

without my approval endorsed thereon with the expectation that the same will be corrected in the manner above indicated and will then be again submitted to me for approval.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

---

6027.

APPROVAL—BONDS OF SPRINGFIELD RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO, \$18,000.00.

COLUMBUS, OHIO, September 1, 1936.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

---

6028.

APPROVAL—BONDS OF AKRON CITY SCHOOL DISTRICT, SUMMIT COUNTY, OHIO, \$18,000.00.

COLUMBUS, OHIO, September 1, 1936.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

---

6029.

BOARD OF EDUCATION—CONDITIONS UNDER WHICH FREE TEXT BOOKS MUST BE FURNISHED.

**SYLLABUS:**

1. *The present statutes grant authority to boards of education to furnish textbooks free of charge for pupils in attendance in the public schools, but the duty to furnish such books is not mandatory except as to those pupils whose parents or guardians upon satisfactory proof to the board, are unable to furnish such textbooks, for grades and types of schools other than the elementary grades until after the expiration of the school year 1936-1937.*

2. *The duty to furnish free textbooks for pupils in grades 1-4, inclusive, was mandatory during the school year 1935-1936, and is manda-*

tory for grades 1-8, inclusive, during the school year 1936-1937, and thereafter. After the expiration of the school year 1936-1937, it is mandatory for boards of education to furnish free textbooks for pupils attending all grades and types of public schools except as those pupils may be supplied with books, in which case the duty to supply books is mandatory when new books are needed.

3. In the event a board of education fails to perform its duty to furnish free textbooks in accordance with law, for the pupils attending the public schools, that duty may be enforced by an action in mandamus brought in a court of competent jurisdiction by a citizen who resides in the school district wherein the board of education fails to perform its duty with respect to the furnishing of free textbooks or by the parent or guardian or person in charge of a child attending the public schools in said district and entitled by reason thereof to the benefits of the statute.

COLUMBUS, OHIO, September 1, 1936.

HON. E. L. BOWSER, *Director of Education, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

"We have had numerous requests relative to the force, effect and meaning of House Bill No. 41 enacted by the Ninety-First General Assembly. There appears to be a prevalent opinion that a local board of education is not required to furnish free textbooks for all pupils enrolled in the school.

In view of this fact, we should appreciate a formal opinion from your office upon the following questions:

1. Do the present statutes require a board of education to furnish free textbooks?
2. How many years do boards have in which to complete the furnishing of free textbooks?
3. What remedy exists in the event a board of education fails or refuses to provide free textbooks?"

Section 7739, General Code, enacted in House Bill 41, of the 91st General Assembly, referred to in your inquiry, reads 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 text books shall be supplied only as other or new books are needed. Pro-

vided, 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 text books 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 text books to any pupil whose parent or guardian upon satisfactory proof to the board is unable to furnish said text books, may restrict the provisions of this section as to the furnishing of free text books to grades 1-4 inclusive for the school year 1935-1936 and to grades 1-8 for the school year 1936-1937."

It will be observed from the language of the first sentence of said Section 7739, General Code, that each board of education is charged in mandatory language, with the duty of furnishing free of charge necessary textbooks to the pupils attending the public schools. No distinction is made between those attending high schools, elementary schools, vocational schools or any other class or grade of public schools; all are included. Former Section 7739, General Code, which was repealed in said House Bill 41, was permissive in character. By the change of the word "may" in the former statute to the word "shall" in the amended statute a clear and decisive legislative intent is manifested that the duty to furnish textbooks as expressed in the later statute is mandatory except as to those pupils who have necessary books, in which case books "shall" be supplied as other or new books are needed. *State ex rel. v. Board of Education*, 105 O. S. 438.

The language of this first sentence, which sets forth the general purpose to be effected by the enactment of the statute is clear and unambiguous, and imports, in my opinion, a clear intent that textbooks for all classes of pupils attending the public schools must be furnished free of charge by boards of education to all such pupils needing or desiring them.

This sentence is followed by two provisos, neither of which standing alone, is entirely clear, which are so repugnant to each other as to render the statute taken as a whole so ambiguous as to call for judicial construction or interpretation. It apparently was the purpose of the legislature to ease the burden of supplying free textbooks by spreading it out over a period of time, that is, to permit the gradual purchase of the

textbooks for free distribution instead of requiring that they all be provided at once. I have been informed by one of the members of the legislature that the inclusion in the statute as finally enacted, of both of the provisos was an error on the part of the Conference Committee of the Legislature. It was not intended that both of these provisos should be in the statute, but for some unaccountable reason they were both included in the statute as it was finally enacted. The first proviso, the purport of which was to spread out the furnishing of textbooks over a period of at least four years and left to the discretion of the board the grades or classes of pupils to be supplied from year to year, was the idea of one of the branches of the legislature. The second proviso was insisted upon by the other branch of the legislature. This difference of viewpoint between the House and the Senate sent the bill to a conference committee, and when it emerged from this committee and was finally passed, the statute contained both provisos.

Be that as it may, we must take the statute as we find it and subject it to the rules of construction applicable to such situation and determine its true meaning from the standpoint of a duly enacted law, as obviously, the two provisos are so inconsistent that both cannot be administered.

It is a well recognized rule of statutory interpretation that when two statutory enactments are irreconcilable and repugnant to each other, the later in point of time or position will prevail, and this rule applies to sections or provisions of the same act of the legislature and to provisions of the same section of an act. This rule is stated in Lewis' Sutherland Statutory Construction, 2nd Ed., Section 268, which reads as follows:

"The different section or sections of the same statute or code should be so construed as to harmonize and give effect to each, but if there is an irreconcilable conflict, the later in position prevails."

And again, in Section 280 of the same work it is said:

"Where there is an irreconcilable conflict between different sections or parts of the same statute the last words stand and those which are in conflict with them, so far as there is a conflict, are repealed; that is, the part of a statute later in position in the same act or section is deemed later in point of time, and prevails over repugnant parts occurring before though enacted and to take effect at the same time. This rule is applicable where no reasonable construction will harmonize the parts. It is presumed that each part of a statute is intended to co-act with every other part; that no part is intended to antagonize the general pur-

pose of the enactment. To ascertain the legislative intent every part of an act, and other parts in *pari materia* are to be considered. One part of an act may restrict another part; an early section a later, and vice versa; but if one part is so out of line with other parts and the general purpose of the act can only operate by wholly neutralizing some other part, then the latter provision is supreme as expressing the latest will of the lawmaker."

See also Section 349, Lewis' Sutherland Statutory Construction.

By applying the rules of statutory construction stated above, it follows that the latest proviso in the statute to the effect that boards of education may restrict 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 should be regarded as being effective and the first proviso disregarded inasmuch as it is entirely irreconcilable with the latter one.

No mention is made in this last proviso as to the types of schools other than grades 1-8 inclusive, known as elementary schools. It therefore becomes important to know what the law contemplates as to the providing of textbooks for pupils in types or grades of public schools other than grades 1-8, inclusive.

It will be observed from the terms of the effective proviso in Section 7739, General Code, that boards of education are granted permissive authority to restrict the provisions of the statute with respect to the furnishing of free textbooks to the furnishing of those textbooks except as to any pupil whose parents or guardians upon satisfactory proof to the board are unable to furnish free textbooks to grades 1-4, inclusive, for the school year 1935-1936, and to grades 1-8 for the school year 1936-1937. The language of the proviso is quite clear and needs little interpretation. To restrict means to limit. The permissive authority thus granted is to permit boards of education within their discretion to limit the furnishing of free text books for the year 1935-1936 to grades 1-4 and for the year 1936-1937 to grades 1-8. No authority is there granted to in any wise limit the mandatory duty imposed by the purpose clause of the statute after the school year 1936-1937.

It follows, in my opinion, that the board of education may in its discretion refuse to furnish textbooks for pupils in grades and types of the public schools other than in grades 1-8, inclusive, until after the expiration of the school year 1936-1937, except as to pupils whose parents or guardians upon satisfactory proof to the board are unable to furnish such textbooks. After the expiration of the school year 1936-1937, boards of education are required to furnish free textbooks for all pupils in all grades and types of public schools who are not supplied with said books.

In your third question you inquire as to what remedy exists in the event a board of education fails or refuses to furnish free textbooks in accordance with the statute.

The duty to furnish textbooks being a public duty imposed by law, may be enforced by an action in mandamus which may be brought by any citizen within a school district wherein the board fails to perform this duty with respect to the furnishing of free textbooks, or by the parent or guardian or person in charge of a child attending the public schools in said district and entitled by reason thereof to the benefits of the statute. *State v. Brown*, 38 O. S. 344; *State, ex rel. v. Henderson*, 38 O. S. 644; *Bissel et al v. State*, 87 O. S. 154; *State ex rel. v. Gilman, Dir.*, 44 Ohio App., 339, 25 O. Jur., pages 1163, 1166.

In specific answer to your questions, I am of the opinion :

1. The present statutes grant authority to boards of education to furnish textbooks free of charge for pupils in attendance in the public schools, but the duty to furnish such books is not mandatory except as to those pupils whose parents or guardians on satisfactory proof to the board are unable to furnish such textbooks for grades and types of schools other than the elementary grades until after the expiration of the school year 1936-1937.

2. The duty to furnish free textbooks for pupils in grades 1-4, inclusive, was mandatory during the school year 1935-1936, and is mandatory for grades 1-8, inclusive, during the school year 1936-1937, and thereafter. After the expiration of the school year 1936-1937, it is mandatory for boards of education to furnish free textbooks for pupils attending all grades and types of public schools except as those pupils may be supplied with books, in which case the duty to supply books is mandatory when new books are needed.

3. In the event a board of education fails to perform its duty to furnish free textbooks in accordance with law, for the pupils attending the public schools, that duty may be enforced by an action in mandamus brought in a court of competent jurisdiction by a citizen who resides in the school district wherein the board of education fails to perform its duty with respect to the furnishing of free textbooks or by the parent or guardian or person in charge of a child attending the public schools in said district and entitled by reason thereof to the benefits of the statute.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*