

1068.

BOOKS—WHERE PUBLISHERS FILE COPIES OF SCHOOL BOOKS WITH SUPERINTENDENT OF PUBLIC INSTRUCTION TOGETHER WITH PUBLISHED LIST PRICE—COMMISSION FIXES MAXIMUM PRICE AT WHICH BOOKS MAY BE PURCHASED BY BOARD OF EDUCATION—PUBLISHERS ACCEPT PRICE AND AGREE TO FURNISH BOOKS DURING PERIOD OF FIVE YEARS—SUCH PROCEEDINGS CONSTITUTE CONTRACT FOR FULL PERIOD OF FIVE YEARS FROM DATE OF SUCH WRITTEN NOTICE AND AGREEMENT—BOARDS OF EDUCATION LIMITED IN SELECTION OF BOOKS—EXCEPTION—DUTY OF BOARD OF EDUCATION BEFORE ADOPTING BOOKS—PUBLISHERS MAY NOT REFILE SAME BOOK WITHIN PERIOD OF FIVE YEARS AT HIGHER MAXIMUM PRICE.

1. *When a publisher of school books, desiring to offer the same for use by pupils in the common schools of Ohio, files in the office of the superintendent of public instruction, a copy of such book or books, together with the published price list thereof, and the commission, consisting of the governor, secretary of state and superintendent of public instruction, fixes the maximum price (not exceeding seventy-five per cent. of such list price) at which such book or books may be sold to or purchased by boards of education; and if after notice of such price, such publisher notifies the superintendent in writing that he accepts such price, and agrees in writing to furnish such book or books during a period of five years at that price, such proceedings constitute a contract between such publisher and the commission for the benefit of boards of education of the state, whereby such publisher becomes bound to furnish such book or books to boards of education for the full period of five years from that date of such written notice and agreement, at a price not exceeding that so fixed by the commission and accepted by such publisher.*

2. *Boards of education are limited in their selection of books to be used in the public schools of this state, to the books so filed with said commission, but books so selected and adopted must be adopted for a period of five years, subject to the right to change such adoption by the consent, at a regular meeting, of five-sixths of the members thereof.*

3. *It is the duty of boards of education before adopting any of such books, to make an effort to secure from such publishers the desired books at less than the maximum so fixed by the commission.*

4. *Within the period of five years from his acceptance of a maximum price fixed by the commission for any book, a publisher thereof may not refile the same book with the superintendent and have a higher maximum price fixed therefor.*

COLUMBUS, OHIO, March 12, 1920.

HON. FRANK B. PEARSON, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter, which reads as follows:

“At a meeting of the state text book commission, it was agreed by unanimous consent to ask you to review the opinions handed down by your predecessor relating to the listing of text books in Ohio. As secretary of this commission, I am apprising you of this action, and hope it will be your pleasure to make this review.”

Pursuant to the above request, I have made a careful review of the opinions of my predecessor therein referred to, and have diligently considered the briefs and contentions of various interested parties.

After such review and consideration, I am convinced that the conclusion of my predecessor, as stated in his said opinions, is correct, and the doctrine of those opinions is adhered to and hereby affirmed.

In view of this conclusion, I take it that an extended discussion of the opinions and of the statutes and contentions would not be interesting.

However, I may state that in arriving at this conclusion I have been persuaded by the history of the legislation itself, by the practical construction placed upon these provisions by the department having their enforcement in charge and by all other interested parties prior to the date of the opinions, and by the acquiescence of such parties in the doctrine of the opinions since their rendition, until it might be said that from the time of the enactment of the legislation the doctrine of these opinions has become the settled rule of construction.

So far as I have been advised, no hardships have resulted from that construction, and particularly is this true as applied to the people of the state, the result having been to stabilize the price of text books used in our public schools for a definite period of five years.

Much that has been said in opposition to the construction aforesaid might be potent argument to the legislature to induce a change in the law; but it is our duty to construe and enforce the law as we find it.

