

4251

1. BOOKS, SCHOOL TEXT—TEACHER EMPLOYED BY BOARD OF EDUCATION—MAY NOT ACT AS SALES AGENT FOR ANY PERSON, FIRM OR CORPORATION WHOSE SCHOOL TEXT BOOKS HAVE BEEN FILED WITH SUPERINTENDENT OF PUBLIC INSTRUCTION—SECTIONS 4854-1, 4854-9 G. C.
2. TEACHER, DURING SPARE TIME, MAY ACT AS SALES AGENT FOR PUBLISHER OF ENCYCLOPEDIA OR OTHER GENERAL REFERENCE WORK—SALE TO PRIVATE INDIVIDUALS—PROVISO, PUBLISHER HAS NOT FILED WITH SUPERINTENDENT OF PUBLIC INSTRUCTION ANY SCHOOL TEXT BOOKS PROPOSED TO BE FURNISHED FOR USE OF SCHOOLS—SECTIONS 4854-1, 4854-4, 4854-9 G. C.

## SYLLABUS:

1. A teacher employed by a board of education may not, under the provisions of Section 4854-9, General Code, act as sales agent, either directly or indirectly, for any person, firm or corporation whose school text books have been filed with the superintendent of public instruction, as provided by Section 4854-1, General Code.

2. Nothing in Sections 4854-4 or 4854-9, General Code, makes it unlawful for a teacher employed by a board of education to act, during his spare time, as sales agent for the publisher of an encyclopedia or other general reference work, in the sale to private individuals of such encyclopedia or other reference work, provided such publisher has not filed with the superintendent of public instruction any school text books which he proposes to furnish for the use of schools, as provided in Section 4854-1, General Code.

Columbus, Ohio, January 7, 1949

Hon. Gordon B. Gray, Prosecuting Attorney,  
Athens County, Athens, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“Section 4854-9 of the General Code prohibits a teacher from acting as sales agent for school books filed with the Superintendent of Public Instruction as provided by law, or for school apparatus or equipment of any kind for use in the public schools of

the State. Sections 4854, 4854-1, 4854-2, 4854-3 and 4854-7 of the General Code prescribe the method of such filing of school books with the Superintendent of Public Instruction and their sale to and use by schools.

"Section 4854-4 of the General Code, however, specifically exempts supplementary reading books, library books, reference books or any other books except text books from the filing requirements of Sections 4854, 4854-1, 4854-2, 4854-3 and 4854-7.

"The encyclopedia in question is a reference work and a library or reading book, and is not filed with the Superintendent of Public Instruction as a text. It is claimed that as such, it falls within the exemption from filing specified in Section 4854-4, and that sales thereof to private individuals by a teacher during spare time are not prohibited by Section 4854-9.

"Does Section 4854-9, Ohio General Code, prohibit a teacher in the public schools of this State from supplementing his or her income as a teacher by acting as an agent for the sale of an encyclopedia to private individuals during the spare time of the teacher?"

"Does Section 4854-4, Ohio General Code, preserve the right of a teacher to sell reference works, encyclopedias, and any other book other than filed textbooks, as spare time employment?"

Sections 4854 to 4854-9, inclusive, of the General Code, deal with public school books. Section 4854 provides for fixing the maximum price at which school books may be sold to or purchased by boards of education and for the acceptance by publishers of such price scale as a condition precedent to their right to sell the same to a board of education. There is further provision for a penalty in case of failure on the part of the publisher to comply.

Section 4854-1 reads as follows :

"Any publisher or publishers of school books in the United States desiring to offer school books for use by pupils in the public 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. No revised edition of any such book shall be used in public schools until a copy of such edition has been filed in the office of the superintendent together with the published list wholesale price thereof. The superintendent must carefully preserve in his office all such copies of books and the price thereof."

Section 4854-2 relates to the failure of a publisher to furnish such adopted books after agreeing in writing to furnish the same and to a penalty to be recovered against such publisher. Section 4854-2 reads as follows:

“If a publisher who agreed in writing to furnish books as above provided, fails or refuses to furnish such books adopted herein provided to any board of education or its authorized agent upon the terms herein provided, such board at once must notify such commission of such failure or refusal, and it at once shall cause an investigation of such charge to be made. If it is found to be true the commission at once shall notify such publisher and each board of education in the state that such book shall not thereafter be adopted and purchased by boards of education. Such publisher shall forfeit and pay to the state of Ohio five hundred dollars for each failure, to be recovered in the name of the state, in an action to be brought by the attorney general, in the court of common pleas of Franklin county, or in any other proper court or in any other place where service can be made. The amount, when collected, must be paid into the state treasury to the credit of the general revenue fund of the state.”

Section 4854-4 reads as follows:

“The provisions of sections 4854, 4854-1, 4854-2, 4854-3, and 4854-7 of the General Code shall not apply to the purchase of supplementary reading books, library books, reference books or any other books except text books, required by the board of education. All of such books except text books required by the boards of education, shall be ordered, received, examined and paid for in the same manner and by the same persons as other supplies and equipment.”

Section 4854-7 requires each board of education, in February and August of each year, to determine which of the text books so filed shall be used. Section 4854-9 reads as follows:

“A superintendent, supervisor, principal or teacher employed by any board of education in the state shall not act as sales agent, either directly or indirectly, for any person, firm or corporation whose school text books are filed with the superintendent of public instruction as provided by law, or for school apparatus or equipment of any kind for use in the public schools of the state. A violation of this provision shall work a forfeiture of their certificates to teach in the public schools of Ohio.”

It will readily be observed that the exemption contained in Section 4854-4, *supra*, has no effect except to eliminate all books except text books

from the provisions of the sections referred to. In other words, these supplementary reading books, etc., are not subject to the requirement of having prices fixed or a schedule agreed to by publishers; they are not subject to the requirement that copies must be filed with the board of education; a publisher undertakes no obligation to furnish them as required in the case of text books; and the board of education has no duty with reference to adopting such books for use in the schools. Plainly, the only effect of Section 4854-4 is to limit the requirement of the sections named, to text books.

Coming to Section 4854-9, it will be noted that it forbids any teacher employed by a board of education in Ohio to act as sales agent, either directly or indirectly, for any person, firm or corporation "whose school text books are filed with the superintendent of public instruction, as provided by law." It does not forbid any teacher from acting as such sales agent for any person, firm or corporation whose school text books are not so filed. Accordingly, whether a teacher is or is not violating the law in acting during his spare time, as sales agent for the publisher of an encyclopedia or other reference book, depends entirely on whether or not the publisher thereof has filed with the superintendent of public instruction any text books which he proposes to sell to boards of education.

There is nothing in Section 4854-4 that bears on the rights or obligations of a teacher excepting as it distinguishes text books from reference books.

Accordingly, in specific answer to your questions, it is my opinion:

1. A teacher employed by a board of education may not, under the provisions of Section 4854-9, General Code, act as sales agent, either directly or indirectly, for any person, firm or corporation whose school text books have been filed with the superintendent of public instruction, as provided by Section 4854-1, General Code.

2. Nothing in Sections 4854-4 or 4854-9, General Code, makes it unlawful for a teacher employed by a board of education to act, during his spare time, as sales agent for the publisher of an encyclopedia or other general reference work, in the sale to private individuals of such encyclopedia or other reference work, provided such publisher has not filed with the superintendent of public instruction any school text books which he proposes to furnish for the use of schools, as provided in Section 4854-1, General Code.

Respectfully,

HUGH S. JENKINS,  
Attorney General.