

2137.

BOARD OF EDUCATION—MAY NOT ADOPT TEXT BOOKS FILED IN 1915  
AT CERTAIN PRICE BUT NOT RELISTED IN 1920 BY PUBLISHER.

*A board of education may not adopt for use text books which were first filed in 1915 at a certain price but were not relisted in 1920 by the publisher at the end of the five-year period mentioned in section 7710 G. C., since such period ends with the expiration of the five years, starting with the date of acceptance by the publisher of the price fixed by the text book commission.*

COLUMBUS, OHIO, June 6, 1921.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

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

“Text books were listed with the state text book commission in 1915 at a certain price. In 1920 these books were not relisted. May a board of education adopt these books? If so, at what price? Does the five-year period, automatically end at the expiration of five years?”

In answering your question consideration must be given to two recent opinions on the question of school text books, issued by this department, as a very large part of your question is considered in these opinions.

The syllabus of opinion No. 786, issued on November 15, 1919, to the Superintendent of Public Instruction, and appearing at page 1443, Volume II, Opinions of Attorney-General, 1919, reads as follows:

“1. Publishers of text books cannot charge more than the Ohio contract price on file with the state school 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 or reference purposes as against an adoption for school use.”

Following this there was issued opinion No. 1068 under date of March 12, 1920, and addressed to the Superintendent of Public Instruction, appearing at page 272, volume 1, Opinions of Attorney-General, 1920. The syllabus of this opinion reads as follows:

“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."

The second branch of the syllabus of this later opinion says that :

"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,"

and this means that the board of education cannot adopt or later purchase for use a text book that is not filed with the state text book commission in the manner provided by law. You indicate that certain text books were listed with the state text book commission in 1915 at a certain price and that in 1920, that is five years thereafter, these certain text books were not relisted by their publishers.

Your question then appears to be whether these certain text books, having been first listed with the state text book commission in 1915 at a certain price, were still "listed" or "filed" with the state text book commission following the year 1920, even though the publishers did not in the year 1920 refile or relist such books.

Section 7709 G. C. says :

"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. \* \* \*"

Section 7710 G. C. says :

“\* \* \* If the publisher so notified, notifies the superintendent in writing that he accepts the price fixed, and agrees in writing to furnish such book during a period of five years at that price, such written acceptance and agreement shall entitle the publisher to offer the book so filed for sale to such boards of education.”

The effect of this language is that for five years following the time of listing there is contractual relation existing between the publisher and the state text book commission acting for the boards of education, as set forth in opinion No. 1068, the syllabus of which appears above.

During such period of five years the publisher is bound to offer his book so filed for sale to any and all boards of education in the state, but he is no wise bound by his agreement in writing to offer such books for sale to boards of education after the five year period has expired; the contemplation of the state text book law appears to be that if the publisher desires to have his text book used in the schools of the state through adoption by boards of education, he should file such text book in the office of the Superintendent of Public Instruction at the expiration of the five year period mentioned in section 7710 G. C., or make a new agreement in writing for the five years following such refiling or relisting. If his text book has not been relisted or refiled at the end of this five year period, starting with the time of its first filing and listing, the contractual relations set forth in section 9710 G. C. between the publisher and the state text book commission no longer obtain and the stability as to prices charged for text books would disappear for the reason that the publisher “agrees in writing to furnish such book during the period of five years at that price,” and when this five years is up, the contractual relations in existence are discharged, unless a new agreement is submitted by the publisher and accepted by the state text book commission on behalf of the boards of education of the state.

In reply to your specific question you are therefore advised that boards of education are limited in their selection of books to be used in the public schools to the text books filed with the state text book commission, and the board of education may not adopt for use text books which were first filed in 1915 at a certain price but were not relisted in 1920 by the publisher at the end of the five year period mentioned in section 7710 G. C., since such period ends with the expiration of the five years, starting with the date of acceptance by the publisher of the price fixed by the text book commission.

Very respectfully,

JOHN G. PRICE,  
*Attorney-General.*

2138.

FEDERAL CENSUS—WHEN FIRST GENERAL REGISTRATION OCCURS IN CITIES HAVING POPULATION OF 11,800 AND LESS THAN 100,000—WHEN MEMBERS AND CLERKS OF ELECTION BOARDS ENTITLED TO ADDITIONAL COMPENSATION—WHEN SUCH CITIES COMMENCE PAYING SHARE OF REGISTRATION EXPENSES—WHEN AND HOW MUNICIPAL CORPORATIONS MAY PROVIDE FOR GENERAL REGISTRATION OF ELECTORS.

1. *In cities which had a population of eleven thousand eight hundred and less than one hundred thousand, as announced by the secretary of state in his official proclamation of January 21, 1921, a general registration of all the electors in such*