappropriates school district funds, files false statements in order to obtain a license while employed as a teacher in the public schools. Certainly, action which results in a conviction for illegal gambling in violation of federal and state law is conduct of the same general nature as that which the courts of Pennsylvania have declared to be immoral. In fact, the conduct in question here is far more serious for the case law also suggests that a conviction is not essential to warrant a finding of immorality.

Illegal gambling is a serious crime. It is not unreasonable to conclude that one's involvement in an illegal gambling operation constitutes immoral conduct unbecoming a person whose profession is teaching and whose livelihood involves a close association with impressionable students.

It should come as no surprise that the profession of teaching imposes certain moral and ethical standards on those who teach because of the extremely important role the teacher has in the lives of his or her students. The courts of this state have, on several occasions, referred to the high standards and high expectations the community imposes on those in the teaching profession.

"It has always been the recognized duty of a teacher to conduct himself in such a way as to command the respect and good will of the community, though one result of the choice of a teacher's vocation may be to deprive him of the same freedom of action enjoyed by persons in other vocations. Educators have always regarded the example set by the teacher as of great importance...." *Horosko v. Mt. Pleasant Township Area School District*, 335 Pa. 369, 372, 6 A.2d 866, 868 (1939).

* * *

"A teacher exerts considerable influence in molding the social and moral outlook of his student by his own precept, deportment and example. With respect to such moral formation, the role of the teacher may not be minimized. He is the chief creator of the student's educational environment and the main source of his inspiration." *Appeal of Edwards*, 57 Luz.L.Reg. 105, 112 (1967).

Just as the court has required that teachers be aware of the impropriety of the conduct pursued in the cases outlined above, so too, the Appellant in the case before us, must also be aware of the serious impropriety of the acts he committed while serving as a teacher in the School District of the City of Allentown. The Honorable Raymond J. Broderick's prediction that he felt certain that the Appellant was going to be facing problems in connection with his employment as a school teacher and a coach was accurate. Appellant's conduct fell below the standard of conduct expected of a teacher and accordingly, warrants a finding of immorality.

The school board at its original hearing offered testimony of three notable Allentown citizens (Mr. Charles F. Wilson, Allentown School Superintendent; Dr. William G. Bartholemew, Executive Director of the Carbon-Lehigh Intermediate Unit who served in public education for 40 years and Rev. Ronald C. Boyer, a local clergyman with a 600-member congregation) with regard to Appellant's conduct and whether it offended the morals of their community. The consensus of opinion was that illegal gambling was definitely offensive to the morals of the Allentown community and that Appellant's conduct fell below the high moral standard expected of teachers in that same community. We believe immorality was sufficiently averred since the charges served on the Appellant stated that Appellant's conduct offended the morals of the community and was inconsistent with moral rectitude. *Batrus Appeal*, 148 Pa. Super. 587, 26 A.2d 121 (1942).

Appellant makes the argument that his plea of *nolo contendere* has no effect beyond the particular case and cannot be used as an admission of guilt against the defendant in a subsequent civil action.

In Pennsylvania, the Supreme Court has ruled that a plea of *nolo contendere* is equivalent to a plea of guilty. *Commonwealth v. Warner*, 228 Pa. Super. 31, 324 A.2d 362 (1974). See also *Commonwealth v. Boyd*, 221 Pa. Super. 371, 292 A.2d 434 (1972). Although there is no consensus among jurisdictions as to how a conviction based on a plea of *nolo contendere* may be used, the majority position allows the use of a conviction entered after a *nolo contendere* plea and suggests a conviction based on a plea of *nolo contendere* is equivalent to a conviction under any other plea.

"While a conviction of the Defendant upon the plea of *nolo contendere* is not an admission of his guilt ... the fact of his conviction upon the plea may be shown in a later proceeding, and such a conviction subjects the Defendant to all the consequences of a conviction in the same way as if it were after a plea of guilty or not guilty." 89 ALR2d 540, 604 (1963).

See also, *In Re Lewis*, 389 Mich. 668, 209 N.W. 2d 203 (1973); *In Re Snook*, 94 Idaho 904, 499 P.2d 1260 (1972); *In Re Bosch*, 175 N.W. 2d 11 (1970); *U.S. v. American Bakeries Company*, 284 F. Supp. 864 (W.D. Mich. 1968); A.B.A. Project on Minimum Standards for Criminal Justice, *Pleas of Guilty* (approved draft 1968), pp. 14-15; *In Re Greenberg*, 21 Ill.2d 170, 171 N.E.2d 615 (1961); *State v. Stanoshek*, 117 Neb. 192, 92 N.W.2d 194 (1958); *In Re Eaton*, 14 Ill.2d 338, 152 N.E.2d 850 (1958).

Thus, the fact that the Appellant entered a plea of *nolo contendere* does not render the judgment of conviction any less of a conviction than if he had been found guilty. In addition, courts in numerous jurisdictions have held that for purposes of disciplinary proceedings, for example, license revocations and disbarment proceedings, a conviction based on a plea of *nolo contendere* constitutes an admission of the matters alleged. *Adel v. Bar Association of Erie Co.*, 41 A.D.2d 509, 344 N.Y.S.2d 110 (1973), *State v. Stanoshek*, 167 Neb. 192, 92 N.W.2d 194 (1958). A dismissal proceeding instituted pursuant to Section 1122 of the School Code is analogous to revoking a license or disbaring an attorney. The school board's decision to dismiss a teacher means that the teacher's opportunity to practice his profession within a certain geographical area is officially cut off. We do not think it was inappropriate for the school board to use the fact of Appellant's conviction in federal court for illegal gambling as a basis for dismissing him under the School Code.

