

the funeral home or establishment committed to their care or under their management, it is quite clear to my mind that the requirements imposed by Section 1335-6a, General Code, have been met.

In other words, it is my opinion that Section 1335-6a of the General Code only requires that funeral directors in managing or operating funeral homes or establishments in the State of Ohio shall expend, in the supervision of such homes or establishments, only that amount of time necessary to fully and efficiently discharge all of the duties connected with such employment.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

3485.

TEXTBOOKS—SUPERINTENDENT COUNTY SCHOOL DISTRICT OR CITY SCHOOL DISTRICT—WHERE PUBLISHING COMPANY FORWARDS NEW TEXTBOOK—SALE—BOOK COMPANY—NO VIOLATION OF SECTION 7718 OR 12876 G. C. FOR SCHOOL OFFICIALS TO RETAIN MONEY RECEIVED FROM SALE.

SYLLABUS:

Where a textbook publishing company forwards a new textbook to a superintendent of a particular county school district or a particular city school district and such superintendent sells the textbook to a company that makes a business of collecting textbooks, and retains the money received for the same, such superintendent is not violating either the provisions of Section 7718 or Section 12876, General Code.

COLUMBUS, OHIO, January 3, 1939.

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

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

“We are informed it is the practice of various text book publishing companies to send to the various county and city school superintendents copies of new textbooks when same are published. In numerous instances such books are sold by the

superintendents to companies who make a business of collecting textbooks.

We respectfully request your opinion upon the following question :

Are such books the private property of the superintendents or, since they come into the possession of the superintendents by virtue of their offices, would the sale of same and the retention of money received by a superintendent be conversion of property under Section 12876, General Code?"

From the facts stated in your letter, the textbooks in question, are sent directly to, and for the superintendents of county school districts and superintendents of city school districts. It appears that, in the forwarding of such textbooks no restrictions or limitations are imposed upon the manner in which such textbooks are to be used upon receipt of same by the superintendent of a county school district or the superintendent of a city school district.

Section 7718, General Code, reads as follows :

"A superintendent, supervisor, principal or teacher employed by any board of education in the state shall not act as sales agent, either directly or indirectly, for any person, firm or corporation whose school text books are filed with the superintendent of public instruction as provided by law, or for school apparatus or equipment of any kind for use in the public schools of the state. A violation of this provision shall work a forfeiture of their certificates to teach in the public schools of Ohio."

It is evident from a reading of Section 7718, *supra*, that there is a violation of the provisions of this section only when the superintendent acts as a sales agent, either directly or indirectly, in the sale of a textbook ; and that it cannot be said that a superintendent is acting in the capacity of a sales agent when he sells to a firm that makes "a business of collecting textbooks," a textbook that has come into his possession gratis, from a textbook publishing company.

Section 12876, General Code, provides as follows :

"Whoever, being elected, or appointed to an office of public trust or profit, or an agent, clerk, servant or employe of such officer or board thereof, embezzles or converts to his own use, or

conceals with such intent, anything of value that shall come into his possession by virtue of such office or employment, is guilty of embezzlement and, if the total value of the property embezzled in the same continuous employment or term of office, whether embezzled at one time or at different times within three years prior to the inception of the prosecution, is thirty-five dollars or more, shall be imprisoned in the penitentiary not less than one year nor more than ten years, or, if such total value is less than thirty-five dollars, shall be fined not more than two hundred dollars or imprisoned not more than thirty days, or both."

In order for a superintendent to be guilty of violating the provisions of Section 12876, *supra*, it would be necessary for the superintendent to convert to his own use, the textbook that came into his possession by virtue of his or her employment as superintendent of a county school district or superintendent of a city school district.

The fact that a superintendent receives the textbook by virtue of his employment in the schools as superintendent, cannot be denied. However, it must be said that although the textbook comes into possession of the superintendent by virtue of his or her employment as superintendent, it is the intention of the publishing company in forwarding such textbook to a particular superintendent of a particular school district that the textbook shall become the property of the superintendent to whom it is delivered and that he use the same. Therefore, there is no necessity for the superintendent to "convert" the textbook to his own use. Consideration must also be given to the fact that Section 12876, *supra*, is a penal statute. Therefore, its provisions cannot be interpreted to include any persons other than those clearly evidenced by the language employed in the statute. This principle of law is clearly set forth in 37 Ohio Jurisprudence, page 744, wherein it is stated as follows:

"It is a well-settled general rule, recognized by the General Code, that a strict construction is to be accorded to penal statutes. More accurately, it may be said that such laws are to be interpreted strictly against the state and liberally in favor of the accused. On the other hand, exemptions from such restrictive provisions are liberally construed.

It has been declared to be a well-established rule of construction that a statute should, if possible, be so construed as to avoid a penalty. Moreover, penal statutes are not to be extended in their operation by inference, implication, or construction beyond the manifest intention of the legislature. They are not to be extended by implication or construction to persons or

things not within their descriptive terms, even though such cases appear to be of equal atrocity, or within the reason and spirit of the statute, or within the mischief intended to be avoided. It has been declared that only those transactions are included within penal statutes which are within both their spirit and letter. There is also authority in Ohio to the effect that all doubts in the interpretation of the penal statutes are to be resolved in favor of the accused."

Therefore, in specific answer to your question it is my opinion that, where a textbook publishing company forwards a new textbook to a superintendent of a particular county school district or a particular city school district, and such superintendent sells the textbook to a company that makes a business of collecting textbooks, and retains the money received for the same, such superintendent is not violating either the provisions of Section 7718 or Section 12876, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3486.

BOARD OF EDUCATION—SERVING MEALS, BANQUETS—PERMITTED—PROVISO, CHARGE FOR FOOD—FOOTBALL, BASKETBALL TEAM, CERTAIN SOCIETIES, CLUBS, CLASSES, ORGANIZATIONS, FACULTY—NO AUTHORITY TO SERVE FOOD TO PARENT TEACHERS ASSOCIATION, CHURCH OR W. P. A. CLUBS OR GROUPS.

SYLLABUS:

A board of education may permit the serving of meals or banquets to football and basketball teams, honor societies, school classes, school clubs and other school organizations whose members are attending school in the school district wherein the lunchroom or cafeteria is situated, and also, to the members of the faculty who teach in the school district wherein the lunchroom is situated, provided charges are made for the food served.

There is not any authority for a board of education to permit the serving of meals or banquets to the members of Parent Teachers' Associations, or of church, or of W. P. A. Clubs or groups.