

Opinion No. 22.**Schools—Free Text Books**

Constitution Art. XI Sec. 8; Art. V.
Sec. 35. Art. IV Sec. 4 U. S. Const.

HELD: Legislature has the constitutional power to authorize school districts to grant free use of text books in public and private schools.

January 21, 1937

Messrs, E. J. Stromnes and M. J. Mulholland
House of Representatives
The Capitol

Gentlemen:

You have requested an opinion as to the constitutionality of House Bill No. 51. Omitting the formal parts, this bill reads as follows:

“Free text-books shall be furnished for the use of all pupils attending any school, public or otherwise, including high schools within the state. And it is the duty of all school boards and school trustees to purchase, at the expense of the school district, the text-books required for the use of such pupils residing within each such district, which text-books shall be only those selected and adopted by the State Text-Book Commission. And such books shall be loaned to such pupils free of charge, subject to such rules and regulations as such boards or trustees shall prescribe, provided that such free text-books shall be sold at cost to any such pupil upon his request.”

The intent of the proposed bill requires school districts to:

1. Supply textbooks to all school or private schools;
2. Books furnished shall be of a standard and uniform kind;
3. Books shall be loaned to the pupils.

Section 8, Article XI of the Montana Constitution provides:

"Neither the legislative assembly nor any county, city, town, or school district, or other public corporations, shall ever make directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever."

Section 35, Article V, provides:

"No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association."

See Section 4, Article IV, Fourteenth Amendment, United States Constitution.

This matter has been adjudicated in the courts so that there remains no question as to the constitutionality of this proposed bill. The identical question to an identical legislative act arose in the State of Louisiana, in the case of *Cochran v. Board of Education et al.*, reported in 168 La. Rep. 1030, and under constitutional provisions practically identical with those provisions of the Montana Constitution. The Supreme Court of Louisiana upheld the constitutionality of the Legislative Act. The case was appealed to the United States Supreme Court, cited as *Cochran et al v. Louisiana State Board of Education et al.*, 281 U. S. 370. Chief Justice Hughes, writing a unanimous opinion, affirmed the decision of the Supreme Court of Louisiana, upholding the constitutionality of the legislative enactment and

expressly declaring that said Act was neither repugnant to nor in violation of not only the Louisiana State Constitution but Section 4, Article IV and the Fourteenth Amendment of the United States Constitution. The court said:

"One may scan the acts in vain to ascertain where any money is appropriated for the purchase of school books for the use of any church, private, sectarian or even public school. The appropriations were made for the specific purpose of purchasing school books for the use of the school children of the state, free of cost to them. It was for their benefit and the resulting benefit to the state that the appropriations were made. True, these children attend some school, public or private, the latter, sectarian or non-sectarian, and that the books are to be furnished them for their use, free of cost, whichever they attend. The schools, however, are not the beneficiaries of these appropriations. They obtain nothing from them, nor are they relieved of a single obligation, because of them. The school children and the state alone are the beneficiaries. It is also true that the sectarian schools, which some of the children attend, instruct their pupils in religion, and books are used for that purpose, but one may search diligently the acts, though without result, in an effort to find anything to the effect that it is the purpose of the state to furnish religious books for the use of such children * * *. What the statutes contemplate is that the same books be furnished children attending private schools. This is the only practical way of interpreting and executing the statutes, and this is what the state board of education is doing. Among these books, naturally, none is to be expected, adapted to religious instruction."

"The Court also stated, although the point is not of importance in relation to the Federal question, that it was 'only the use of the books that is granted to the children, or in other words, the books are lent to them.'

"Viewing the statute as having the effect thus attributed to it, we can not doubt that the taxing power of the state is exerted for a public

purpose. The legislation does not segregate private schools, or their pupils, as its beneficiaries or attempt to interfere with any matters of exclusively private concern. Its interest is education, broadly; its method, comprehensive. Individual interests are aided only as the common interest is safeguarded."

Neither can it appear as a practical legal conclusion that such an Act as House Bill No. 51 would impose a discriminatory burden upon the taxpayers, imposing an added obligation upon one class and granting a special privilege to another class because the parents of children attending private schools pay taxes equally and alike with those parents of children attending public schools and by the provisions will receive the same and equal privileges.

It is needless to review further legal objections relating to the constitutionality of this Act as our highest court has finally and definitely decided that such an Act as you proposed is constitutional. Therefore, in conclusion, it is my opinion that your proposed bill, if enacted, would be constitutional and that the legislature has the constitutional right to make provision for the free use and loan of textbooks in both public and private schools.