



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-1471
Re: General Appropriation Act
(1939) -- State Board of
Education -- Traveling
expenses -- Freight on new
textbooks.

We beg to acknowledge receipt of your request dated November 10, 1939, supplemented by your further letter of November 18, 1939, for an opinion upon the following questions:

"1. Is the Board of Education authorized to use its appropriation for contingent expenses and also the money set aside by the Board of Education for the textbook fund for the payment of traveling expenses incurred by such department? In other words, may the Board of Education pay traveling expenses from either of the two funds?

"2. In view of the riders on the present General Appropriation Bill, known as Senate Bill No. 427, Acts of the Regular Session of the Forty-sixth Legislature, may the Board of Education pay for freight on new textbooks out of the textbook fund, or, must the item of freight be considered a contingent expense and be paid from the 'Contingent Expense' appropriation?"

In the appropriation for the State Department of Education all the various divisions are given an express appropriation for traveling expenses except that of textbooks and curriculum division and textbook depository.

Hon. George H. Sheppard - Page 2

Of course, where there is a specific item of traveling expense, no real question is presented. But it is further the rule, as shown by many opinions from this department, that in the absence of such specific enumeration of traveling expenses, where there is a specific appropriation for a comprehensive purpose, such as miscellaneous or contingent items, traveling expenses may be and are authorized to be paid out of such appropriation. In other words, such an appropriation, though general to a degree, is yet specific enough without a further enumeration of every conceivable item of miscellaneous or contingent nature. (See conference opinion No. 3089 addressed to yourself).

Under the head of maintenance and miscellaneous, the appropriation act provides for the textbook and curriculum division, item 1, as follows:

Office and depository supplies, postage, express, drayage, telephone, telegraph, printing, stationery, rent, contingent expense, including freight on used textbooks, \$25,000.00.

Ordinarily, under the rule above announced, this would be sufficient to authorize the payment of traveling expenses therefrom. It has been ruled by this department, however, that "since there was no specific appropriations for traveling expenses, we believe that the State Board of Education is authorized to expend such portion of the textbook fund as may be necessary for traveling expenses in the purchase and distribution of textbooks." (See conference opinion No. 3091 addressed to yourself under date of November 7, 1930). We see no reason to depart from that ruling. The reasons for such ruling, if any are needed in addition to those given in opinion No. 3091, will be stated in connection with our discussion of your next question. So that traveling expenses in connection with the purchase and distribution of textbooks should be paid from the textbook fund and not from the contingent fund.

We will now consider the matter presented in your second question. There is no specific mention of the item of freight on new textbooks purchased by the Board in the maintenance and miscellaneous appropriation quoted above, although it will be seen there is the express mention of freight on "used textbooks." It is our opinion that the item of freight on new textbooks should

Hon. George H. Sheppard - Page 3

be paid out of the textbook fund and not out of the contingent expense fund above quoted. This conclusion is based upon the interpretation of the Act in connection with the Constitution and general statutes governing the purchase and distribution of textbooks.

The Constitution (Article 7, Section 3) makes it the duty of the State Board of Education "to set aside a sufficient amount out of said tax to provide free textbooks for the use of children attending the public free schools of this state."

Article 2866, R. C. S., declares:

"The State Board of Education is hereby empowered and it is made its duty to purchase books from the contractors of textbooks used in the public free schools of this State and to distribute same without other cost to the pupils attending such schools within this State in the manner and upon the conditions hereinafter set out."

Article 2869, R. C. S., further provides:

"The State Board of Education shall require from the State Superintendent on July first of each year a report as to the funds necessary for the purchase and distribution of (or) other necessary expenses of school books for the regular school session of the following year, and said Board of Education shall have the power to set apart from the available school fund the estimated amount with 25 per cent additional, this additional sum to be used to meet emergencies or necessities caused by unusual increase in scholastic attendance or by unusual and unforeseen (unforeseen) expenses and school conditions.
* * *

A rider to this appropriation declares:

"It is hereby provided that any amount expended for Textbook Administration, in-

cluding new textbooks, rebinding, and any other expenses connected therewith, shall be paid out of the State Textbook Fund."

From these statutory provisions, and from that part of the appropriation act relating to the Department of Education, it is our opinion that the item of freight on new textbooks is more definitely specified rather as a part of the cost and distribution of textbooks than as a contingent expense, and for this reason payment of such freight should be paid from the textbook fund and not from the contingent expense item or fund.

The express mention of "used textbooks" in the maintenance and miscellaneous item above quoted does not argue against this conclusion, but rather it favors such conclusion. If the Legislature had contemplated that freight on new textbooks should be considered as a contingent expense, it most likely would have mentioned such freight specifically, seeing that it had in mind and considered the matter of freights. Its omission of freights on new textbooks, therefore, argues that such freight on new textbooks would more properly come under the head of purchase and distribution of textbooks, and, therefore, be payable out of the textbook fund.

For the reasons here given and heretofore given in our opinions above referred to, we answer your inquiries as above indicated.

Very truly yours

ATTORNEY GENERAL OF TEXAS

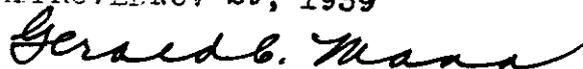
By



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