

6017.

TEXTBOOKS—MANDATORY DUTY OF BOARD OF EDUCATION TO FURNISH FREE TEXTBOOKS DISCUSSED—CUSTODIANSHIP OF TEXTBOOKS DISCUSSED.

SYLLABUS:

1. *Under the terms of Section 7715, General Code, the director of schools in districts having a director, or the superintendent of schools and the board of education in other districts, are not designated as the custodian or custodians of textbooks other than those which are furnished free of charge to the pupils, as provided by law.*

2. *As to textbooks which are purchased by a board of education for sale to the pupils or their parents or guardians in pursuance of Section 7715, General Code, the board of education may in its discretion, designate who shall be the custodian of those books and make the sales as requested by the pupils or their parents or guardians.*

3. *After the expiration of the school year of 1936-1937, a mandatory duty is imposed upon boards of education by the terms of Section 7739, General Code, to furnish textbooks for pupils in all the grades and types of public schools except to those pupils who do not need them.*

COLUMBUS, OHIO, August 29, 1936.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your request for my opinion, which reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following questions relating to the construction of Sections 7715 and 7739, General Code, as amended in 116 O. L., 282:

1. Under Section 7715, is the Director of Schools in a city district or in districts not having a Director, the Superintendent and the board of education, custodian or custodians of textbooks other than those being distributed free?

2. In the event you hold he or they have custody only of the books being distributed free, who has charge of the books which are being sold?

3. Under Section 7739, which seems to provide that the board of education is required to furnish all textbooks free to

certain grades for certain years, is the board of education required, by this section, to in the end furnish all textbooks, free to the pupils in the schools?"

Sections 7715 and 7739, General Code, as amended in House Bill No. 41 of the 91st General Assembly, read:

Sec. 7715.

"Each board of education shall make all necessary provisions and arrangements to place the books so purchased within easy reach of and accessible to all the pupils in their district. In a city school district having a director of schools, the director shall be the custodian of all school books purchased for the use of and furnished free to the pupils attending the public schools of such district. In districts not having a director the superintendent and the board of education shall be the custodian under such rules as they may provide. They shall distribute such books, keep such records, maintain such accounts, and make such reports as the board of education shall require. The board may employ such additional help as it shall deem necessary to properly administer the provisions of this section.

Nothing in this section shall be construed to prohibit any pupil, or the parent of any pupil from purchasing textbooks for their own use, or the use of their children or wards in the schools of the district in which such purchaser resides. The board of education in each school district upon the request of a pupil, or the parent of any pupil, shall sell to such individual making the request textbooks of the kind requested at a price not to exceed the cost paid therefor plus ten per cent. The proceeds of such sales shall be credited to the fund from which payments are made by the board for the purchase of textbooks."

Sec. 7739.

"Each board of education shall furnish, free of charge the necessary textbooks to the pupils attending the public schools. But pupils wholly or in part supplied with necessary textbooks shall be supplied only as other or new books are needed. Provided however that a board of education may limit its purchase and ownership of books needed for its schools to six subjects per year, the cost of which shall not exceed twenty-five per cent of the entire cost of adoption. All textbooks furnished as herein

provided, shall be the property of the district, and loaned to the pupils on such terms and conditions as each such board prescribes. In order to carry out the provisions of this act, each board of education, in the preparation of its annual budget, shall include as a separate item the amount which the board finds necessary to carry out the terms of this act and such amount shall not be subject to transfer to any other fund. Provided further that each board of education, except for the furnishing of free textbooks to any pupil whose parents or guardian, upon satisfactory proof to the board is unable to furnish said textbooks, may restrict the provisions of this section as to the furnishing of free textbooks to grades 1-4 inclusive for the school year 1935-1936 and to grades 1-8 for the school year 1936-1937."

