

No. 317

**SCHOOLS—TEXTBOOKS—PUBLISHERS—CONTRACT—
LIST PRICE—STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION**

Held: Where a publisher has qualified for and received a license to sell textbooks to school districts in Montana, such publisher may not withdraw such book or books from such list for three years from date of filing such lists.

December 11, 1941.

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

Dear Miss Ireland:

You have submitted the following problem:

Whether or not under Chapter 138, Laws of 1941, a publisher could file a book, or books, in the office of the State Superintendent

of Public Instruction on one day, and then within a few days, or weeks, withdraw the book or books so filed from the official listing for sale in the State of Montana.

In answering your inquiry, it is necessary to refer to Chapter 138, Laws of 1941, which act repealed in toto Sections 1187 to 1197, inclusive, Revised Codes of Montana, 1935, abolishing the textbook commission of Montana, and providing a statewide law for the adoption of text books by the public schools of Montana.

Chapter 138, Laws of 1941, Section 2, provides:

"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: . . ." (Emphasis mine.)

Section 2 further provides such persons shall file in the office of the State Superintendent of Public Instruction a copy of such textbook, together 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 like kind and grade, but of a different series, are received in exchange, **such exchange price to be used on a three year adoption period.**

Section 2 further provides such persons shall file with the State Superintendent of Public Instruction a written agreement to furnish said book or books to any school board in the State of Montana at the said lowest price so filed and to maintain said prices uniformly throughout the state, etc.

Section 2 further provides such persons shall file and maintain with the Secretary of State a surety bond for not less than \$2,000 and not more than \$10,000 to be **conditioned on the faithful performance of all things on the part of such persons to be performed under this act.**

Section 9 of the act provides for the adoption of such school books, and specifically declares:

". . . These adoptions shall be for a minimum period of three (3) years . . ." (Emphasis mine.)

Thus it will be seen the legislature in its sovereign power has declared the procedure and method whereby the textbooks used in the public schools of the State of Montana are to be supplied. Summarizing the foregoing provisions, it is apparent from this legislative act any persons desiring to offer to sell, sell or exchange any textbooks **for adoption for a minimum period of three years** to any school district in Montana shall first file such book, with their sworn statement of the list price, lowest wholesale and lowest exchange prices, in the office of the State Superintendent of Public Instruction. It will further be seen such persons shall also file with the State Superintendent of Public Instruction a written agreement to furnish said book or books to any school board at the lowest price so filed for a minimum term of three years, and to reduce such prices automatically in Montana, whenever reductions are made elsewhere in the United States.

The act provides also such persons shall file and maintain with the Secretary of State a surety bond in an amount to be approved by the State Superintendent of Public Instruction for not less than \$2,000.00 and not more than \$10,000, conditioned on the faithful performance of all things on the part of such persons to be performed under the act.

The United States Circuit Court of Appeals, Seventh Circuit, had under consideration a similar question from Illinois, interpreting the Act of 1917, at page 754, Chapter 122, paragraphs 502 to 513, Ill. R. S. 1937, which is an act similar to our Chapter 138, Laws of 1941. The Court stated:

"It is the further contention that the listing of the books and prices is but an offer to contract, and may be withdrawn by the publisher at any time before acceptance through adoption by school districts. Appellant's counsel seems to treat the statute as though it made provision only for the offering of textbooks for sale. If so limited the act would avail little or nothing. . . . The bond provided for is conditioned that the person filing it shall furnish for five years any of the books listed, at the stated prices, to any school district or corporation in the state. It is made the duty of the state superintendent to publish the lists and distribute them to all the public school authorities, who may make adoptions from such listed books . . . here, the statute clearly intends that one filing the lists and bonds shall be obligated to supply the books as adopted during the statutory period."

Charles Scribner & Son v. Board of Education, Cook County,
278 Fed. 366, 369, 370.

So here, in the question under consideration, if a publisher perfects his filings so as to receive a license to sell textbooks to the school districts of this state and may at any time thereafter without limitation withdraw such books from such listings, it would render this act meaningless. It would throw the whole school system of Montana into a turmoil—school districts would be forced to adopt textbooks at each meeting of the board with no assurance of permanency.

True, Section 8 of Chapter 138, Laws of 1941, provides how books shall be removed from such list, one way being "upon written request of the publisher thereof." By this provision the legislature intended, in conformity with the rest of the act, that at any time during the three year adoption period the publisher could request a book or books on such list be removed at the end of the adoption period. The request may or may not be granted by the State Superintendent of Public Instruction, the administrative officer of this act, by whose discretion such question is to be resolved so that no school district of the state be penalized on an adoption.

It is therefore my opinion any textbook publisher or person who qualified for and received a license to sell textbooks to school districts in the State of Montana may not withdraw or remove any such listed textbooks from such price list for a minimum term of three years from the time of such listing.

It is my further opinion any publisher granted a license to sell textbooks to school districts in Montana may request in writing such book or books be removed from the said list at the expiration of the three year adoption term from the date of filing the same, but such request is to be acted upon by the State Superintendent of Public Instruction, who is the administrative officer of this act. When a publisher receives a license by filing the textbook, his sworn statement of the list price and his agreement and bond to sell textbooks to school districts of this state, he has entered into a binding contract under the act to furnish textbooks and such exchange books at the list price to school districts for a minimum term of three years.

Sincerely yours,

JOHN W. BONNER
Attorney General