Appellant argues in his brief that at the hearing before the school board no attempt was made to prove he was involved in an illegal gambling operation. Appellant claims that a plea of *nolo contendere* as the sole evidence of his involvement is simply insufficient to sustain the school board's burden of proving that the Appellant actually committed the acts as charged. The school board did not have to prove the Appellant was actually involved in the illegal gambling operation to sustain their burden of proof. The fact of Appellant's conviction alone established the school board's case. A recent case argued before the Commonwealth Court of Pennsylvania supports this position. In *Meth v. Commonwealth State Real Estate Commission*, 14 Pa. Cmwlth. 203, 321 A.2d 221 (1974), the Appellants were real estate brokers whose licenses were revoked after pleading *nolo contendere* to submitting false statements. Appellants argued their due process rights had been denied since the real estate commission relied on their pleas in federal court without ascertaining whether in fact the Appellants were guilty as charged. The Commonwealth Court of Pennsylvania stated that the Real Estate Commissioners have "no duty to look beyond the *nolo contendere* plea to determine the substance of the allegations". *Id.* at 207, 321 A.2d at 223. See also, *In Re Lewis*, 389 Mich. 668, 209 N.W.2d 203 (1973). The school board in the instant case, did not have to acquire independent proof of misconduct in order to meet their burden of proof at the dismissal proceedings.

Finally, Appellant argues that he had only a "peripheral" involvement in the illegal gambling operation. That is, he was not a principal in the operation and received no financial gain from his involvement but merely assisted another gentleman who was having physical problems and this should act as a mitigating factor in the disposition of the case. Again, we must disagree. The Supreme Court of Pennsylvania announced in *Batrus Appeal*, 148 Pa. Super. 587, 26 A.2d 121 (1942) that the degree of one's involvement in immoral activity or the motives which underlie immoral conduct are not really relevant to whether a charge of immorality can be sustained.

"The fact that what appellant did may have been for the benefit of others and not for her own profit may be a mitigating circumstance, but unfortunately this did not erradicate the result or change the complexion of her acts. Whether she actually engaged in the operation of the business is immaterial...." *Batrus Appeal*, 148 Pa. Super. 587, 593, 26 A.2d 121, 124 (1942).

The Appellant was also dismissed on grounds of incompetency under Section 1122 of the School Code. In order to dismiss a professional employee for incompetency, Section 1123 of the School Code provides that the employee must be rated by an approved rating system which

considers teaching techniques, pupil reaction, preparation and personality. In the *Appeal of Sullivan County Joint School Board*, 410 Pa. 222, 189 A.2d 249 (1963) the court held that two preliminary unsatisfactory ratings must be made before an employee can be dismissed for incompetency. See also *Mulhollen Appeal*, 155 Pa. Super. Ct. 587, 39 A.2d 283 (1944) and *Streibert v. York School Directors*, 339 Pa. 119, 14 A.2d 303 (1940).

A review of the record in this case indicates the Appellant was never given any unsatisfactory ratings during the last years of his employment with the School District of the City of Allentown.

"If a dismissal is to be justified on the grounds of incompetency, the legislative provision for supervising the competency of professional employes must be strictly followed." at 252, 227-228. *Appeal of Sullivan County Joint School Board*, 410 Pa. 222, 227-28. 189 A.2d 249, 252 (1963).

Since the school board had not supported its charge of incompetency with the statutory requirement of two unsatisfactory ratings, the charge must be dismissed for lack of sufficient evidence and failure to comply with Section 1123 of the School Code.

In the instant case, the school board acted properly as to the charge of immorality. Section 1122 of the School Code specifically empowers the board of school directors to dismiss a teacher for certain causes and on certain grounds. Participating in an illegal gambling operation may be deemed contrary to accepted standards of morality and brings reproach upon the teaching profession. We hold that such professional misconduct provides a basis for the school board to dismiss a teacher.

Accordingly, we make the following:

ORDER

AND NOW, this 22nd day of June, 1976, it is hereby Ordered and Decreed that the Appeal of Richard C. Baker be and hereby is dismissed, and that the decision of the School Board of the City of Allentown dismissing him as a professional employee on the ground of immorality be and hereby is sustained.

* * * *

HELEN K. McCracken, Appellant
v.

Central Susquehanna Intermediate Unit,
Appellee

In the Office of the Secretary of Education

Teacher Tenure Appeal No. 280

OPINION

John C. Pittenger
Secretary of Education

Helen K. McCracken, Appellant herein, has appealed the termination of her employment as "Adult Basic Education Specialist" with the Central Susquehanna Intermediate Unit.

FINDINGS OF FACT

1. Prior to her being hired by Appellee, Appellant was a certified teacher in Pennsylvania, having taught business courses for some time.
2. On or about June 21, 1972, Appellant was hired by Appellee and appointed to the position of Administrative Assistant in Special Education.