It will be observed from the provisions of Section 7715, General Code, that no definite direction is contained therein as to the custody of school books other than those purchased for the use of, and furnished free to the pupils attending the public schools. As to those books, the director of schools is to be the custodian if the district has a director of schools. If the district does not have a director of schools, the custodian of such books is to be the superintendent and the board of education under such rules as the board may prescribe. The statute does, however, provide that each board of education shall make all necessary provisions and arrangements to place textbooks within easy reach of and accessible to the pupils of the district, and further provides that pupils or parents may purchase textbooks for their own use or for the use of their children or wards and that the board of education upon the request of a pupil or parent shall sell to such individual making the request, textbooks of the kind requested at a price not to exceed the cost paid therefor, plus 10%.

Former Section 7715, General Code, which was repealed when the statute was amended in House Bill No. 41, contained a similar provision as to the placing by a board of education of textbooks within easy reach of and accessible to pupils. It contained the further provision that the board might make contracts with third persons for the handling of textbooks, and that those third persons might receive a profit of 10% in the selling of books to the pupils or their parents. Inasmuch as that provision was not contained in the amended statute, it must be held that the board is now without authority to contract with third persons for the handling of textbooks and permit those third persons to make a profit thereon.

Inasmuch as there is no express direction in the statute as to the

custodian of books which are sold to the pupils or their parents and the statute directs that the board shall make the books accessible to parents and children who desire to purchase them, it follows that the board may use its discretion as to naming the custodian of the books for that purpose. It may be the clerk of the board or the superintendent or the director, or perhaps in some cases, some other person who is in the employ of the board. The entire proceeds of such sales, including the 10% increase over the cost should be credited to the fund from which the books are purchased.

With respect to your third question, your attention is directed to Opinion No. 6029 directed to Hon. E. L. Bowsher, Director of Education, where it is held:

“1. The present statutes grant authority to boards of education to furnish textbooks free of charge for pupils in attendance in the public schools, but the duty to furnish such books is not mandatory except as to those pupils whose parents or guardians upon satisfactory proof to the board, are unable to furnish such textbooks, for grades and types of schools other than the elementary grades until after the expiration of the school year 1936-1937.

2. The duty to furnish free textbooks for pupils in grades 1-4 inclusive, was mandatory during the school year 1936-1937, and thereafter. After the expiration of the school year 1936-1937, it is mandatory for boards of education to furnish free textbooks for pupils attending all grades and types of public schools except as those pupils may be supplied with books, in which case the duty to supply books is mandatory when new books are needed.

3. In the event a board of education fails to perform its duty to furnish free textbooks in accordance with law, for the pupils attending the public schools, that duty may be enforced by an action in mandamus brought in a court of competent jurisdiction by a citizen who resides in the school district wherein the board of education fails to perform its duty with respect to the furnishings of free textbooks or by the parent or guardian or person in charge of a child attending the public schools in said district and entitled by reason thereof to the benefits of the statute.”

I am therefore of the opinion, in specific answer to your questions:

(1) Under the terms of Section 7715, General Code, the director of schools in districts having a director, or the superintendent of schools and the board of education in other districts, are not designated as the custodian or custodians of textbooks other than those which are furnished free of charge to the pupils, as provided by law.

(2) As to textbooks which are purchased by a board of education for sale to the pupils or their parents or guardians in pursuance of Section 7715, General Code, the board of education may, in its discretion, designate who shall be the custodian of those books and make the sales as requested by the pupils or their parents or guardians.

(3) After the expiration of the school year of 1936-1937, a mandatory duty is imposed upon boards of education by the terms of Section 7739, General Code, to furnish textbooks for pupils in all the grades and types of public schools except to those pupils who do not need them.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6018.

APPROVAL—BONDS OF SEBRING EXEMPTED VILLAGE
SCHOOL DISTRICT, MAHONING COUNTY, OHIO, \$40,-
000.00.

COLUMBUS, OHIO, August 29, 1936.

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

6019.

APPROVAL—BONDS FOR THE FAITHFUL PERFORMANCE
OF THEIR DUTIES AS DISTRICT DEPUTY DIRECTORS—
JOSEPH M. MORRISSEY, HAROLD McCORMICK AND
O. CARSON BARKLOW.

COLUMBUS, OHIO, August 31, 1936.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted three bonds, each in the penal sum of \$5,000.00, with sureties as indicated, to cover the faithful performance of the duties of the officials as hereinafter listed: