



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable E. Harold Beck, Chairman
Senate Committee on Constitutional Amendment
The Senate
Austin, Texas

Dear Sir:

Opinion No. 0-3386
Re: Whether Senate Joint
Resolution No. 4, as amended
by committee substitute No.
1, if submitted by the Legis-
lature and adopted by the
people, would in any way
prevent the continuance of
the distribution of free
school books to the children
of Texas.

We have your letter of April 7, 1941, in which you ask
our opinion upon the following question:

"If S. J. R. No. 4 as amended by committee
substitute No. 1 is submitted by the Legislature
and adopted by the people, would it in any way
prevent the continuance of the distribution of
free school books to the children of Texas?"

Committee substitute No. 1 to Senate Joint Resolution
No. 4 would amend Article VII, Section 5 of the Constitution of
the State of Texas, to read as follows:

"Sec. 5. The principal of all bonds and other
funds, and the principal arising from the sale
of the lands hereinbefore set apart to said school
fund, shall be the permanent school fund, and all
the interest derivable therefrom and the taxes herein
authorized and levied shall be the available school
fund, to which the Legislature may add not exceeding
one per cent annually of the total value of the per-
manent school fund, such value to be ascertained by

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the Board of Education until otherwise provided by law, and the available school fund shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever nor shall the same, or any part thereof ever be appropriated to or used for the support of any sectarian school, provided that the State Board of Education may furnish state adopted text books free to every child of scholastic age, attending any school within the state upon the election of the parent or guardian of such child to use such books; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law." (Emphasis ours)

Article VII, Section 5 of the Constitution of the State of Texas, is identical with the provisions quoted above from the committee substitute for Senate Joint Resolution No. 4, except that the committee substitute adds to Article VII, Section 5, the words which are underlined in the above quotation.

The Constitution of the State of Texas at present provides for the use of the Available School Fund to provide free textbooks only for the use of children attending the public free schools of this State. Article VII, Section 3, of the Constitution of the State of Texas, contains the following provision relating to free textbooks:

"Sec. 3. One-fourth of the revenue derived from the State occupation taxes and poll tax of one dollar on every inhabitant of the State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and in addition thereto, there shall be levied and collected an annual ad valorem State tax of such an amount not to exceed thirty-five cents on the one hundred (\$100.00) dollars valuation, as with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this state for a period of not less than six months in each year, and it shall be the duty of the State Board of Education

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to set aside a sufficient amount out of the said tax to provide free text books for the use of children attending the public free schools in this State; provided, however, that should the limit of taxation herein named be insufficient the deficit may be met by appropriation from the general funds of the State

We also direct your attention to Article I, Sections 6 and 7 of the Constitution of the State of Texas, which read as follows:

"Sec. 6. All men have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship."

"Sec. 7. No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes."

If Senate Joint Resolution No. 4, as amended by committee substitute No. 1 is submitted by the Legislature and adopted by the people, Article VII, Section 5, of the Constitution, would then read as quoted above. It would then be the duty of the courts to construe all sections of the Constitution, if possible, so that all parts thereof may be given effect. *City of San Antonio v. Toepferwein*, 104 Tex. 43, 133 S. W. 416; *Cordova v. State*, 6 Tex. App. 207;

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9 Tex. Jurisprudence, 434.

There is no necessary legal inconsistency between providing free textbooks to children attending the public free schools of the State of Texas and also providing free textbooks to the children attending sectarian schools. We are therefore of the opinion that the portions of the Constitution providing for free textbooks for children attending the public free schools would not be impaired by the adoption of the amendment to Article VII, Section 5, of the State Constitution, as proposed by committee substitute No. 1 to Senate Joint Resolution No. 4, and that the submission and adoption of such amendment would not legally prevent the continuance of the distribution of free school books to the children attending the public free schools.

In this opinion, as in all other opinions of this department, we are passing only on the legal questions presented and not upon any matters of policy which may be involved.

Very truly yours

ATTORNEY GENERAL OF TEXAS

Approved
APPROVED MAY 7 1941

FIRST ASSISTANT
ATTORNEY GENERAL

BY *James P. Hart*

James P. Hart
Assistant

JPH:EP

