



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

0-1-3-83-
GERALD C. MANN
ATTORNEY GENERAL

State Board of Education
Austin, Texas

Dear Sir:

Attention: Hon. P. H. Stevenson, President

Opinion Number 3-5585

Re: Does the State Board of Education
have the legal authority to adopt
two textbooks on Spanish for each
of grades 6, 7 and 8?

Your letter of August 29, 1943, advises that the State Board of Education has issued a call for bids on "A textbook on Spanish for each of grades 3, 4 and 5; two textbooks on Spanish for each of grades 6, 7 and 8," under the provisions of Chapter 48, Acts of the Regular Session of the 47th Legislature (Art. 2911a, Vernon's Ann.). The statute cited provides:

"Section 1. The Board of Trustees of Independent and Common School Districts in this State shall have the power to designate certain grades of the elementary schools in their respective districts and to designate certain grades or sections of grades above the second grade in such schools in which the teaching of the Spanish language may be a part of the curriculum.

"Section 2. The State Board of Education is hereby authorized and empowered and directed to purchase text books for the teaching of the Spanish language in such grades or sections of grades so designated by said Board of Trustees, and to distribute such books without cost to the pupils.

State Board of Education, page #2

"Section 3. * * *The manner and condition of selecting, purchasing and distributing the textbooks authorized by this Act shall be the same as now provided with respect to free text books generally by Title 49, Chapter 16 of the 1925 Revised Civil Statutes of the State of Texas, as amended to the effective date of this Act.

You submit the following inquiries:

- "1. Does the State Board of Education have the legal authority to adopt two textbooks on Spanish for each of grades 6,7 and 8?
- "2. Should you answer the foregoing question in the affirmative, then please advise if there is any limit upon the number of textbooks on Spanish the State Board of Education may adopt for each of grades 3,4,5,6,7 and 8?"

The only limitations placed by Chapter 98, supra, upon the Board's authority to adopt Elementary Spanish textbooks above the second grade are: First, that they shall be for the teaching of Spanish in those grades above the second grade of the several independent or common school districts as may be designated by the Board of Trustees; and second, that the manner and condition of selecting, purchasing and distributing such books shall be the same as provided with respect to free textbooks generally by Title 49, Ch. 16 of the 1925 Revised Civil Statutes of Texas as amended to the effective date of Chapter 98.

Examination of the statutes embraced in Title 49 discloses no limitation which would prohibit the Board from contracting for an advanced textbook in Spanish and an elementary book in Spanish for the same grade to be used at the same time

State Board of Education, page #5

in different elementary schools. Article 2843, as amended by Chapter 827, Acts of the Regular Session of the 47th Legislature, provides for the selection and adoption by the State Board of Education of a uniform system of textbooks for the elementary grades of the public school system in the subjects and branches of study named therein. Article 2843 does not authorize adoption of a uniform system of textbooks in Spanish for the elementary grades, but provides only that "nothing in this Act shall be construed to prevent the teaching of * * * Spanish * * * in any of the public schools."

In the enactment of Chapter 98, supra, the 47th Legislature did not prescribe a uniform system of textbooks in Spanish for the elementary grades above the second grade, but directed the State Board to select and purchase textbooks for instruction in Spanish in such of those grades or sections of grades as might be designated by the local Boards of Trustees of Common and Independent School Districts. Since it is within the discretion of the local boards to designate that instruction shall be given in all grades between the third and eighth grades, under Section 1 of Chapter 98, supra, it follows that under Section 2 of the Act the State Board of Education is empowered to select suitable textbooks for instruction of Spanish in those grades. But the local school board may determine under the authority of Section 1 of the Act that instruction in Spanish shall be given in its particular district in grades six, seven and eight. Obviously, a beginner's textbook in Spanish designed for use in the third grade might not be suitable as a beginner's textbook for the sixth grade level or vice versa; and further, a textbook designed for instruction of sixth grade pupils who previously had studied Spanish beginning in the third grade, hardly would be suitable also as beginner's textbook in the sixth grade.

Since the Act under consideration empowers the local boards of trustees to determine the grade placement of instruction in Spanish in the elementary grades above the second, and since the Legislature has not authorized or prescribed a uniform system of textbooks therefor, the State Board of Education has authority under Section 2 of the Act to select, purchase and

State Board of Education, page 14

Distribute such textbooks as in the exercise of sound discretion it determines are necessary for the teaching of Spanish in the grades of the elementary schools as designated by the Boards of Trustees of such schools.

In answer to your inquiries, therefore, you are advised that the Legislature has vested in the State Board of Education authority to adopt two or more textbooks in Spanish for each of the grades from the third through the eighth, if such books are necessary for the teaching of Spanish in such of those grades in the public schools as may be designated by the boards of trustees of such schools.

APPROVED SEP 4, 1943

W. B. Archibald

SECRETARY GENERAL OF TEXAS

Very truly yours

ATTORNEY GENERAL OF TEXAS

Gaynor Kendall
 Gaynor Kendall
 Assistant

62-2

