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2 copies to Justice

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable H. A. Glass, Director
Textbook Division
State Department of Education
Austin, Texas

Dear Mr. Glass:

Opinion No. O-2458

Re: Has the State Board of Education authority to expend within one year for the rebinding of State-owned textbooks a sum in excess of the amount itemized for this purpose in the General Appropriation Bill of the 46th Legislature?

We beg to acknowledge receipt of your letter of June 18, 1940, propounding the following question for an opinion, to wit:

"Has the State Board of Education authority to expend within one year for the rebinding of State-owned textbooks a sum in excess of the amount itemized for this purpose in the General Appropriation Bill of the Forty-sixth Legislature and as set out on Page 57 of said bill?"

In connection with your question stated you advise:

"Annually the State Board of Education in the approval of the budget for the Textbook Division has designated a specific sum for rebinding. Since books may be rebound at 55% of their original cost, it is readily seen that a considerable saving may be effected through the Board's present policy of re-adopting books which have proved satisfactory

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through their use in the public schools and to continue them in the public schools for the usual contract period of five years through the process of rebinding them.

"An ample amount of money is available in the State Textbook Fund appropriated by the Legislature and allocated by the State Board of Education. It would not be necessary for this Division to ask for an additional allocation by the Board of Education.

* * * *

"The sum itemized in the Legislative Appropriation is inadequate in this or any other year so long as the Board of Education follows the policy of readopting books as an economy program. This is readily seen when one considers that there are more than a million and a half children in the State and that the average annual purchase of textbooks amounts to from three and one-half to five and one-half million books per year."

Senate Bill 427, Acts of the 46th Legislature, in the appropriation styled "Employees of the Textbook and Curriculum Division and Textbook Depository", appearing under the main heading "State Department of Education", contains the following item, under Maintenance and Miscellaneous:

"Rebinding \$23,360.00"

A rider immediately following the appropriation made to this division reads as follows:

"This appropriation shall be as above provided and no other salary or expenditure shall be paid for any purpose other than those itemized herein."

Immediately following this appropriation, there appears, under the heading "Available School Fund Aid and Textbook Administration" the following:

"For the purposes provided by law, there are appropriated for the biennium ending Aug-

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ust 31, 1941, to the State Board of Education the full income to, and any balance in the Available School Fund and the State Textbook Fund, except as otherwise appropriated by this Legislature, to be expended and distributed in accordance with the laws of this State; provided that textbooks may be purchased only from funds arising from the State ad valorem school tax."

"It is hereby provided that any amount expended for textbook administration, including new textbooks, rebinding, and any other expenses connected therewith, shall be paid out of the State Textbook Fund."

"It is further provided that the amounts to be expended for new textbooks and rebinding books shall be as fixed by the State Board of Education; provided however, that no employees in addition to those listed and itemized above, shall be employed."

"All employees in the Textbook Division in the Education Department shall be appointed or removed by the State Superintendent of Public Instruction subject to the approval of the State Board of Education."

It is observed that the entire balance in the Available School Fund and the State Textbook Fund is appropriated by specific language to the State Board of Education "to be expended and distributed in accordance with the laws of this State". The limitation of payments clause appearing in the general rider appended to Senate Bill 427, therefore, does not apply, because the entire balance or surplus in the fund is specifically appropriated by the Legislature to the State Board of Education. See our Conference Opinion No. 3088.

It is particularly observed that the Legislature has specifically provided that the amount to be expended out of this appropriation of the balance in the funds for new textbooks and rebinding books shall be as fixed by the State Board of Education, and that, in this connection, the Legislature found it necessary to provide that no employees, in addition to those listed and itemized for the Textbook Division of the Department of Education, should be employed out

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of this separate fund. It is clear to us, therefore, that the Legislature intended that the State Department of Education should have specific authority to expend not to exceed \$23,360.00 per annum for rebinding, such authority to be derived directly from the Legislature by virtue of the appropriation made of that amount; but that amounts to be expended for rebinding out of the balance in the fund, over and above the \$23,360.00, should be as fixed and determined by the State Board of Education. In this respect, the authority of the State Board of Education with respect to the surplus appropriated to it for such purpose is similar to that conferred upon the Limitation of Payments Board by the limitation of payments clause appearing in the general rider, with respect to surpluses coming within the jurisdiction conferred upon that Board by that clause.

It follows from what has been said above, that such amounts for rebinding books may be expended in excess of the \$23,360.00 specifically appropriated for that purpose by the Legislature, as the State Board of Education specifically authorizes and fixes for that purpose out of the appropriation of the entire surplus in the fund made to the State Board of Education.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED JUL 16, 1940

George A. Miller
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