

the classification of positions in the civil service of such city and city school district. It is also provided in said section that said municipal commission shall have and exercise all other powers and perform all other duties with respect to the civil service of such city *and city school district*, as is prescribed and conferred upon the state civil service commission with respect to the civil service of the state in the civil service law of which said section is a part."

In specific answer to your inquiry, it is my opinion that the authority of the civil service commission of the city of Cleveland Heights, Ohio, is not limited to the geographical area of the city, but said civil service commission has control and supervision of all positions in the civil service of the city school district named in your inquiry.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

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BOARD OF EDUCATION—FREE TEXTBOOKS, WHEN—
MANDATORY, WHEN.

SYLLABUS:

1. *A board of education cannot spread the furnishing of free text books, in at least six subjects over a period of four years and thereby limit its purchase of free text books, in at least six subjects, annually during the school years 1935-36, 1936-37, 1937-38, and 1938-39, to one-fourth of the entire adoption.*

2. *After the expiration of the school year 1936-37, Section 7739, General Code, imposes a mandatory duty upon each board of education to furnish, free of charge the necessary text books to the pupils attending the public schools, except, to those pupils wholly or in part supplied with necessary text books in which cases the duty to supply text books becomes mandatory only as other or new books are needed.*

COLUMBUS, OHIO, April 2, 1937.

HON. LESTER S. REID, *Prosecuting Attorney, Chillicothe, Ohio.*

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

"I would like for you to answer the following inquiry with reference to the furnishing of free text books in the public schools.

Section 7739 of the General Code of Ohio provides in part as follows:

'Section 7739. Each Board of Education shall furnish, free of charge, the necessary text books to the pupils attending the public schools. 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. Provided, further that each Board of Education may restrict the provisions of this section as to the furnishing of free text books to grades 1-4 inclusive for the school year 1935-36 and to grades 1-8 for the school year 1936-37.'

A question has arisen as to whether the proviso contained in G. C. Section 7739, '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', would enable Boards of Education not wishing to go completely on a free text book basis in 1935-36 and 1936-37, to spread the furnishing of free text books, in at least six subjects, over a period of four years, that is to limit its purchase of free text books, in at least six subjects, annually during the school years 1935-36, 1936-37, 1937-38 and 1938-39, to one-fourth of the entire adoption.

I have reviewed the opinions No. 6017, August 29, 1936, and No. 6029, September 1, 1936, and while they touch upon the grades and types of schools to which free text books must be furnished, I do not feel that they specifically involve my inquiry above, which deals rather with the number of texts to be furnished free of charge within a time certain.

Therefore, please advise me whether, in your opinion, after the expiration of the school year 1936-37, it will be mandatory for the Boards of Education to furnish free of charge all of the necessary text books to all pupils attending the public schools, not wholly or in part supplied with the same.

Your early attention to this matter will be greatly appreciated as this matter was asked for in December, and we never received an answer to the inquiry."

The only provision of the General Code pertinent to your question is Section 7739, General Code, which 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. 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 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 1935-36 and to grades 1-8 for the school year 1936-37.”

The first sentence of Section 7739, supra, contains the purpose clause of the statute and imposes a mandatory duty upon “each board of education” to “furnish free of charge the necessary text books to pupils attending the public schools.” However, this section contains two provisos by which a board of education may, in its discretion, restrict the operation of the general terms contained in said first sentence or purpose clause.

A reading of the first sentence and the first proviso contained in Section 7739, supra, would clearly permit a board of education “not wishing to go completely on a free text book basis in 1935-36 and 1936-37, to spread the furnishing of free text books, in at least six subjects over a period of four years.” This would mean that in each of the school years of 1935-36, 1936-37, 1937-38, and 1938-39, the board of education could purchase one-fourth of the entire number of text books needed for complete adoption of the “free text book plan.”

A reading of the first sentence and the second proviso contained

in Section 7739, supra, clearly imposes a mandatory duty upon the board of education to "furnish, free of charge the necessary text books to the pupils attending the public schools" with the exception that during the school year 1935-36 it may limit the furnishing of free text books to Grades 1-4 inclusive and during the school year 1936-37, to Grades 1-8, subject however to the provision that during the school years 1935-36 and 1936-37, it must furnish "free text books to any pupil whose parent or guardian upon satisfactory proof to the board is unable to furnish said text books." Therefore, by the provisions of the first sentence and the second proviso contained in Section 7739, supra, there is imposed a mandatory duty upon "each board of education" to be prepared for the year 1937-38 and thereafter to "furnish, free of charge the necessary text books to the pupils attending the public schools." This said second proviso which makes it mandatory that at the beginning of the school year 1937-38, each board of education must have purchased all text books necessary for the pupils attending the public schools is in direct conflict and, inconsistent, with the provisions of the first proviso. For, under the provisions of said first proviso a board would be permitted to adopt such a plan whereby it could purchase its third installment of one-fourth of all text books needed at any time before the beginning of the school year 1937-38, and the fourth or last installment of one-fourth of all text books needed at any time before the beginning of the school year 1938-39.

Section 7739, supra, was construed and interpreted in an opinion rendered by my predecessor in office, dated September 1, 1936, and numbered 6029. In said opinion, numbered 6029, it was said:

"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." * * *

"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."

I concur in the opinion of my predecessor that the first proviso

of Section 7739, *supra*, must be disregarded. There is no other rule of construction that can be invoked. This is clearly set forth in the case of *The State ex rel. Attorney General vs. John E. Bailey, et al.*, 37 O. S. 98, at page 103, where it is stated:

“The principle underlying this rule is, that in case of conflicting provisions so repugnant that both cannot be reconciled and have effect, the latest expression of the legislative will must prevail. It rests upon the same foundation as repeals by implication, where a subsequent statute is in conflict with a prior statute.”

It is therefore my opinion:—that, in the interpretation of Section 7739, *supra*, the first proviso contained therein is void for repugnancy and must be disregarded; that therefore, a board of education cannot “spread the furnishing of free text books, in at least six subjects over a period of four years” and thereby “limit its purchase of free text books, in at least six subjects, annually during the school years 1935-36, 1936-37, 1937-38, and 1938-39, to one-fourth of the entire adoption”; and that, after the expiration of the school year 1936-37, Section 7739, General Code, imposes a mandatory duty upon “each board of education” to “furnish, free of charge the necessary text books to the pupils attending the public schools”, except to those “pupils wholly or in part supplied with the necessary text books” in which cases the duty to supply text books becomes mandatory only “as other or new books are needed”.

Specifically answering your question: it is my opinion: 1. That a board of education cannot spread the furnishing of free text books, in at least six subjects over a period of four years and thereby limit its purchase of free text books, in at least six subjects, annually during the schools years 1935-36, 1936-37, 1937-38 and 1938-39, to one-fourth of the entire adoption. 2. That, after the expiration of the school year 1936-37, Section 7739, General Code, imposes a mandatory duty upon each board of education to furnish, free of charge the necessary text books to the pupils attending the public schools, except, to those pupils wholly or in part supplied with necessary text books in which cases the duty to supply text books becomes mandatory only as other or new books are needed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.