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WHETHER A BOOK IS A TEXTBOOK SUPPLEMENTAL READING OR REFERENCE BOOK IN A MATTER OF FACT TO BE DECIDED BY BOARDS OF EDUCATION BASED ON LOCAL NEED AND INTENDED USE—§§3329.02, 3329.05, R.C.

SYLLABUS:

Whether a book is a textbook subject to the price limitation of Section 3329.02, Revised Code, or whether it is a supplemental reading or reference book pursuant to Section 3329.05, Revised Code, is essentially a matter of fact and must be decided by the various boards of education based on the local need and intended use.

Columbus, Ohio, August 4, 1961

Hon. E. E. Holt, Superintendent of Public Instruction
Department of Education, Columbus 15, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads as follows:

“A number of school districts throughout the state have indicated the need to provide textbooks in classes for advanced pupils. These are the children who need additional educational training over and above the normal high school curricula. To facilitate this type of pupil, it is necessary to provide a textbook not used in the public high school program. The solution to this problem is to use an advanced text; one which is normally used at the college level.

“Section 3329.02 R. C. requires that school books sold by publishers to boards of education be sold at a price not exceeding 75 per cent of the published list wholesale price. Publishers sell to college book stores at a price equal to 80 per cent of the published list wholesale price and refuse to sell books which are ordinarily sold through college book stores to boards of education at a greater discount than this. Section 3329.05 R. C. provides that section 3329.02 R. C. does not apply to the purchase of supplementary reading books, reference books or any other books except textbooks.

“Can college level books or books which are ordinarily used as college textbooks be considered supplementary reading books or reference books under these statutes when such books are

purchased by boards of education for the purposes described herein? Putting the question another way, can college level textbooks which are purchased to supplement the textbooks ordinarily used in high school for the courses ordinarily taught in high school be classed as supplementary reading books or reference books within the meaning of section 3329.05 R. C.?"

You have asked for an opinion as to whether certain college level text books may be considered as supplementary or reference books as that term is used in Section 3329.05, Revised Code, so as to avoid the 75% of published list wholesale price which is made the maximum price payable under Section 3329.02, Revised Code. Section 3329.02, Revised Code, reads as follows :

"When any book and the price thereof is filed in the office of the superintendent of public instruction as provided in section 3329.01 of the Revised Code, pursuant to the regulations of the state board of education(,) the superintendent immediately shall fix the maximum price at which such book may be sold to or purchased by boards of education which price must not exceed seventy-five per cent of the published list wholesale price thereof. The superintendent immediately shall notify the publisher of such book so filed, of the maximum price fixed. 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 one year at that price, such written acceptance and agreement entitles the publisher to offer the book so filed for sale to such boards. It shall be a part of the terms of any such contracts that such publisher will reduce such net prices in Ohio whenever reductions are made elsewhere in the United States, and that said publisher shall file in the office of the superintendent within ten days, a sworn statement of such reductions made elsewhere, so that at no time shall any book so filed and listed be sold in Ohio at a higher net price than such book is sold for elsewhere in the United States under like conditions under contract or sales made subsequent to this filing. For failure to so file, such publisher shall pay to the state five hundred dollars for each failure, to be recovered in the name of the state, in an action to be brought by the attorney general in the court of common pleas of Franklin county, or in any other place where service can be made. The amount, then collected, must be paid into the state treasury to the credit of the general revenue fund."

Section 3329.05, Revised Code, provides :

"Sections 3329.01 to 3329.04, inclusive, and section 3329.08 of the Revised Code do not apply to the purchase of supplementary reading books, library books, reference books, or any other

books except textbooks, required by the board of education. All of such books except textbooks required by the board, shall be ordered, received, examined, and paid for in the same manner and by the same persons as other supplies and equipment."

While you have not supplied me with sufficient information to make an intelligent decision as to whether such books are textbooks or are supplementary reading books, I do not believe it would be appropriate for me to do so, even if such information were supplied. This is primarily not a legal question but a factual one, depending on how the books are used in each particular instance. In passing, however, I should note that as the books under consideration are stated to be college level textbooks it would be reasonable to assume that such books would not be high school textbooks but would only be supplemental to the normal high school course. If this is, in fact, true, then the books could be purchased under Section 3329.05, Revised Code, at whatever price books could be obtained.

It is my opinion, therefore, and you are accordingly advised that whether a book is a textbook subject to the price limitation of Section 3329.02, Revised Code, or whether it is a supplemental reading or reference book pursuant to Section 3329.05, Revised Code, is essentially a matter of fact and must be decided by the various boards of education based on the local need and intended use.

Respectfully,

MARK McELROY

Attorney General