



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Hon. L. A. Woods
State Superintendent of Public Instruction
Austin, Texas

Dear Sir:

Opinion No. 0-7158

Re: Whether State Board of Education is authorized to enter into contract for purpose of having the component materials of State owned free textbooks tested to determine whether such textbooks comply with the official minimum manufacturing standards and specifications for Texas textbooks or whether said contract should be let by the State Board of Control

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

"We should like to have your opinion in regard to the following question:

"May the State Board of Education enter into a contract with an individual, firm, or agency for the purpose of having the component materials of State owned free textbooks tested to determine whether or not such textbooks comply with the Official Minimum Manufacturing Standards and Specifications for Texas Textbooks?"

"In the past your department has ruled that a contract for the rebinding of State owned textbooks should be let by the State Board of Control, and when the question of having tests made of the component materials of free textbooks came before the State Board of Education

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for its consideration, the question was raised as to whether or not this would be a proper function of the Board of Education or of the Board of Control.

"Several years ago the State Board of Education approved the manufacturing standards and specifications as set out in the attached Form A entitled Official Minimum Manufacturing Standards and Specifications for Textbooks. These specifications and standards have now been adopted by at least twelve states and were originally worked up from the specifications prepared in the local Textbook Division. These specifications and standards have also been adopted by the Book Manufacturers' Institute of the United States for the manufacture of textbooks in all states which have free books.

"The State Board of Education has at no time since the adoption of its official minimum manufacturing standards and specifications had any method by which it could determine with any degree of exactness whether or not its specifications were being complied with in the manufacture of textbooks. The only method of determining such matters in the past has been by visual and manual examination of bound volumes without the aid of instruments or specific scientific tests of any kind. However, it is provided in Article 2848, R.C.S. that ". . . The text books shall be selected and adopted after a careful examination and consideration of all books presented, and the books selected and adopted shall be those which, in the opinion of the Commission, are most acceptable for use in the schools -- quality, mechanical construction, paper, print, authorship, literary merit and other relevant matters being given such weight in making its decision as the Commission may deem advisable."

"In view of the fact that the State Board of Education purchases annually approximately two million dollars worth of State textbooks and that the books in the State represent a continuous investment of from six to eight million dollars, it seems that it

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would be desirable to have access to some agency through which it can be definitely determined that these products are being manufactured in such manner as to protect the fiscal interests of the State and at the same time provide the children of the State with the best content materials of the respective subjects for a progressive educational program. The following is an example of what could happen if certain types of textbooks were made of poor materials or were poorly manufactured and would not stand up to the hard usage to which such books are subjected in the hands of the children in the upper elementary grades: A certain textbook in the subject of United States History now under contract is purchased at a cost of \$1.47. In the three years that this book has been under contract the State has purchased approximately 120,000 copies at an approximate cost of \$175,000.00. The book is under contract for three more years. Should the 120,000 copies now in the State because of poor component materials or poor manufacturing standards go to pieces in the next year or two, the cost of replacements for this one title could very easily be practically doubled, whereas a book of similar type and cost which is composed of standard materials and which is produced under standard manufacturing processes can be maintained in the schools for six years at an average total replacement cost of from fifteen to twenty-five per cent of the purchase price of the original number needed to completely supply the schools.

"Certain contacts have been made and it is definitely established that there are testing laboratories in the State whose owners and employees together are adequately prepared and equipment is available for making such tests as will determine the quality of materials employed in the manufacture of State owned textbooks. Moreover, the testing procedure and the tests themselves are all set out in Column 22, Page 3 of Form A, Minimum Manufacturing Standards and Specifications for Textbooks.

"We shall be glad to have your opinion with respect to our original question at your early convenience."

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Article 2848, Vernon's Annotated Texas Civil Statutes, reads as follows:

"It shall be the duty of the commission to meet at the time and place mentioned in the notice and advertisement, and it shall then and there open and examine the sealed proposals received; and it shall be the duty of the commission to make a full and complete investigation of all the books and bids accompanying the same. The textbooks shall be selected and adopted after a careful examination and consideration of all books presented, and the books selected and adopted shall be those which in the opinion of the commission are most acceptable for use in the schools - quality, mechanical construction, paper, print price, authorship, literary merit and other relevant matters being given such weight in making its decision as the commission may deem advisable. The commission shall proceed without delay to adopt for use in the public schools of this State textbooks on all branches hereinbefore mentioned; provided, that if the bids submitted to said commission should not be satisfactory to said commission, they may postpone the selection of such books or a part thereof to such time as they may select, and after the same is readvertised, new bids may be received and acted on by such commission as provided for in this Act; provided, that no textbook shall be adopted until it has been read carefully and examined by at least a majority of the commission." (Underscoring ours)

The State Textbook Commission has been abolished and its duties were transferred to the State Board of Education. See Article 2675b-5, Vernon's Annotated Texas Civil Statutes.

Opinion No. 0-401 of this department is the opinion referred to in your letter, which holds that a contract for rebinding of State owned textbooks should be let by the State Board of Control. However, this holding was based on the specific provisions of Article 508, R.C.S. and we think has no application to the question submitted by you.

Many statutes deal with the authority of the Board of Control to let contracts for the purchase of State supplies,

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printing, etc. but we are unable to find any statute giving the Board of Control any authority or jurisdiction over the letting of a contract similar to the one inquired about in your letter, and it is therefore our opinion that the Board of Control has no authority or duty to let the contract inquired about.

It is our further opinion that Article 2848, supra, is broad enough to authorize the Board of Education to enter into the contract inquired about.

It is our further opinion that there is an available appropriation from which payment of such contract could be made. This appropriation is found under the title "Textbook Division and Textbook Depository", is a part of the appropriations provided for the State Board of Education, is found on page 851, Vol. 5, Vernon's 1945 Texas Session Law Service, and reads as follows:

"It is provided that any amount expended for Textbook Administration, including new textbooks, rebinding, and any other expenses connected therewith, shall be paid out of the State Textbook Fund."
(Underscoring ours)

Trusting that this satisfactorily answers your inquiry,
we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

Wm. J. Feaning

By Wm. J. Feaning
Assistant

APPROVED
MAY 9 1946
apv.
W. J. Feaning
FIRST ASSISTANT
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