

By the above grants there are conveyed to the State of Ohio certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters or water courses passing through and over said lands.

Upon examination of the above instruments, I find that the same have been executed and acknowledged by the grantor in the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3545.

TEXTBOOK—WORKBOOK—BOARD OF EDUCATION—BOTH TYPES MAY BE ADOPTED—PROVISO—COPIES FILED IN OFFICE, SUPERINTENDENT OF PUBLIC INSTRUCTION—INCUMBENT TO FURNISH BOOKS FREE TO PUPILS—CUSTODIAN—KEEPER OF RECORDS—SEE SECTION 7713 G. C.

SYLLABUS:

If a board of education determines that the use of both the textbook and the workbook thereto offers a more complete textbook, and the pupils can acquire more knowledge and instruction in the particular subject for which the textbook and workbook was prepared, the board of education has the authority to adopt both the textbook and the workbook, as the textbook for a particular graded course of study, provided that the publisher of such textbook and workbook has filed a copy of both the textbook and the workbook in the office of the superintendent of public instruction.

If a board of education adopts the textbook and the workbook thereto, to be used as the textbook for a particular graded course of study, it would then be incumbent upon the board of education to make all necessary provisions and arrangements to place the workbooks, along with the textbooks, within easy reach of and accessible to all pupils in the district. In a city school district having a director of schools, such director would be the custodian of the workbooks that were to be furnished free to the pupils, along with the textbooks. In the school districts not having a director of schools, the superintendent and board of educa-

tion would be the custodian of the workbooks that were to be furnished free to the pupils, along with the textbooks, and they would be charged with the same duty of keeping account and maintaining records in regard to such workbooks as is imposed upon them in regard to textbooks, by virtue of the provisions of Section 7713, General Code.

COLUMBUS, OHIO, January 9, 1939.

HON. E. N. DIETRICH, *Director of Education, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication, which reads as follows:

“Will you be so kind as to furnish me with opinions on the following questions:

1. Under the laws of Ohio, do boards of education have the right to furnish workbooks which are part of a specific course of instruction?

2. Can boards of education act as distributing agents for workbooks which are part of a specific course of instruction?”

There was submitted with your request for opinion, a sample copy of the textbook, “Our Continental Neighbors” and the workbook for “Our Continental Neighbors.”

I am informed that a workbook of the particular type here in question, must be used in conjunction with the textbook for which the workbook has been especially prepared; that the workbook is a part of the textbook, and that the purpose of the workbook is to enable the pupil to better acquire and retain information set forth in the textbook.

I am further informed that workbooks and textbooks are prepared in separate books in order that the workbook can be used by the teacher as a means of testing the knowledge the pupil has acquired in a certain lesson and also to enable the teacher to be reasonably certain that the textbook is not at hand when the pupil is filling in the blanks in the workbook. The following will demonstrate the manner in which the textbook and workbook are prepared, and how the workbook is used in conjunction with the textbook:

Textbook—P.P. 1 and 3—

“We think and speak of the United States as ‘our country,’ and of the continent of North America, of which it forms so large a part, as “our continent.’ Most of the people of the United States were born within its borders, but the ancestors of nearly all of them came from beyond the seas. Some few of

our people have but lately come from other lands. In this book you are to study the lands and people of the other continents, and you will learn about the countries from which your ancestors came. Let us begin with South America, the nearest neighbor of our own continent.

The continent of South America is joined to North America by the Isthmus of Panama. The two continents were discovered and explored in the closing years of the fifteenth century and the early years of the sixteenth century and were then spoken of as the 'New World.' This name is still much used by the people of the older countries of Europe.

In learning about the continents and oceans it is best, at first, to make use of a globe. This is because the forms of the land and ocean areas are shown accurately on a globe, as are also their true positions in relation to one another. In studying a globe you will find that the continent of South America is not directly south of North America but southeast of it. You can get an idea of how far east the continent of South America lies, by making use of the meridian of 80° west longitude. Find this meridian on your schoolroom globe. Trace it southward from the North Pole, across the eastern part of Canada and the United States, into the Atlantic Ocean, across Cuba, the Caribbean Sea, and the Isthmus of Panama, and on southward to the South Pole. You see that most of North America is west of this meridian, while nearly all of South America is east of it. Remember, too, that all of North America is in the Northern Hemisphere and most of South America is in the Southern Hemisphere. On the globe trace the Equator from east to west across the continent of South America.

In some ways the continents of North and South America are much alike. You would not call them 'twin continents,' perhaps, but they are enough alike so you may think of them as 'sister continents'. Each is shaped somewhat like a triangle. In each, the shortest side of the triangle is on the north, the longest side is on the west, and the sharpest angle is toward the south.

The most extensive highlands in both continents are near the Pacific Ocean. Their mountain systems are among the greatest on earth; they are high and long and broad, and inclose high plateaus. There are also mountain and plateau areas in the eastern part of each continent, as well as lowlands along their eastern coasts, and interior lowlands between their two chief regions of highland. There are similarities in the drainage of

the two continents, also. In each there are great rivers that flow from the interior of the continent into the oceans, or seas, to the north, the east, and the southeast.

