

Opinion No. 8.**State Textbook Commission—Schools
—Textbooks—Basal Texts.****HELD:** 1. The State Textbook
Law requirement of a special supple-

ment for the basal text in National Civil Government precludes a separate basal text for state civil government.

2. The State Textbook Commission is not authorized to adopt basal texts in Montana History, Music or Art.

December 29, 1938.

Mr. A. Jerome Wall, Chairman
State Textbook Commission
Glasgow, Montana

Dear Mr. Wall:

You have asked if the Montana State Textbook Commission is required to adopt basal text books for all subjects listed in Section 1054, Revised Codes of Montana, 1935, as amended by Chapter 158, Laws of 1937.

Section 1054, Revised Codes of Montana, 1935, lists the subjects prescribed for a course of study in the elementary schools. It is mandatory upon the board of school trustees to require that all of the subjects listed in that section be taught in the appropriate grade of the elementary school. The statute declares that "public schools shall be taught in the English language and instructions shall be given in the following branches." The California statute, from which Section 1054 was adopted, used the word "must" in each instance. (Cal. Political Code Secs. 1664, 1665).

A discussion of the use of the word "shall" in legislative acts is found in *State ex rel McCabe v. District Court* (106 Mont. 272). There the court declared, except where the intent and purpose of the legislature is plain and unambiguous and clearly signifies a contrary construction, the synonymous terms "must" and "shall" are generally interpreted as mandatory.

An additional indication of the legislative intent to make the provisions of Section 1054 mandatory is found in Section 1015, Revised Codes of Montana, 1935, as amended by Chapter 165, Laws of 1937, which defines the duties of trustees. Subsection 17 thereof provides that the school board shall have the power to "determine what branches, if any, in addition to those required by law" shall be taught in the schools of the district. (See *Perkins v. Trask*, 95 Mont. 1, 8.)

The purpose of Section 1054, as amended, is to require that certain

fundamental branches of learning shall be given in the elementary schools of Montana, and it is mandatory that all the enumerated subjects be taught at some period in the elementary school curriculum.

In order that the textbooks in the schools of the state will be calculated to provide the instruction required and that a certain uniformity and efficiency may be achieved in the school system of the state, the legislature has provided for the creation of the State Textbook Commission and has prescribed its powers and duties in Chapter 111, Vol. 1, Political Code, Revised Codes of Montana, 1935. Section 1190 of that chapter deals with contracts for supplying textbooks and authorizes the commission to "make contracts for textbooks in the following branches, to-wit: Reading, spelling, writing, arithmetic, geography (elementary and advanced), language and grammar, physiology and hygiene, civil government (state and national), history of the United States (elementary and advanced) and elementary agriculture." The commission is authorized to adopt basal textbooks in each of the enumerated subjects and such supplementary texts to be used in connection with the basal text as are deemed advisable. A previous attorney general's opinion has held that this section means that one particular text must be provided as the basal text for each branch of learning, (16 Opinions of the Attorney General 3) and with that opinion I concur.

In accordance with Section 1190 separate basal texts must be provided in reading, spelling, writing, arithmetic, elementary geography, advanced geography, language and grammar, physiology and hygiene, civil government, elementary United States history, advanced United States history, and elementary agriculture. (See Opinion 1, Vol. 18, Opinions of the Attorney General, issued December 2, 1938.) In Vol. 16, Opinions of the Attorney General, 364, it was held that separate basal textbooks were authorized for the study of state and national civil government. In arriving at that conclusion, the provision of Section 1190, "they (the commission) shall also cause to be prepared a special supplement for Montana for the civil government adopted, which supplement shall con-

tain not less than one hundred pages," was overlooked and disregarded.

It is my opinion that the legislature intended that the commission should adopt a basal text for national civil government and the publisher should be required to provide a state supplement. Therefore, the holding in Vol. 16, Opinions of the Attorney General, 364, in so far as it authorizes separate text for state and national civil government, is hereby reversed.

Section 1054 requires that instruction be given in Montana history, music and art, but Section 1190 does not authorize the commission to contract for textbooks in these branches. A fundamental rule of statutory construction is the maxim *expressio unius est exclusio alterius* (the mention of one thing implies the exclusion of the other). Then the commission has only the powers specifically enumerated in Section 1190 and the enumeration of those powers implies that others not so enumerated were not intended to be granted to the commission. The provision requiring that instruction be given in the history of Montana was a part of Section 1054 when Section 1190 was amended and re-enacted by Chapter 25, Laws of 1925. Therefore, it must be taken that the legislature does not intend that a basal text be supplied for the teaching of Montana history. The Twenty-fifth Legislative Assembly added music and art and instruction in cooperative economics to Section 1054. Again Section 1190 was not amended, and the application of the rule of *expressio unius* would reach the same result as in the case of Montana history. Furthermore, as those subjects are such as may be taught without a formal textbook, it follows that the legislature did not intend to give the commission authority to contract for basal textbooks in them.

I am, therefore, of the opinion that the commission is authorized to contract for basal textbooks in only those branches specifically enumerated in Section 1190.