

2392.

SCHOOLS—WHO AUTHORIZED TO PRESCRIBE COURSE OF STUDY—  
EXAMINATION QUESTIONS BASED UPON TEXT BOOKS ADOPTED  
BY BOARD—COURSE OF STUDY SUBJECT TO APPROVAL OF  
SUPERINTENDENT OF PUBLIC INSTRUCTION.

1. *In the prescribing of a course of study for its school district, as provided in section 7645 G. C., a board of education is authorized to direct the superintendent employed by the board to formulate or submit to the board a course of study which will conform to the text books adopted by the board of education for use in that district.*

2. *A board of education has the power to adopt the necessary rules and regulations for the government of the schools and the employes of the board and for enforcing the rules and regulations thus adopted, and a board of education is authorized to direct that the superintendent employed by the board shall formulate final examination questions based upon the text books adopted by the board and used by the pupils in the district.*

3. *Text books for use in schools are adopted by the local board of education in accordance with section 7713 G. C. and the board of education is required to prescribe a graded course of study for all the schools under its control under authority of section 7645 G. C., but such course of study is subject to the approval of the superintendent of public instruction.*

COLUMBUS, OHIO, September 3, 1921.

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

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

1. "Has a board of education of a village or rural school district the power to compel its superintendent to formulate a course of study to conform with the textbooks adopted by said board?"
2. Has a board of education of a village or rural school district the power to compel its superintendent to formulate final examination questions based upon the books in use?"

As to who is to prescribe the course of study to be used in a school district appears in section 7645 G. C., which reads in part as follows:

"Boards of education are required to prescribe a graded course of study for all schools under their control in the branches named in section 7648, subject to the approval of the superintendent of public instruction. \* \* \*

This section of the law clearly sets forth that it is the duty of the board of education to issue and put in force the course of study to be used in the district. The superintendent or principal in the district does not control what is to appear in the course of study according to the language of section 7645 G. C. (108 O. L. Part II, p. 1283). Of course the administrative head of the schools in the district usually submits a proposed course of study to the board of education for its adoption and promulgation in that district. He does this because he is an employe or a servant of the board of education and as such is presumed to carry out all reasonable rules, regulations and

requirements made by the board unless such board makes a requirement which would affect a contract of the board with a teacher which in itself would be illegal or unconstitutional or an abuse of discretion.

In the prescribing of a course of study by a board of education (7645 G. C.) there is no question but what the board of education should have the assistance of the superintendent or principal in the formulating of the course of study to be used because the very carrying out of the course of study from an administrative standpoint is to be performed by the superintendent or principal himself.

Other pertinent sections of the law are as follows:

Sec. 7690 G. C. "Each city, village or rural board of education shall have the management and control of all the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools. It may elect, to *serve under proper rules and regulations*, a superintendent or principal of schools \* \* \* and may fix their salaries. \* \* \*"

Sec. 4750 G. C. "A board of education may make such rules and regulations as it deems necessary for its government and the *government of its employes* and the pupils of the schools. \* \* \*"

Sec. 7701. "Each board may dismiss any appointee or teacher for inefficiency, neglect of duty, \* \* \*"

The following two sections, speaking of courses of study, while not pertinent to the case at hand, may have been in mind when this question came up and they are therefore quoted herein:

Sec. 7706-2 G. C. "It shall be the duty of the county superintendent and assistant county superintendents to recommend to the county board of education such text books and courses of study as are most suitable for adoption." (109 O. L. 245).

Sec. 4737 G. C. "The county board of education shall publish with the advice of the county superintendent a minimum course of study *which shall be a guide* to local boards of education in prescribing the course of study for the schools under their control. The county board may publish different courses of study for village and rural school districts." (104 O. L. 133).

Bearing upon section 7706-2 G. C. your attention is invited to Opinion No. 508 issued by the Attorney-General, August 9, 1917, and appearing at page 1446, Vol. II, Opinions of the Attorney-General for 1917, the syllabus of which reads:

"General Code section 7706-2, which provides that county and district superintendents (now abolished) shall recommend text books to county boards of education, does not repeal by implication the provisions of section 7713 which gives the power to adopt text books to district boards of education.

A county board of education has no power to adopt a text book and therefore any recommendations to it of text books should in turn be referred to the various district boards of education of the county school district."