The difference of opinion as to the proper construction of section 7710 G. C. appears to be of recent origin, and grows out of the fact that two "five-year periods" are referred to; one in section 7710 G. C.—the other in section 7713 G. C. In my judgment, there is no necessary connection between the two.

The "five years" mentioned in section 7710 refers to the period during which the publisher of a given text book agrees with the state text book commission to furnish the book at a given price, the immediate parties being the commission and the publisher, but the agreement made being for the benefit of third parties, to-wit: boards of education of this state.

By section 7714 G. C. such boards are authorized to contract direct with publishers, if they can, for a less price than the maximum agreed upon between such publisher and the text book commission. If unable to procure a less price, then the boards simply operate under the contract made for their benefit by the commission.

Forerunners of this section (4020a and 4020-2 R. S.) carry the words "for the period of five years *from the date of such acceptance.*" The codifying commission disposed of sections 4020-1 to 4020-9 R. S. by stating that they were repealed by implication by senate bill 249, 92 O. L. 282, the title of which is "An Act to provide for supplying the schools of Ohio with good and sufficient school books at the lowest possible prices." This act became sections 4020-10 to 4020-14 R. S., and carried into the Code as sections 7709 to 7718.

If the purpose of the legislature was, as stated, to procure books at the lowest possible price, how can it be said that that object may be accomplished if after providing for a fixed price for five years, a construction may be had which will permit a refiging of the same book each year at an increased price? I cannot think such a construction was ever contemplated by the legislators who were seeking to obtain books at the lowest possible price, and who created a text book commission to guard the rights of the people in that respect.

The other "five years" mentioned in section 7713 G. C. is a limitation directed against boards of education, to the end that there may not be frequent changes of text books with a consequent expense to the people, but at the same time providing a method of changing a text book should it become necessary, by the votes of five-sixths of all the members of such boards.

Without extending this discussion, it is the opinion of the attorney-general that

(1) When a publisher of school books, desiring to offer the same for use by pupils in the common schools of Ohio, files in the office of the superintendent of public instruc-

tion a copy of such book or books, together with the published list price thereof, and the commission, consisting of the governor, secretary of state and superintendent of public instruction, fixes the maximum price (not exceeding seventy-five per cent of such list price) at which such book or books may be sold to or purchased by boards of education; and if after notice of such price, such publisher notifies the superintendent in writing that he accepts such price, and agrees in writing to furnish such book or books during a period of five years at that price, such proceedings constitute a contract between such publisher and the commission for the benefit of boards of education of the state, whereby such publisher becomes bound to furnish such book or books to boards of education for the full period of five years from the date of such written notice and agreement, at a price not exceeding that so fixed by the commission and accepted by such publisher.

(2) Boards of education are limited in their selection of books to be used in the public schools of this state to the books so filed with said commission, but books so selected and adopted must be adopted for a period of five years, subject to the right to change such adoption by the consent, at a regular meeting, of five-sixths of the members thereof.

(3) It is the duty of boards of education before adopting any of such books to make an effort to secure from such publishers the desired books at less than the maximum so fixed by the commission.

(4) Within the period of five years from his acceptance of a maximum price fixed by the commission for any book, a publisher thereof may not refile the same book with the superintendent of public instruction and have a higher maximum price fixed therefor.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

1069.

**BOARD OF EDUCATION—HAS CONTROL OF SCHOOL BUILDINGS—HAS  
 AUTHORITY TO REGULATE MEETINGS AND ENTERTAINMENTS  
 HELD OUTSIDE OF SCHOOL HOURS.**

*A board of education has the entire control and management of the schools and the school buildings and grounds in its district, and such board of education is within its statutory authority in exercising its discretion as to the opening of such school houses for meetings and entertainments held outside of school-hours.*

COLUMBUS, OHIO, March 12, 1920.

HON. LEWIS F. STOUT, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion upon the following statement of facts:

“Several of the residents in a certain district in Jackson township, this county, have made application to the board of education for permission to use one of the school houses to give a public dance. The board of education has refused this permission.

“Would you please give me your opinion as to what the rights of the parties are under section 7622-1?”

Section 7622-1, which you cite, reads as follows: