



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GROVER SELLERS
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ATTORNEY GENERAL

Hon. L. A. Woods
State Superintendent
Department of Education
Austin, Texas

Dear Sir:

Opinion No. 0-6945

Re: Disposition to be made of sample
textbooks which were submitted by
various publishing companies but
which were not adopted by the
State Board of Education

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"Article 2846 of the Revised Civil Statutes provides, in substance, that at least thirty days prior to the date of the meeting of the State Board of Education every person, firm, or corporation desiring to submit bids shall file with the State Superintendent of Public Instruction nine copies of each book on which a bid will be submitted.

"Article 2856 of the Revised Civil Statutes provides, in part, that the State Superintendent shall carefully label and file away the samples adopted as furnished for examination to the Board as described in the statute mentioned above.

"I would like for you to advise me what disposition should be made of the remaining samples of books that were submitted to me by the various publishing companies which books were not adopted."

Articles 2846, 2855, 2856 and 2876e, Vernon's Annotated Texas Civil Statutes, read as follows:

Art. 2846.

".

"Deposits of Samples. At least thirty days

prior to the date of the meeting of the said Commission, every person, firm or corporation desiring to submit bids shall file with the State Superintendent of Public Instruction nine copies of each book on which a bid will be submitted, in each of which copies there shall be printed or stamped a statement of the price at which such book and special editions thereof are sold in other places under State or county adoptions, and the minimum quantities of which it will be sold at such prices, and there shall be also printed or stamped in such books a statement of the publisher's catalogue price of the same and special editions thereof, together with trade discounts and the conditions under which, and the purchasers to whom, such discounts are allowed, and the place of delivery. There shall also be printed or stamped in each book the price at which it is offered to Texas, f.o.b. the Publisher's Texas depository, with and without exchange. There shall also be printed or stamped in each book, the minimum wholesale price at which such book, and special editions thereof, are sold f.o.b. the shipping point of the publisher and the name of the shipping point shall also be stated.

"Bids and Cash Deposits. Bids, when filed by the publishers, shall state specifically at what price each book will be furnished, and such bid shall be accompanied by specimen copies of each book offered, and it shall be required that each bidder deposit with the Treasurer of the State of Texas such sum of money as the Commission may require, to be not less than five hundred (\$500.00) dollars, nor more than twenty-five hundred (\$2,500.00) dollars, according to the value of the books each bidder may propose to supply; . . . Such deposits shall be returned to the unsuccessful bidders on certificate of the State Superintendent that no contract has been awarded on the bid for which the sum was deposited. Acts 1927, 40th Leg., p. 308, ch. 213 § 4."

Art. 2855 - Deposit to be returned

"When any person has been awarded a contract and he has filed his bond and contract with the commission and the same has been approved, the commission shall make an order on the Treasurer of the State reciting such fact, and thereupon the Treasurer shall return the deposit of such bidder to him; but if any successful bidder shall fail to

make and execute the contract and bond as hereinbefore provided, the Treasurer shall place the deposit of such bidder in the State Treasury to the credit of the available school fund, and the commission shall readvertise for other bids to supply such books which said bidder may have failed to supply. All unsuccessful bidders shall have their deposit returned to them by the state treasurer as soon as the commission has decided not to accept their bids."

Art. 2856. Commission to issue proclamation

"As soon as the State shall have entered into the contract for the furnishing of books for the public schools of this State under the provision of this Act, it shall be the duty of the Commission to issue its proclamation of such facts to the people of the State; and the State Superintendent of Public Instruction shall carefully label and file away the copies of the books adopted as furnished for examination to the board; and such copies of such books shall be securely kept and the standard of quality and mechanical excellence of the book or books so furnished under this Act shall be maintained in said books so furnished under contract authorized by this Act during the continuance of the contract."

Art. 2876e. Disposition of textbooks

"The State Superintendent of Public Instruction, with the approval of the State Board of Education, may provide for the disposition of such textbooks as are no longer in a fit condition to be used for purposes of instruction, or for discarded books remaining the property of the State. In case of the disuse of books in fair condition, inspectors of the State Department of Education may require the continuance of the use of said books."

In Opinion No. 0-5443 of this Department the following inquiry was propounded by the Department of Education, towit:

"The State Board of Education at its July 6th meeting directed that your advice be sought in regard to the following matter.

"There are on hand in the State depository at Austin many textbooks on various subjects

which have accumulated because of the expiration of the contract for the particular books and replacement by adoption of other books in the subject field. The Board desires to know what authorities are empowered to dispose of such of these books as are neither under current adoption nor used as supplementary source material in the public free schools. Your attention is directed to Article 2876e of the Revised Statutes of 1925. The Board has been approached with a proposal for sale of the usable texts which have been discarded because of the expiration of the adoption period, and desires to be advised concerning its authority in the matter of the sale of these books, and of free textbooks which, because of condition, are no longer usable in the public free schools."

Our answer to the above quoted inquiry in Opinion No. 0-5443, after quoting Article 2876e, V.A.C.S. was as follows:

"This statute appears to deal specifically with the very essence of your inquiry, and supplies the answer thereto. While the books mentioned are not in an unfit 'condition to be used', they nevertheless are 'discarded books remaining the property of the State.' Therefore they may be disposed of by the State Superintendent of Public Instruction, with the approval of the State Board of Education.

"The effect of this statute requires the joint action -- that is, by initiative and approval-- of the State Superintendent and of the State Board to effect a sale."

However, Opinion No. 0-5443 is not applicable to your question because the sample books you inquire about have never been adopted as textbooks and therefore would not come under the provisions of Article 2876e.

Analyzing the above quoted statutes it would seem that the unsuccessful bidders would be entitled to have their sample copies of textbooks returned to them if they desired them returned. It also appears that if they did not want them returned but chose to abandon them to the State or make a gift of them to the State they could do so.

However, it is our opinion that any such samples which become State property by gift or abandonment should be disposed of in the manner provided by Article 666, Vernon's Annotated

Texas Civil Statutes, which article reads as follows:

"All property belonging to the state, regardless of where it is located, under the control of any department, commission, board, or other state agency, with the exception of state eleemosynary institutions, colleges, and institutions of higher learning, when it shall become unfit for use, or shall be no longer needed, shall be placed under the jurisdiction of the Board of Control, and the Board of Control shall sell such property after advertising it not less than four (4) days in a newspaper in the county wherein the property is situated. Provided, however, that if no newspaper is published in the county wherein the property is situated, notice of said sale setting out the time and place of sale and the property to be sold shall be posted in three (3) public places, one being in the court house in the county wherein the property is situated. Provided, however, that if the value of such personal property is less than One Hundred (\$100.00) Dollars and not sufficient to justify the cost of advertisement in newspapers as outlined above, the Board of Control may sell such property in any manner that it deems for the best interest of the State. The money from the sale of such property, less the expense of advertising the sale, shall be deposited in the State Treasury to the credit of the General Revenue Fund. And provided further, that any property placed in the hands of the Board of Control, as outlined herein, may be transferred by the Board of Control to any department, commission, board or state agency in need of same, and the debit and credit shall be made on the basis that such property can be purchased in the market at the time of the transfer, if a market exists, and if not, at its actual or intrinsic value as set by the Board of Control. The Board of Control shall make a written report to the Comptroller after each sale. The report shall include the following items:

"1. Name of the newspaper and the dates of advertisement of notice of sale; or if posted, the date and place of posting.

"2. Each Article received.

"3. The price for which each article was sold.

"4. The name and address of the person to whom each article was sold.

"This report shall be signed by the Board of Control and a member of the department, commission, board or state agency having control of the property before sale." As amended Acts 1943, 48th Leg. p. 272, ch. 171, §1.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/Wm. J. Fanning
Wm. J. Fanning
Assistant

WJF:BT:wc

APPROVED DEC 6, 1945
s/Carlos C. Ashley
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman