

No. 183

TEXTBOOKS—PUBLIC SCHOOLS—TEXTBOOK COMMISSION—SUPERINTENDENT OF PUBLIC INSTRUCTION—VESTED INTERESTS UNDER CONTRACTS—CONTRACTS—SCHOOLS

Held: Superintendent of Public Instruction required to file and print list of all school textbooks in his office. Each person, firm, company or corporation, before offering any book or books to any school district shall file a bond, obtain a license, list every book so desired to be sold or exchanged, and file a copy of each book in the office of Superintendent of Public Instruction, except school book companies now under contract to furnish books. In event any company now holding contract desires to offer any school district any book for sale or exchange other than those now specifically contracted for, in that event such company must comply fully with Section 2 of Chapter 138, Laws of 1941, in the same manner as any other person or company, or corporation not now holding any such contract.

July 23, 1941.

Miss Elizabeth Ireland
State Superintendent of
Public Instruction
State Capitol
Helena, Montana

Dear Miss Ireland:

You have asked for my official opinion on the following:

"Are all textbook companies which desire to sell grade school books, or high school and junior high school books, or both, to the county superintendents, school superintendents, principals and trustees and boards of education required to:

- "1. File a bond;
- "2. Obtain a license;
- "3. List every book so desired to be sold;
- "4. File a copy of every book to be offered for sale, with the State Superintendent of Public Instruction, before any of these above mentioned textbooks can be presented for examination and sale to the purchasers in school districts?"

In answering your inquiry, it is well to keep in mind Chapter 138, Laws of 1941, repealed Sections 1187 to 1197, inclusive, and Section 1200, Revised Codes of Montana, 1935, thereby abolishing the state textbook commission.

Nevertheless, the said state textbook commission—while functioning as such commission—entered into contracts with various book companies, as provided by the above-mentioned repealed sections. These contracts expired at different times, some expiring in two years, some in four years, and other in six years.

The rights of the book companies and the state under the respective contracts are controlled by the terms of each contract and the law applicable at the time each contract was executed.

It will be observed the legislature limited the making of contracts by the textbook commission to contracts covering the following textbooks only, to-wit: textbooks in **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**, which are known as basal textbooks, and also contracts for supplemental textbooks to be

used only supplementary to and in connection with the basal textbooks so contracted for. (Section 1190.)

The repealed law provided (Section 1193) the school book company file an approved bond with the Secretary of State, conditioned on their compliance with the terms of their contract. I am advised all contract holders have filed such a bond. It then became the duty of the Superintendent of Public Instruction to cause all prices of such textbooks, as guaranteed by the publisher, to be printed and distributed through the county superintendents to the trustees of all school districts of the state. (Section 1193.)

All basal and supplementary textbooks so contracted for have been listed with and a copy of each book filed in the office of the Superintendent of Public Instruction, with the certificate of the Chairman and Secretary of the textbook commission. (Section 1191.)

Therefore the book companies—holding contracts under the repealed law—may not now be required to file another bond, or required to be relicensed or file another bond, or refile copies of their contracted books with the Superintendent of Public Instruction, as required by the terms of Chapter 138 of the Laws of 1941, as any such requirement would be in conflict with Section 10 of said Chapter and in conflict with Section 11 of Article III of the Constitution of Montana.

However, if any book company now holding a contract to sell a certain book or books now desires to sell or exchange any other school textbook or textbooks to any public school in the State of Montana, such person, company or corporation is required to and shall comply with each provision of Section 2 of Chapter 138, Laws of 1941, just as any person, firm, company or corporation not having a contract under the repealed statutes must, before offering any textbook for adoption, sale or exchange, comply with each provision of Section 2 of Chapter 138 of the Laws of 1941, which is as follows:

“Section 2. Textbooks—License to Sell—Conditions. Before any person, company, or corporation shall offer to any school district any textbook for adoption, sale or exchange, in the State of Montana, said person, company, or corporation shall comply with the following conditions:

“First: Such persons shall file a copy of such textbook in the office of the state superintendent of public instruction, with a sworn statement of the list price; the lowest wholesale price; and the lowest exchange price that will be given when old books in the same subject and of the like kind and grade, but of different series, are received in exchange, such exchange price to be based on a three (3) year adoption period. Such prices are to be quoted FOB Chicago, FOB San Francisco, FOB any other city from which publishers may ship books, and FOB a textbook depository in Montana.

“Second: Such persons shall file with the state superintendent of public instruction a written agreement, (1) to furnish said book or books to any school board in the State of Montana at the lowest price so filed, and to maintain said prices uniformly throughout the State; (2) to reduce such prices automatically in Montana whenever reductions are made elsewhere in the United States; and (3) to guarantee that at no time shall any book so filed by such persons, be sold in Montana at a higher price than is received for such elsewhere in the United States under similar conditions of transportation and marketing.

“Third: Such persons shall file and maintain with the secretary of state a surety bond for not less than two thousand dollars (\$2,000.00) and not more than ten thousand dollars (\$10,000.00), such bond to be in an amount to be fixed by the state superintendent of public instruction and to run to the State of Montana, to be conditioned on the faithful performance of all things on the part of such persons to be performed under this act and such bond to be approved by the

attorney general. Upon compliance with the foregoing conditions the state superintendent of public instruction shall issue a license to any such person to sell such textbooks to school districts in the State of Montana.

"Fourth: License fees. The person receiving such license shall pay a fee of one dollar (\$1.00) for each book listed; provided that in the case of several books presented by one publisher in the same subject under the same series head for any one (1) grade, the maximum filing fee in such case shall not exceed three dollars (\$3.00). Such moneys received through payment of said filing fees shall be used to defray all expenses incurred under the provisions of this act. Provided that any surplus which might exist at the end of any biennium shall be transferred to the state public school general fund."

It must also be pointed out Section 1191, Revised Codes of Montana, 1935, so repealed, contained the following provision, which was a further restriction on the power of the textbook commission:

"Provided that nothing in any part of this Act shall be so construed as to prevent the purchase or use by any district of any reference books for use in any of the schools of the State."

Chapter 109, comprising Sections 1181 to 1186, inclusive, Revised Codes of Montana, 1935, provides for the library fund, location and control of school libraries and the selection of the books therefor. Section 1189 of the repealed Act contains the following provision:

". . . and nothing herein contained shall be so construed as to have any reference to the provisions of this act relating to school libraries."

Section 1262.72, Revised Codes of Montana, 1935, is as follows:

"1262.72. Text Books. The text books for all high schools, including junior high schools and all junior and senior high school courses shall be selected by the district superintendent or the principal of the high school, in either case with the approval of the board of trustees."

In reviewing the statutes, it must be noted the textbook commission was limited in executing any contracts by the provisions of Section 1187 to 1197, inclusive.

The only contracts the textbook commission could enter into were for basal textbooks in the subjects as set forth in Section 1190, 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; and such other textbooks supplementary to the basal textbooks above referred to as the commission deemed advisable, such supplementary textbooks to be used only in connection with and supplementary to the basal textbooks adopted by the board.

It is therefore apparent school districts are required to use the contracted basal textbooks and the contracted supplementary textbooks, until each such contracts expire or are terminated, except in the case of supplemental textbooks. As to supplemental textbooks, whenever it is determined by the superintendent or principal and the board of trustees, or the county superintendent and his committee, it is for the best interests of the pupils and the school, they may adopt and select additional supplementary books; but such books so selected and adopted are not to replace or be substituted for the contracted supplementary books, but are in addition thereto. This power was conferred on the textbook commission by Section 1189, Revised Codes of Montana, 1935, repealed, and now vests in the administrative officers under Section 9 of Chapter 138 of the Laws of 1941.

It is my opinion it is the duty of the Superintendent of Public Instruction to cause all such contracted basal textbooks and supplementary text-

books prices, as guaranteed by the publishers, to be printed and distributed through the county superintendents to the trustees of all school districts in the state (Section 1195, repealed).

It is also the duty of the State Superintendent of Public Instruction to receive copies of any and all textbooks, with a sworn statement of the list price, the lowest wholesale price, and the lowest exchange price, all as provided in Section 2 of Chapter 138 of the Laws of 1941, from any person, company, or corporation—which said textbooks do not, in any manner, conflict with, substitute for, or replace any basal textbook or supplemental textbook contracted for under the repealed act—and also to send to each school official within the state a copy of all such listed school textbooks then on file in his office, as provided in Section 8 of Chapter 138 of the Laws of 1941.

Any textbook company, now holding a valid contract for any basal textbook or books or any supplementary textbook or books, now desiring to offer to sell a school district in this state any other textbook or books or supplementary textbooks in Montana other than those already under valid contracts, must comply with all of the provisions of Chapter 138 of the Laws of 1941. Any person, company, or corporation not holding a contract under the repealed act must—before offering any textbook for adoption to any school district in this state—comply with all of the requirements of Chapter 138, Laws of 1941.

Any public high school district or county high school, junior high school, or high school may select the textbooks in the manner provided in Section 9 of Chapter 138, Laws of 1941, from the lists furnished by the State Superintendent of Public Instruction, as provided in Section 8 of Chapter 138, Laws of 1941.

Any public school district in this state may purchase any reference textbooks as it may in its discretion determine to be necessary for the best interests of the students from the lists provided by the State Superintendent of Public Instruction.

Sincerely yours,

JOHN W. BONNER
Attorney General