

of the proceedings which logically or reasonably seems to be applicable. It is true, section 1304 G. C. provides that the state board of pharmacy, if satisfied that the applicant for examination is of the required age, possessed of the practical experience required, and passes a satisfactory examination, shall issue him a certificate to practice the profession of pharmacist or assistant pharmacist; yet it is not reasonably contended that the provisions of this section may be so stressed as to cure the defect of a failure to comply with the provisions of section 1303-3.

It is true that such a construction of the law may operate as a hardship to the particular applicants mentioned in your communication, who, possessing all other qualifications essential for the practice of pharmacy, may be excluded from the examinations held by the state board of pharmacy by reason of their technical failure to comply with the registration requirements of section 1303-3 G. C., yet it cannot be seen, in view of the positive provisions of this section, how any other construction could be adopted without defeating the general purpose of the apprenticeship registration therein contained.

Upon such considerations, therefore, you are advised that a negative answer must be given to the specific question contained in the last paragraph of your communication.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2713.

STATE TEXTBOOK COMMISSION—NOT AUTHORIZED TO EXAMINE
SUBJECT MATTER OF TEXTBOOK FILED BY PUBLISHER UNDER
SECTION 7709 G. C.—DUTY IS TO FIX MAXIMUM PRICE OF SUCH
BOOK.

The general assembly has not authorized the state text book commission to examine the content or subject-matter of a text book filed by a publisher under section 7709 G. C., the duty of the text book commission being to immediately fix the maximum price at which such books may be sold to or purchased by boards of education in the state.

COLUMBUS, OHIO, December 19, 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 of this department upon the following statement of facts:

“Section 7710 G. C. provides for a textbook commission consisting of the Governor, Secretary of State and the Superintendent of Public Instruction, and designates that said commission shall immediately fix the maximum price at which books filed in the office of the Superintendent of Public Instruction, as provided in section 7709, 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. I find no statute that prescribes duties except those above mentioned and related duties designated in section 7712.

"In view of this limited enumeration of the rights and duties of the textbook commission, has said commission the right to refuse to permit a book to be filed in the office of the Superintendent of Public Instruction and to *refuse to fix the price* at which it may be sold, thus rendering it impossible for it to be used in the schools of Ohio because of any subject matter it contains that is, in the opinion of the commission, objectionable to be taught to the children of Ohio; or is the suitability of the content of a book to be decided absolutely by boards of education in exercising their right and power of adoption of textbooks in accordance with the provisions of section 7713 G. C.?"

In summarizing your statement of facts it would appear that your questions are whether the state textbook commission, consisting of the governor, secretary of state and superintendent of public instruction, have the right (1) to refuse to fix the price at which textbooks filed may be sold, and (2) to pass upon or censor the subject matter appearing in any book filed in the office of the superintendent of public instruction.

Section 7709 G. C. reads in part:

"Any publisher or publishers of school books in the United States desiring to offer school books for use by pupils in the common schools of Ohio as hereinafter provided, before such books may be lawfully adopted and purchased by any school board, *must file* in the office of the superintendent of public instruction, a copy of each book proposed to be so offered, together *with the published list wholesale price thereof.* * * *"

In the above section the outstanding points are that there must be a "filing" of the book in question and a filing of the published list wholesale price of such book. Nothing else is demanded by the statute, no description or summary of the book or its contents, but merely the exhibit itself as a product to be offered to the boards of education in the state.

Section 7710 G. C. reads:

"When and so often as any book and the price thereof is filed in the office of the superintendent of public instruction as provided in section 7709 a commission consisting of the governor, secretary of state and superintendent of public instruction, *immediately shall fix the maximum price* at which such books may be sold to or purchased by boards of education, as hereinafter provided, which price must not exceed seventy-five per cent of the published list wholesale price thereof. The superintendent of public instruction *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 five years at that price, such written acceptance and agreement shall entitle the publisher to offer the book so filed for sale to such boards of education."

