

You refer in your letter to other questions which may arise in this estate. You do not specifically request any opinion as to such other questions, and none is given.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1624.

SCHOOLS—SUPERINTENDENTS OF SCHOOLS REQUIRED TO ASSIST IN RECOMMENDATION OF TEXT BOOKS AND COURSES OF STUDY—BOARDS OF EDUCATION UNDER PROVISIONS OF SECTION 7645 G. C. MUST HAVE THEIR COURSE OF STUDIES APPROVED BY SUPERINTENDENT OF PUBLIC INSTRUCTION.

1. *Under the provisions of section 7706-2 G. C. it is the duty of superintendents employed under section 4740 to assist in the recommendation of text books and courses of study to the county board of education.*

2. *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 G. C., but such courses of study are subject to the approval of the superintendent of public instruction.*

COLUMBUS, OHIO, October 20, 1920.

HON. FRANK CARPENTER, *Prosecuting Attorney, Norwalk Ohio.*

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

“1. Is it the duty of superintendents working under section 4740 G. C. to assist in the recommendation of such text books and courses of study to the county board of education as are most suitable for adoption?

2. May a board of education legally prescribe and use a course of study, which is not first approved by the superintendent of public instruction?

3. May a local board of education of a county school district legally prescribe and legally use a course of study which was not prepared by the use of the county course of study as a guide, where said course of study of the local board of education was not first approved by the superintendent of public instruction?”

Bearing upon your first question, section 4740, General Code, reads as follows:

“Any village or wholly centralized rural school district or union of school districts for high school purposes which maintains a first grade high school and which employs a superintendent shall upon application to the county board of education before June 1st of any year be continued as a separate district under the direct supervision of the county superintendent until the board of education of such district by resolution shall petition to become a part of a supervision district of the county school district. Such superintendents shall perform all the duties prescribed by law for a district superintendent, but shall teach such part of each day as the board of education of the district or districts may direct.” (107 O. L. 622)

The pertinent part of the above section, as regards this question, is the provision that "all the duties prescribed by law for a district superintendent" shall also be performed by the superintendents in the 4740 districts. Among the duties of the district superintendent are those mentioned in section 7706-2 G. C., which reads in part as follows:

"It shall be the duty of the county superintendent, district superintendents to recommend to the county board of education such text books and courses of study as are most suitable for adoption."

It would thus appear, in the light of the two sections above quoted, one of which places all of the duties prescribed by law for a district superintendent upon the 4740 superintendents, that the superintendents in these latter districts are required to assist in the recommendation of text books and courses of study.

These school districts organized under section 4740, are under the direct supervision of the county superintendent of schools and are not under any district superintendent. The needs in their particular village school district as regards a course of study are better understood by them than by the district superintendent whose supervision district might surround the 4740 district, and it would appear that the intention of the general assembly was that the superintendent in the 4740 districts should be consulted as to what constituted the course of study in that district.

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

"General Code section 7706-2, which provides that county and district superintendents 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."

In arriving at such conclusion, the Attorney-General further said in the body of said opinion, on page 1447:

" * * * under the language of section 7706-2, as now found in 107 O. L., page 624, all that the county and district superintendents are authorized to do with reference to text books and courses of study is to recommend same."

In your second question you desire to know whether a board of education may legally prescribe and use a course of study which is not first approved by the superintendent of public instruction. The answer to this is found in section 7645, General Code, as amended by the present general assembly in 108 O. L., page 1283, and reading 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. * * *"

It will be noted that the above section says "boards of education," which means all boards of education having control of schools, and clearly provides that the approval of the superintendent of public instruction must first be secured in the prescribing of a graduated course of study for all schools under their control.

The language of section 7645 of the General Code is very broad and therefore includes the boards of education in city districts of the state and exempted village districts, as well as the boards of education which act in conjunction with the county board of education. Section 7645 G. C. is also a later enactment than section 4737 G. C., which reads as follows:

"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."

This section, it will be noted, provides for a "minimum course" which shall be "a guide" to local boards in arranging their course of study, and nothing in the section requires the local board of education to adopt or use the course of study recommended by the county board of education, the inference being that the local board of education was still left with the power of arranging its own course of study. It will be noted, too, that the county board of education, while authorized to recommend courses of study to local boards of education under its jurisdiction, would have no authority to recommend a course of study to be used in the city school districts or the exempted village school districts which might be located in the geographical confines of the county itself. On the other hand, however, section 7645 G. C., very recently amended, does provide that all boards of education must have their course of study approved by the superintendent of public instruction.

The answer to your second question, therefore, is that a course of study could not be prescribed and used legally without being first approved by the superintendent of public instruction.

Your third question is also upon the question of the necessary approval of the superintendent of public instruction before such course of study could be legally adopted or used, and the answer to your third question is the same as to your second question, that is, that all boards of education, under the provisions of section 7645 G. C. must have their courses of study approved by the superintendent of public instruction.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1625.

FISH AND GAME—WATERS OF OHIO RIVER BORDERING STATE OF OHIO WITHIN JURISDICTION OF STATE OF OHIO—LICENSE MUST BE OBTAINED TO HUNT WILD BIRD OR WILD ANIMALS ON SAID RIVER.

The waters of the Ohio river bordering the state of Ohio are within the jurisdiction of the state of Ohio, and persons may not, in view of the provisions of section 1431 G. C., hunt wild birds or wild animals on said river, without first having applied for and received a hunter's and trapper's license.

COLUMBUS, OHIO, October 20, 1920.

HON. A. C. BAXTER, *Chief, Bureau of Fish and Game, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter to this department reading as follows: