



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD**  
**ATTORNEY GENERAL**  
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State Board of Education  
Austin, Texas

Attention: Mr. Gaynor Kendall

Opinion No. O-5443  
Re: Authority to dispose  
of textbooks not in condition  
to be used or that have been  
discarded.

Gentlemen:

This will acknowledge receipt of your inquiry re-  
question an opinion from this department upon the above-  
captioned subject, as follows:

"The State Board of Education at its July  
6th meeting directed that your advice be  
sought in regard to the following matter.

"There are on hand in the State depository at Austin many textbooks on various subjects which have accumulated because of the expiration of the contract for the particular books and replacement by adoption of other books in the subject field. The Board desires to know what authorities are empowered to dispose of such of these books as are neither under current adoption nor used as supplementary source material in the public free schools. Your attention is directed to Article 2876e of the Revised Statutes of 1925. The Board has been approached with a proposal for sale of the usable texts which have been discarded because of the expiration of the adoption period, and desires to be advised concerning its authority in the matter of the sale of these books, and of free textbooks which, because of condition, are no longer usable in the public free schools."

Article 2876e of the Revised Civil Statutes  
cited by you is as follows:

"The State Superintendent of Public Instruction with the approval of the State Board of Education, may provide for the disposition of such textbooks as are no longer in a fit condition to be used for purposes

of instruction, or for discarded books remaining the property of the State. In case of the disuse of books in fair condition, inspectors of the State Department of Education may require the continuance of the use of said books."

This statute appears to deal specifically with the very essence of your inquiry, and supplies the answer thereto. While the books mentioned are not in an unfit "condition to be used", they nevertheless are "discarded books remaining the property of the State." Therefore, they may be disposed of by the State Superintendent of Public Instruction, with the approval of the State Board of Education.

The effect of this statute requires the joint action--that is, by initiative and approval--of the State Superintendent and of the State Board to effect a sale.

Very truly yours

APPROVED JUL 28, 1945  
/s/ Grover Sellers  
FIRST ASSISTANT  
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

By /s/ Ocie Speer  
Ocie Speer, Assistant

APPROVED: OPINION COMMITTEE  
BY: BMB, CHAIRMAN

OS:MR:WB