The duties of the state textbook commission are set forth in section 7710, as above, and that duty consists solely in the words "immediately shall fix the maximum price." No other duty is put upon the textbook commission by the statutes. There is no reference or direction that the state textbook commission shall examine or censor the contents of any of the school books offered and filed, as set forth in section 7709 G. C. In fact, if that were contemplated then the state textbook commission could not "immediately * * * fix the

maximum price" because of the great number of textbooks offered at each filing period. If the law-making body contemplated that the state textbook commission should have the power to censor, pass upon or examine the content or subject matter of any book, then the law would have said so. On the contrary section 7710 G. C. puts upon the textbook commission one outstanding duty and this shall be done "immediately" and that is, the "fixing of the maximum price."

Section 7713 G. C. reads :

"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. * * *

In the above section it is clear that the local board of education has the say as to what studies shall constitute the course of study in its district. Various other sections of the statutes provide for preparing the course of study in a school district by those who are especially trained, and who know best what the needs of that particular district might be. Textbooks are but units that are used in a course of study and which, taken together as a whole, constitute the basis of the course of study.

Section 7713 G. C. says that the board of education shall select the books which shall be used in the schools under its control and the section says that the selection shall be made from the "textbooks so filed" and not from "textbooks so passed," or "textbooks so approved." The continued use of the word "filed" throughout the sections constituting the state textbook law is significant; if more was meant than a mere "filing" the legislature would likely have said so. The various sections of the state textbook law establish the fact that the textbook commission is to approve "the price" and not the content or subject matter of any book filed with the superintendent of public instruction. The only reference in the state textbook law at all as to the examining of any books is that which occurs in section 7714, which provides that the board of education shall order direct from the publisher, who shall ship the books to the clerk without delay, and then the clerk "forthwith shall examine the books, and, if found right and in accordance with the order, remit the amount to the publisher."

Your attention is also invited to opinion 1068, issued on March 12, 1920, to Hon. Frank B. Pearson, Superintendent of Public Instruction, and found in Vol. I of Opinions of the Attorney-General for 1920, page 272, the syllabus of which reads :

"1. When * * * the commission, consisting of the governor, secretary of state and superintendent of public instruction, fixes the maximum price * * * and * * * such publisher notifies the superintendent in writing that he accepts such price and agrees in writing to furnish such book or books during the period of five years at that price, such proceedings constitute a contract between such publisher and the commission for the benefit of boards of education of the state * * *.

"2. Boards of education are limited in their selection of books to be used in the public schools of this state, to the books so filed with

said commission, but books so selected and adopted must be adopted for a period of five years * * *.

"3. It is the duty of boards of education before adopting any of such books, to make an effort to secure from such publishers the desired books at less than the maximum so fixed by the commission."

In the above opinion of this department it will be noted that the language in the first branch of the syllabus is limited to the words "fixes the maximum price;" there is no reference to any other duty on the part of the state textbook commission and it has never been presumed in the years in which the state textbook law has been in force that this commission, consisting of three state officials, should be required to examine the contents of each of the many textbooks filed with the superintendent of public instruction.

In the second branch of the syllabus of the above opinion the holding is that boards of education are limited "in their selection * * * to the books so *filed with said commission*" and there is no reference to books passed by the commission, books censored by the commission, examined by the commission or approved by the commission.

The third branch of the syllabus mentions the duty of a board of education to deal direct with the publisher in the securing of textbooks in an endeavor to secure a price "less than *the maximum* (price) *so fixed by the commission.*"

In conclusion it is believed that the purpose and intent of the state textbook law was *to stabilize the price* of textbooks used in the state by the creation of a state textbook commission, which should *pass upon prices* and not upon the contents or subject matter of any book offered for use in the schools of the state. Thus on page 273, in the opinion of this department just referred to (1068), the Attorney-General, speaking of the state textbook law, uses these words:

"The result having been to stabilize *the price* of text books used in our public schools for a definite period of five years."

You are therefore advised that it is the opinion of this department, in answer to your inquiry, that the General Assembly has not authorized the state textbook commission to examine the content or subject matter of a textbook filed by a publisher under section 7709 G. C., the duty of the textbook commission being to immediately fix the maximum price at which such books may be sold to or purchased by boards of education in the state.

Respectfully,

JOHN G. PRICE,
Attorney-General.