

1710.

APPROVAL, BONDS OF VILLAGE OF NEW KNOXVILLE, AUGLAIZE COUNTY, \$16,300.00, STREET IMPROVEMENTS.

COLUMBUS, OHIO, September 4, 1924.

*Retirement Board, State Teachers' Retirement System, Columbus, Ohio.*

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1711.

APPROVAL, BONDS OF JEFFERSON TOWNSHIP RURAL SCHOOL DISTRICT, CLINTON COUNTY, \$25,000.00, FOR SCHOOL IMPROVEMENTS.

COLUMBUS, OHIO, September 4, 1924.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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1712.

SCHOOLS—TEXT BOOKS—AUTHORITY OF BOARDS OF EDUCATION IN ADOPTING BOOKS FOR USE IN PUBLIC SCHOOLS DISCUSSED—SECTIONS 7709, 7710 AND 7620 OF THE GENERAL CODE OF OHIO CONSTRUED.

**SYLLABUS:**

1. *In view of the provisions of sections 7709 and 7710, General Code, a dictionary designed for use as a text book by pupils in the public schools, as distinguished from reference or supplementary books, should be filed and listed with the state text book commission before adoption by a board of education.*

2. *The phrase "published list wholesale price" as used in Sections 7709 and 7710, General Code, with reference to a book or books, may mean whatever price the publisher or publishers, may see fit to fix. The interest of the schools in this connection are amply protected by the provisions empowering the state school book commission to fix the maximum price at which such books may be sold, which price must not exceed seventy-five per cent. of the wholesale list price and apparently may be less.*

3. *In view of a former opinion of this department, found in Opinions of the Attorney General for 1919, Vol. II, page 1443, and the provisions of Section 7711, General Code, it is not believed a board of education can "cause to be used in the common schools any book" not listed with the state school book commission and, of course, could not purchase such book for the use of the pupils of the public schools.*

4. *The apparent purpose of the school book commission law being to provide school books for the pupils of the schools at the lowest possible price, it is believed these sections would not affect the purchase of library, reference or supplementary*

*books and that a board of education would have authority, under Section 7620, to purchase library, reference and supplementary books without regard to the listing of same with the state text book commission.*

COLUMBUS, OHIO, September 5, 1924.

HON. VERNON M. RIEGEL, *Director of Education, Columbus, Ohio.*

Dear Sir:—

Yours of recent date received in which you submit the following questions bearing upon Sections 7709 and 7710, General Code:

"1. Must dictionaries designed for use by public school pupils be filed and listed with the state text book commission the same as school text books?

"2. Section 7710 specifies that the price fixed for listed books 'must not exceed seventy-five per cent. of the published list wholesale price thereof.' What interpretation should be given to the phrase 'published list wholesale price', particularly the word 'wholesale'?

"3. Attorney General's Opinion No. 786, issued November 15, 1919, holds that a board of education can not expect to enjoy the benefits of the contract price of a listed book, if it does not legally adopt same for a period of five years. Since the inference is plain that a board may purchase a listed book without adopting it in accord with Section 4752, G. C., may it purchase without adoption a book that is not listed with the text book commission?

"4. A concrete case exists in which a publisher has a book that is advertised to sell at one dollar. The publisher's uniform discount throughout the United States is 20 per cent., making the net price eighty cents. Can the publisher make the price on this book, for purposes of listing in Ohio, \$1.07, so that when the state text book commission has complied with Section 7710 in setting the maximum price at 75 per cent. of the list price he shall be able to obtain the net price of eighty cents in Ohio as in all other states?

"5. Can boards of education purchase desk copies of dictionaries, sets of encyclopedias and other reference works, and library books, which have not been listed with the state text book commission?"

In answer to your first question, your attention is directed to a former opinion of this department, found in Opinions of the Attorney General for 1919, Vol. 1, page 1443, wherein it was held that:

"There is but one method for the legal adoption of books for use in the public schools and that is the method provided in section 4752 G. C. The statutes do not recognize an adoption of a school book for supplementary or reference purposes as against an adoption for school use."

See also the provisions of section 7713 G. C., which reads as follows:

"At a regular meeting, held between the first Monday in February and the first Monday in August, each board of education shall determine by a majority vote of all members elected the studies to be pursued and which of

such text books so filed shall be used in the schools under its control. But no text books now in use or hereafter adopted shall be changed, nor any part thereof altered or revised, nor any other text books be substituted therefor for five years after the date of the selection and adoption thereof, as shown by the official records of such boards, except by the consent at a regular meeting, of five-sixths of all members elected thereto. Books so substituted shall be adopted for the full term of five years."

This section is a part of the text book law and requires every board of education to determine "the studies to be pursued and *which of such text books so filed shall be used* in the schools under its control."

In a former opinion found in Opinions of the Attorney General for 1920, page 272, it was held:

"Boards of education are limited in their selection of text books to be used in the public schools of this state to the books so filed with said commission."

Attention is also directed to the last sentence of section 7611, General Code, which reads:

"A board of education shall not adopt or cause to be used in the common schools any book whose publisher has not complied, as to such book, with the provisions of law relating thereto."

Considering the sections of the General Code above mentioned in the light of former opinions, it is believed that a dictionary designed for use as a *text book* by pupils in the public schools, as distinguished from reference or supplementary books, should be listed and filed with the state text book commission before adoption by the board of education.