All that might be accomplished under sections 7706-2 and 4737 G. C. is to merely recommend to the local boards of education what text books should constitute the course of study; further than this those sections are not operative, for the reason that section 7645 G. C. places a mandate upon the local board of education itself to prescribe the course of study, while section 7713 authorizes a local board of education to adopt such text books as it sees fit. Thus section 7713 G. C. reads in part:

“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 text books so filed shall be used in the schools under its control. \* \* \*”

Sec. 7711 G. C. \* \* \* “A board of education shall not adopt or *cause to be used* in the common schools any book whose publisher has not complied, as to such book, with the provisions of law relating thereto.”

Sec. 7715 G. C. “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. \* \* \*. Such books must be sold to the pupils of school age in the district, at the price paid the publisher, and not to exceed ten per cent therefore added.”

Bearing upon this question, the following decisions of the courts and former opinions of this department are of interest, to-wit:

“A board of education has power to adopt the necessary rules and regulations for the government of the schools and for enforcing the rules and regulations thus adopted.” (Sewell vs. Board of Education, 29 O. S. 89).

“A board of education is clothed with the discretionary power to regulate and decide the text books to be used in the schools. This discretionary power can not be interfered with by a court.” (State vs. Board of Education, 35 O. S. 368).

“Where a board of education has adopted a set of rules and regulations, and has had them printed for general distribution, such rules and regulations have all the force of law on school matters in that particular school district and the school board is expected to obey their own rules as well as all others concerned. *A school board has the right to amend and change its regulations at will by a majority vote*, but as long as such rules have not been changed by the board of education, all concerned should be governed by the rules and regulations of the board as they exist at that particular time.” (Opinion of the Attorney-General, page 684, Vol. I, 1919).

Under the provisions of section 7645 G. C. (108 O. L. 1283) all

“Boards of education are required to prescribe a graded course of study for all schools under their control in the branches named in section 7648, *subject to the approval of the superintendent of public instruction.*”

In your question submitted it is presumed that you have in mind the superintendent in a village school district or a rural school district operated under section 4740 G. C., as there cannot be a superintendent in a rural school district unless such rural school district is established as a forty-seven forty district as held in Opinion No. 2324 issued by this department, August 12, 1921.

The authority of a board of education to adopt rules and regulations as to its employes and what they are required to do, is fully set forth in the sections of the law heretofore quoted, and a board of education can compel the superintendent employed by it to formulate or submit a course of study to conform with the text books adopted by said board, whose duty it is to prescribe the course of study to be used in the district. It would seem very impractical to prescribe a course of study which contained or mentioned text books not adopted for use in that particular district. There is a wide distinction between what is known as a course of study and the text books themselves, the law contemplating that a course of study shall follow the adoption of the text books for use in the district by a board of education; thus a course of study will set forth that during a certain semester or portion of the school year certain pages or chapters of a text book shall be covered, and a course of study usually contains recommendations as to how and when the text books adopted should be used. To have appear in a course of study a text book which was not adopted by the board would in reality be a violation of section 7711, which provides that *no book shall be used* in the common schools unless it has been properly adopted by the board of education under the text book law. The purpose of this law is to place in the hands of the pupils the text books which they are to use in their daily work at as cheap a price as possible, and it would seem that these books would be the ones to which the pupils had access and from which their knowledge for final examinations would be obtained, and therefore in promotional examinations the examination questions to test the fitness of the pupil for promotion or graduation should be based upon the text books to which he has had access and which have been placed for use officially in the district by the board of education. However, your attention is invited to section 7645 G. C. as amended in 108 O. L., 1283, providing that every course of study in the school districts of the state is subject to the approval of the superintendent of public instruction, and if the course of study in a given district does not conform to the text books adopted by the board of education in that district and it is the opinion of the superintendent of public instruction that such course of study so formulated should not be approved, he has full authority to provide under section 7645 G. C. that the course of study must conform to the text books adopted by the board in the local district. The board of education, in a district under other sections of the law as above cited has ample authority to direct and compel that its superintendent assist in the formulation of its course of study to be submitted to the superintendent of public instruction, and this the board can do by rule or regulation as it sees fit. The board of education also has power and authority in its general control of all the schools in the district and its own employes to provide by a rule or regulation that final examination questions to be submitted to pupils must be based upon the text books adopted and in use in that particular district.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*