



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable Mace Stewart, President  
State Board of Education  
Austin, Texas

Dear Sir:

Opinion No. 0-6657

Re: Whether State Board of  
Education may purchase  
and distribute recorded  
Spanish Exercises and  
pay for same out of the  
free Textbook Fund.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"The Forty-Ninth Legislature which adjourned recently enacted S. B. No. 328 with sufficient votes to make it immediately effective. This bill was filed without the Governor's signature with the Secretary of State on June 4th, so that it is now operative as a statute. The essential part of the bill reads as follows:

'The State Board of Education is hereby authorized and empowered and directed to purchase textbooks and recorded Spanish exercises 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.' The bill is an amendment of Section 2 of Article 2911a (Acts of 1941, Forty-Seventh Legislature).

"Earlier this week at a meeting of the State Board of Education, a committee of citizens of the State appeared urging the immediate adoption of a set of recorded Spanish exercises for use in the public schools of Texas. However, the

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State Board of Education was not sure that recorded Spanish exercises could be classified as textbooks. Since the constitutional provision stipulates that free textbooks are to be supplied as set forth in Section 3 of Article 7 of the Constitution in these words, 'and it shall be 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', the State Board desires your interpretation of the law with respect to this problem. Please supply us with a ruling on the following questions:

"(1) May the State Board of Education purchase and distribute recorded Spanish exercises and pay for them out of the Free Textbook Fund?

"(2) If you answer the foregoing in the affirmative, then is the Board of Education limited to the purchase of recorded Spanish exercises, or may it purchase other recordings and teaching aids?

"Those portions of the statutes dealing with the purchase and distribution of free textbooks (Articles 2842-2876j) have been examined, and in no instance have we found the use of any terms other than those of 'books, texts, and textbooks' having been listed as commodities to be supplied and paid for out of the Textbook Fund. Moreover, a specific list is supplied in Articles 2843, 2844, 2844a and 2911a of those subjects for which textbooks are to be furnished. Moreover, Article 2876j implies that the plan is to be considered as a complete plan for the adoption, purchase, distribution and use of free textbooks to be supplied to the public free schools of the state."

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Article 7, Section 3, Constitution of Texas, reads in part as follows:

" . . . and it shall be the duty of the State Board of Education 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 of this State; . . ."

Article 2911a, Vernon's Annotated Texas Civil Statutes (Section 2 of which was later amended by S. B. 328, 49th Legislature of Texas, infra) reads as follows:

"Spanish in elementary grades, teaching of; text books

"Sec. 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.

"Sec. 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.

"Sec. 3. Nothing in this Act shall be construed to restrict in any wise the teaching of the Spanish or other modern language in the public high schools of this State or the supplying of free text books therefor, as now authorized by law. The manner and condition of selecting, purchasing and distributing the text books 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. Acts 1941, 47th Leg. p. 125 ch. 98."

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Senate Bill 328, 49th Legislature of Texas,  
reads as follows:

"S. B. No. 328

"AN ACT

amending Section 2 of Article 2911a (Acts 1941, 47th Legislature) authorizing the State Board of Education to purchase text books and recorded Spanish exercises for teaching the Spanish language in such grades or sections of grades as may be designated by Board of Trustees in Independent and Common School Districts of the state; and declaring an emergency.

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

"Section 1. Section 2 of Article 2911a (Acts 1941, 47th Legislature) be amended so as to hereafter read as follows:

"Section 2. The State Board of Education is hereby authorized and empowered and directed to purchase text books and recorded Spanish exercises 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."

"Sec. 2. The fact that elementary Spanish text books alone are not entirely suitable for giving instructions in Spanish in the elementary grades, and because it has been found that oral expression of the Spanish language is the most effective method of teaching it to children, and because elementary pupils should be taught to speak Spanish effectively and naturally; and because of the further fact that suitable recorded Spanish exercises have recently been developed for Texas schools and are now available; create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted."

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Opinion No. 0-2400 of this department defines the term "textbook". We quote from said opinion as follows:

"The Legislature has not defined the word 'text-books' in this statute, and therefore we believe it was intended in the sense it is ordinarily used. In the case of T. & P. Ry. Co. v. Railroad Commission of Texas, 105 Tex. 386, 150 S. W. 878, the Supreme Court of Texas said:

"Words in common use when used by the Legislature in a statute are to be understood as intended to express the sense in which they are ordinarily used. Lewis, Const. Stat. Vol. 2 p. 654 | 358."

"The word 'textbook' has a well defined meaning. It is defined in Webster's New International Dictionary, 2nd Ed. Unabridged, as follows:

"Originally, a book on which a teacher lectures or comments; hence, any manual of instruction; a book containing a presentation of the principles of a subject, intended to be studied by the pupil and used as a basis of instruction by the teacher."

"The only appellate court case we have found that deals with the meaning of the word 'textbooks' is the case of School District of Ferndale vs. School District of Conemaugh Township, 326 Pa. 141, 191 A. 611, which goes farther than we are going in this opinion and holds that 'textbooks' include all 'books which must be studied to complete text-book work.'"

Clearly, a recorded Spanish exercise is not a "text-book",

The constitutional authorization for the purchase and

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free distribution of textbooks for the use of the school children of this State will not authorize the purchase and free distribution of things other than textbooks.

We therefore answer your first question in the negative. Having so answered, it becomes unnecessary to answer your second question.

Very truly yours

ATTORNEY GENERAL OF TEXAS

*Wm. J. Panning*

By

Wm. J. Panning  
Assistant

WJP:BT

APPROVED JUN 26 1945  
*[Signature]*  
FIRST ASSISTANT  
ATTORNEY GENERAL

THIS OPINION  
CONSIDERED AND  
APPROVED IN  
LIMITED  
CONFERENCE

APPROVED  
OPINION  
COMMITTEE  
BY *BWTS*  
CHAIRMAN