



OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

March 27, 1948

FAGAN DICKSON
FIRST ASSISTANT

Hon. L. A. Woods
State Superintendent
Public Instruction
Department of Education
Austin, Texas

Attention: Hon. H.A. Glass

Opinion No. V-528

Re: Authority of Board of
Education to accept
publisher's gift of
copies of a fictional
work on the early his-
tory of a religious
sect for distribution
to the public schools.

Dear Sir:

We refer to your letter of recent date which
reads as follows:

"At the January meeting of the State Board of Education the Board was offered as a gift by a publisher for distribution to the public schools of the State 10,000 copies of a book entitled FRIENDLY PERSUASION. The offer was made contingent upon the Board's paying the freight on the 10,000 copies from New York City to the State Textbook Depository in Austin, Texas, from which point the book could be distributed to local schools. The book is in no sense a textbook that could be used as the basis for a course of instruction. It is a fictional story dealing with the early life and customs of the Quakers in this country.

"In considering this matter, a question arose to the Board's authority to accept such an offer and to provide a book for use in the public schools of the state that had not been listed or provided for by the legislature. Moreover, there was a question of the payment of freight from New York City to the State Textbook Depository in Austin. Accordingly the Board requested that your opinion be solicited with respect to its authority on the foregoing points. . .

"(1) Does the State Board of Education have authority to accept as a gift from a publishing company a book that does not meet the requirements for a textbook in any of the subject fields prescribed by the legislature and which has not been regularly adopted and placed under contract according to the provisions as set out in the Articles of the Free Textbook Law?

"(2) Is the State Board of Education authorized to pay the freight from New York City to Austin, Texas on such a book as the one described in Question #1?"

Article 2842, V. C. S., provides, in part:

"It shall be the duty of the State Board of Education . . . to meet annually . . . and at such other times as it may be called together by the Chairman, for the purpose of considering the advisability of continuing or discontinuing, at the expiration of each current contract, any or all of the State adopted textbooks in use in the public schools of Texas, and of making such adoptions as are provided for in Articles 2843, 2844 and 2844a, . . . as amended . . ." (Emphasis ours)

Thus, the basal and supplementary textbooks which the Board of Education may adopt for use in and distribution in the Public Free Schools of this State are enumerated or listed in Articles 2843, 2844 and 2844a, as amended.

Article 2843 further provides:

". . . The State Board of Education shall have authority to select and adopt uniform textbooks to be used in the Public Free Schools of Texas, and the books so selected and adopted . . . shall include and be limited to textbooks on the following subjects: spelling, reading, (etc) . . . provided that none of such books shall contain anything of a partisan or sectarian character, . . ." (Emphasis ours)

Article 2860 provides:

"The books adopted by the Commission (State Board of Education) under the provisions of this law (Articles 2842 - 2876j, inclusive, as amended, V. C. S.) shall be introduced and used as textbooks to the exclusion of all others in Public Free Schools of this State . . ." (Words in parenthesis added)

We are advised in your letter that the book offered as a gift by a publisher for distribution to the public schools is in no sense a textbook that could be used as the basis for a course of instruction. The authority of the Board of Education being limited under the provisions of the textbook laws to the selection, adoption, purchase and distribution of statutory textbooks designated in Articles 2843, 2844 and 2844a, as amended, it would follow that the Board is without authority to adopt or cause to be distributed in the public schools of this State a book, such as the one offered, which has been determined to be in no sense a textbook or which could not be designated as a statutory textbook. The Board having no authority to adopt or to distribute such a book, your second question is answered also in the negative.

SUMMARY

The State Board of Education may not accept, adopt, and cause to be distributed to the public free schools of Texas, a book that does not come within the requirement or subject fields prescribed in the State textbook laws. Consequently, the Board may not use State textbook funds for the cost of transportation or distribution of same.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

APPROVED:

Price Daniel
ATTORNEY GENERAL

CEO:mv

By *Chester E. Ollison*
Chester E. Ollison
Assistant