Considering your second and fourth questions, as to the interpretation of the phrase "published list wholesale price", as used in section 7710, General Code, attention is first directed to a former opinion of this department, found in Opinions of the Attorney General for 1921, Vol. 2, page 1151, wherein this section and section 7709, General Code, are considered.

Section 7709, General Code, reads as follows:

"Any publisher or publishers of school books in the United States desiring to offer school books for use by pupils in the common schools of Ohio as hereinafter provided, before such books may be lawfully adopted and purchased by any school board, must file in the office of the superintendent of public instruction, a copy of each book proposed to be so offered, together with the published list wholesale price thereof. No revised edition of any such book shall be used in common schools until a copy of such edition has been filed in the office of the superintendent together with the published list wholesale price thereof. The superintendent must carefully preserve in his office all such copies of books and the price thereof."

In the above referred to opinion appears the following statement:

"In the above section the outstanding points are that there must be a 'filing' of the book in question and a filing of the published list wholesale price of such book. Nothing else is demanded by the statute, no description

or summary of the book or its contents, but merely the exhibit itself as a product to be offered to the boards of education in the state."

Following the above statement in the opinion referred to, section 7710, General Code, is quoted, and then appears the following statement:

"The duties of the state text book commission are set forth in section 7710, as above, and that duty consists solely in the words 'immediately shall fix the maximum price'. No other duty is put upon the text book commission by the statutes."

In view of the language of sections 7709 and 7710, General Code, and the above interpretation of same, it is believed that "published list wholesale price" of a book or books may be whatever price the publisher or publishers may see fit to fix. The interests of the schools in this connection are amply protected by the provisions in said sections empowering the state school book commission to fix the *maximum* price at which such books may be sold, which price *must not exceed seventy-five per cent.* of the wholesale list price, but apparently may be less.

Answering your third question, you are advised that this department concurs in the former opinion found in Opinions of the Attorney General for 1919, Vol. 2, page 1443, as follows:

"1. Publishers of text books cannot charge more than the Ohio contract price on file with the state text book commission for books regularly adopted.

"2. When books for use in public schools are regularly adopted by a board of education, such adoption is for a period of five years, and the board of education is entitled during such period to the benefit of the price of such text book, as filed by the publisher with the school book commission.

"3. There is but one method for the legal adoption of books for use in the public schools and that is the method provided in section 4752 G. C. The statutes do not recognize an adoption of a school book for supplementary reference purposes as against an adoption for school use."

Attention is also directed to the discussion in the above opinion appearing on page 1446, as follows:

"There is a distinction between the adoption of a text book as contemplated in the statutes and the approval of such book for use in public schools. A book might be approved for use upon the recommendation of the superintendent or on the report of a committee of the board of education, but this would not be an adoption in the sense that is mentioned in section 4752, supra, because the board of education could approve the use of such book and not be bound for any specific time, while if the same was adopted, under the language of the statutes such adoption would hold for five years, unless during such five years the book in question was supplanted by another book upon five-sixths vote of the board of education, counting all its members.

"It would seem, therefore, that a board of education which had adopted a text book that was listed with the state text book commission in the manner provided by the text book law would be entitled to the benefits of the prices filed with such commission, such prices being filed by the publishers as being effective to such boards of education as adopt the text book or text books in the manner provided by law.

"On the other hand, a board of education which had merely approved the use of a certain book could hardly demand the full rights of a board of education that had adopted the book for a period of five years, for the former board of education would be presenting little consideration to the publisher, in return for the price quoted and filed with the state school book commission."

Attention is also directed to the latter part of section 7711, General Code, which reads:

"A board of education shall not adopt or caused to be used in the common schools any book whose publisher has not complied, as to such book, with the provisions of the law relating thereto."

In view of the former opinions above referred to and that part of section 7711, General Code, quoted above, it is not believed a board of education can "cause to be used in the common schools any book" not listed, and of course could not purchase such book for the use of the pupils of the public schools.

In considering your fifth question, attention is directed to an opinion of this department, found in Opinions of the Attorney General for 1922, Vol 1, page 314, wherein attention is directed to section 7642, General Code, which provides that in districts where there is not a public library operated under public authority, the board of education may appropriate, not to exceed two hundred and fifty dollars per year, for the purchase of books for the use and improvement of the pupils and teachers of the school district. In the above cited opinion it is also held that section 7642 would not be authority for the purchase of supplementary books except in case no library exists, but further holds that,

"under the provisions of section 7620, General Code, boards of education may lawfully purchase books and other periodicals for their official use and that of the pupils, when deemed advantageous and for the best interests of the schools under their management and control."

In your fifth question the books mentioned apparently are in no sense intended for sale to the pupils of the schools, but rather to be used as supplementary or reference books. The purpose of the act providing a school book commission was to provide school books to the pupils at the lowest possible price. This is evidenced by Section 7715, General Code, which reads in part as follows:

"Each board of education shall make all necessary provisions and arrangements to place the books so purchased (by the board as provided in section 7714) within easy reach and accessible to all the pupils in their district. \*\*\* Such books must be sold to the pupils of school age in the district at the price paid the publisher and not to exceed ten per cent. thereof added."

Therefore, in view of the former opinion and the apparent purpose of the school book commission law, I am of the opinion that a board of education would have authority, under section 7620, General Code, to purchase library, reference and supplementary books without regard to a listing of same with the state text book commission.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*