In many other ways the two continents are very different from each other. Along the coast of South America there are no great indentations such as are found in the northern continent in Hudson Bay and the Gulf of Mexico. The broad part of South America is in the tropics, where the lowlands are always hot and where, over large areas, there are heavy rains and dense forests. But the broad part of North America is in the Temperate and Frigid Zones."

Workbook—South America and Brazil—P.P. 1 and 2—

"You have recently completed a study of North America and of the different countries into which that continent is divided. In your study of the United States—our own country—you learned that it occupies the part of North America where, taken as a whole, people can live most comfortably and happily. You learned, also, that the natural wealth of our country is very great. It has extensive forests, fertile soils, and great stores of a variety of valuable minerals. The use of these resources has led to the development of many industries and to the growth of a large international trade.

You are now to take up the study of our neighboring continent of South America, and of the countries into which that continent is divided. The two continents of North America and South America were discovered at about the same time, and the Spanish people took part in the settlement of both. But the greater part of North America was settled by the people of northern Europe, and most of South America was settled by the people of southern Europe.

Because of racial differences the peoples of the two continents have not always understood each other and the trade between them was, for a long time, much less than the trade between South American and European countries. In recent years, however, conditions have been changing, and our trade with most of the South American countries is now increasing.

Text Pages 1-3.

My namePage Score 13. My Score.....

1. Comparing Two Continents.—North America and South America are alike in many ways, but in some ways they are very different. In this exercise these two continents are compared. Complete the statements in writing, in the blanks left for that purpose, such omitted words as may be needed to make each statement correct.

2. Both of these continents are roughly..... in shape. The longest side of each continent is on the..... and is bordered by the Ocean. The next longest side of each continent is on the and is bordered by the Ocean.

3. In both North America and South America the largest mass of land is in the This means that for North America the greater part of the continent is in the and the zones, and that for South America the greater part of the continent is in the Zone.

4. In both continents the most extensive highlands are in their parts. These two highland areas have in general a and direction. In their central parts they widen to include high.....

My name Page Score 17. My Score.....

5. Smaller highland areas that include both and are found in the eastern parts of both continents.

6. The interior of the two continents have drainage system that are roughly"

Section 7709, General Code, requires that any publisher of school books desiring to offer school books for use in the public schools, must file in the office of the superintendent of public instruction, a copy of each book proposed to be offered for sale, together with the published list wholesale price thereof.

Section 7710, General Code, provides that a Commission consisting of the governor, secretary of state and superintendent of public instruction shall fix the maximum price at which any school book is to be sold. This section also provides for notice to the publisher of such price and acceptance of such fixed price by the publisher during a period of five years.

Section 7713, General Code, provides 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 textbooks so filed

shall be used in the schools under its control. But no textbooks now in use or hereafter adopted shall be changed, nor any part thereof altered or revised, nor any other textbook 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."

Section 7713-1, General Code, provides :

"The provisions of Sections 7709, 7710, 7711, 7712 and 7713, of the General Code, shall not apply to the purchase of supplementary reading books, library books, reference books or any other books except text books, required by the board of education, all of such books, except text books, required by boards of education, shall be ordered, received, examined and paid for in the same manner and by the same persons as other supplies and equipment."

Section 7714, General Code, provides in part, as follows :

"Each board of education shall cause it to be ascertained, and at a regular meeting determine which, and the number of each of such books the schools under its charge require.

The clerk or, in city school districts having a director of schools, such director at once shall order the books so agreed upon of the publisher, who on the receipt of such order must ship them to the clerk or director without delay. He forthwith shall examine the books, and, if found right and in accordance with the order, remit the amount to the publisher. * *"

Section 7715, General Code, reads as follows :

"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."

Section 7739, General Code, provides as follows :

"Each board of education shall furnish, free of charge the necessary text books 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 parent 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 is evident from the provisions of the foregoing statutes that, a board of education is limited to furnishing only textbooks free to pupils.

It is true that by the provisions of Section 7713-1, supra, a duty is imposed upon a board of education to order, receive, examine and pay

for supplementary reading books, library books, reference books, or any other books except textbooks. However, the authority to order, receive, examine and pay for certain books is not broad enough to permit or require a board of education to furnish such books free to pupils. It must also be said that the duty imposed upon a board of education to "place the books so purchased within easy reach of, and accessible to all pupils", is not sufficient authority for the furnishing of such books free to the pupils.

Therefore, the question of whether or not workbooks may be furnished free to pupils is dependent upon the determination of whether or not a workbook is a textbook. The word "textbook" is defined in Webster's New International Dictionary, as follows:

"1. A book of texts; book with wide spaces between the lines for notes;

2. A volume on which a teacher lectures or comments; hence any manual of instruction; a schoolbook."

In Webster's Twentieth Century Dictionary, as follows:

"a. A treatise on any science or art, especially one used as a basis for instruction in a scholastic institution; a school book."

It appears to me that if the workbook is used in conjunction with the textbook, in the study of a particular subject, as hereinabove described, the textbook and workbook together may be considered as one complete textbook for the course of geography, and may be classified as a manual of instruction for geography and as a basis of instruction in a scholastic institution.

The purpose of furnishing a textbook to a pupil is so the pupil may acquire therefrom knowledge and instruction relating to a particular graded course of study. The criterion of whether or not a textbook fulfills this purpose is not whether it comprises one book or two, but is, does the textbook meet the requirement of being so prepared that by its use the pupil may acquire the necessary instruction in and knowledge of the particular subject, which has been adopted as a graded course of study.

Wide discretion is vested in a board of education to determine which of the textbooks are to be used for the graded courses of study that have been adopted to be pursued in the various grades in the schools within the school district. The only limitation on such discretion of a board of education is that the textbooks selected must be from among those filed in the office of the superintendent of public instruction. Therefore, if a board of education determined that the use of both the textbook and the workbook together, offered a more complete textbook and the pupils could acquire more knowledge and instruction in the particular subject for

which the textbook and the workbook were prepared, the board of education would have authority to adopt both the textbook and the workbook as the textbook for that particular course of study, provided the publisher of such textbook and workbook had filed a copy of both the textbook and the workbook in the office of the superintendent of public instruction.

In answer to your second question, it must be said that if a board of education adopts the textbook and the workbook to be used as the textbook for a particular course of study, it would then be incumbent on the board of education to cause the same duties to be performed in regard to securing workbooks as are imposed upon it in the securing of textbooks.

Under the provisions of Section 7714, General Code, this would require that the board of education ascertain the number of workbooks that would be required; that the clerk, or, in city school districts having a director of schools, such director order the workbooks from the publisher, and upon receipt of the books, examine the same, and if satisfactory, remit the amount due the publisher.

Under the provisions of Section 7715, *supra*, the board of education would be required to make all necessary provisions and arrangements to place the workbooks within easy reach of, and accessible to all pupils in the district. In a city school district having a director of schools, the director of schools would become the custodian of the workbooks to be furnished free to the pupils; in the districts not having a director of schools the superintendent and board of education would become the custodian of the workbooks to be furnished free to the pupils, and they would be charged with keeping account and maintaining records in regard to such workbooks in accordance with the provisions of Section 7715, *supra*.

Under the provisions of Section 7715, *supra*, a board of education would be authorized to sell workbooks upon request to any pupil or the parent of any pupil in the school district, at a price not to exceed the cost paid therefor, plus ten per cent.

Therefore, in specific answer to your question it is my opinion that, if a board of education determines that the use of both the textbook and the workbook thereto, offers a more complete textbook, and the pupils can acquire more knowledge and instruction in the particular subject for which the textbook and workbook were prepared, the board of education has the authority to adopt both the textbook and the workbook, as the textbook for a particular graded course of study, provided that the publisher of such textbook and workbook has filed a copy of both the textbook and the workbook in the office of the superintendent of public instruction.

If a board of education adopts the textbook and the workbook thereto, to be used as the textbook for a particular graded course of study, it would then be incumbent upon the board of education to make all neces-

sary provisions and arrangements to place the workbooks, along with the textbooks, within easy reach of and accessible to all pupils in the district. In a city school district having a director of schools, such director would be the custodian of the workbooks that were to be furnished free to the pupils, along with the textbooks. In the school districts not having a director of schools, the superintendent and board of education would be the custodian of the workbooks that were to be furnished free to the pupils, along with the textbooks, and they would be charged with the same duty of keeping account and maintaining records in regard to such workbooks as is imposed upon them in regard to textbooks, by virtue of the provisions of Section 7713, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3546.

BOARD OF EDUCATION—LEGALITY IN EXPENDITURE—FUNDS — CHARGES — INSTRUMENTAL MUSIC, TEACHING — FEE — BAND INSTRUMENTS — GIFT — SUPPLIES, PADLOCK AND KEY, LOCKER, MAGAZINE FUND, PAPER, PENCILS, SUPPLIES FOR INDIGENT PUPILS, BOOKS, PICTURES, FILM RENTALS, PRIZES, PLAYGROUND EQUIPMENT, ETC.

SYLLABUS:

1. *A board of education has authority to adopt the teaching of instrumental music, as a graded course of study in its schools, and to furnish to its pupils the instruments necessary for use in such instrumental course of study. If a board of education adopts instrumental music as a graded course of study in the schools, it has authority to accept as a gift, the band instruments from a band association for the use of the pupils and thereafter purchase all musical instruments and supplies for the pupils at the cost of the board of education. The board may also provide for practicing and playing in the school band as part of the work of such instrumental musical course.*

2. *A board of education does not have authority to charge a pupil a fee for a padlock that has been installed on the locker that was assigned to the pupil. However, the board of education may require a deposit from the pupil in order to insure the return of the key and padlock upon discontinuing the use of the locker by the pupil. If such deposit is required, it would have to be returned to the pupil, if, upon discontinuance of the*