

The only two cases directly in point that we have been able to find are *Mills v. Schoberg* (1926) 216 Ky. 223, 287 S. W. 729, and *Funk & Wagnalls Co. v. American Book Co.* (1927), 18 Fed. (2d) 739. Both of these cases construe the statutory provisions of Kentucky which are substantially the same as found in our uniform textbook law (Chapter 111 and Sections 1187 to 1200 inclusive, R. C. M. 1935). The conclusions reached in each of them are that the designation of supplementary texts was recommendatory only and did not prevent local authorities from recommending other texts or give publishers of designated texts any exclusive right to furnish them.

Since the opinion of the Supreme Court of Kentucky in *Mills v. Schoberg*, supra, is precisely applicable to your question, we quote from it at length:

“* * * The question presented by this record goes to the extent of the power of the Kentucky state textbook commission to make a binding adoption of text-books for use in the common or elementary schools of the state. More concretely expressed, the question is, conceding the power of the text-book commission to make adoption of text-books upon ‘basal’ subjects or subjects ‘required by law’ to be taught in the common elementary schools of the state: Can the commission also make a binding and exclusive adoption as to any other books for use in such schools? Can it legally adopt and require the exclusive use of books ‘supplemental’ or ‘supplementary’ to the ‘basal’ text-books legally adopted by it? * * *

“It must therefore be taken as the definitely established law in this state that the the text-book commission is restricted and limited, in so far as the common elementary schools are concerned, to the adoption of text-books upon these subjects, and these alone (section 4383, section 4369b1, Kentucky Statutes), spelling, reading, writing, arithmetic, English grammar, English composition, geography, physiology and hygiene, civil government, United States history, the history of Kentucky, and elementary agriculture. * * *

“Just what motive actuated the state text-book commission in voting to adopt a number of books upon a

Opinion No. 7.

Schools—Textbooks, Supplementary— State Textbook Commission.

HELD: Schools are not required to use a supplementary textbook adopted by the State Textbook Commission for a given subject before purchasing other supplementary textbooks in that subject.

December 18, 1936.

Miss Elizabeth Ireland
State Superintendent of Public Instruction
The Capitol

Dear Miss Ireland:

In your letter of December 16 you ask for our opinion upon the following question:

“After a basal textbook has been adopted and in use in any one subject, for example, physiology and hygiene, and a supplementary text is also adopted by the Commission, must such **supplementary** text be purchased and in use in a school before that school system may purchase other supplementary texts in that subject?”

variety of subjects and to publish them as 'supplemental' or 'supplementary' adoptions, does not appear, but the members of the commission may have intended their action to be a mere recommendation, which we hold they had the right to do, and perhaps their recommendation might carry as much or even greater weight than any other school authority in the state; but, clearly, the text-book commission had no authority at all to make an adoption of books beyond the power granted it, as set forth in the statutes. It could adopt books upon subjects 'required by law to be taught' in the common elementary schools. The subjects required by law to be taught are clearly designated by statute. The adoption of books upon any other subject is, therefore, wholly without warrant. We are unable to find in the law the slightest indication that the commission was free to adopt schoolbooks generally, or books upon any subject it saw fit, though it is clear that the Legislature had in mind that other books would be used in the schools."

"* * * Not only is the law undoubted that the authority of the commission is limited to the adoption of text-books upon the subjects 'required by law' to be taught, but it seems apparent that it cannot adopt unlimited books even upon such subjects. * * * The commission may adopt one book on each subject, and only one. * * *

"Having arrived at the above conclusion, it is obvious and it necessarily follows that an attempted adoption of supplementary books by the state text-book commission would not require the exclusive use in the public schools, nor would it authorize the commission to enter into a contract for the furnishing of them as is necessary with reference to the adoption of text or basal books. That being true, the one who so contracted as to the recommended or futile adoption of such supplementary books would acquire no right for their exclusive furnishing, and the fact that he may have executed bond for the performance of his contract does not enlarge his rights, since both the contract and the bond were each unauthorized."

In the Funk & Wagnalls case, supra, the Circuit Court of Appeals for the Second Circuit stated that it found the court's construction in the Mills v. Schoberg case of the Kentucky statutes "consistent with our own views, and further pointed out:

"* * * The state text-book commission was directed to adopt a uniform series of text-books, which should include all branches required as necessary study for school children in elementary grades other than the cities referred to. Supplementary text-books might freely be used; the Legislature did not forbid it. They were subject to recommendation only. It is, of course, possible that children in the schools wished their own dictionaries to supplement their text-books, and recommendations as to dictionaries are valuable. This was one of the purposes of section 4421a17, Ky. Stat. The statute is plain as to the studies, as it is the mandatory direction to select the text-books. But the superintendent, teacher, and parent each has a voice in the supplementary books that might be used.
* * *

By virtue of the provisions of Section 1196 R. C. M. 1935, our uniform textbook law is a penal law, and the only method of enforcing it is by prosecution of the school officers as for a misdemeanor for failure to use the text adopted by the State Textbook Commission. In view of the conclusions reached in the above two cases, it is the opinion of this office that no prosecution for violation of said statute would lie for failure to adopt texts recommended by the Commission as supplementary only, and your question is hereby answered in the negative.

We are further strengthened in this conclusion upon the ground of public policy for, as the Supreme Court of Kentucky in the Mills v. Schoberg case pointed out, to hold otherwise would utterly defeat the primary purpose of the act which was to establish a uniform system of textbooks upon the fundamental subjects to be taught, and would open the door to unlimited trickery, bargaining and perhaps corruption in an effort to foist books upon the schools of no value in the scheme of instruction there taught.