



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

May 8, 1975

The Honorable L. DeWitt Hale
Chairman, Committee of the Whole
House
House of Representatives
Capitol Building
Austin, Texas 78767

Letter Advisory No. 102

Re: Constitutionality of Senate
Bill 559

Dear Representative Hale:

You have requested our opinion concerning whether Senate Bill No. 559 violates the Texas Constitution. The Bill provides in pertinent part:

Section 1. There is hereby appropriated for Fiscal Year 1975 to the State Board of Education the unexpended and unappropriated balances in the Textbook Fund No. 3 to pay those contracted textbook obligations contracted for in the fiscal year ending August 31, 1975, which are above the limitations set out in House Bill 139, Chapter 659, Acts of the 63rd Legislature, Regular Session, 1973.

Sec. 2. The State Board of Education shall not expend more than \$2.8 million for the purposes set out above.

The appropriation for the current biennium provides:

28. Other State Fund Allocations:

a. Available School Fund, estimated	\$330,358,000	\$343,571,000
b. State Textbook Fund (excluding cost of Agency Administration above)	26,119,862	20,268,006

c. General Revenue Fund School Program	3,888,000	4,320,000
d. General Revenue Fund Supplemental Salary Aid	5,587,000	

For the purposes provided by law there is appropriated for the biennium ending August 31, 1975, to the State Board of Education, all income to and balances in the Available School Fund and the State Textbook Fund, except as otherwise appropriated by this Legislature, to be expended and distributed in accordance with the laws of this State. . . .

Acts 1973, 63rd Leg., R.S. ch. 659, p. 2070.

Item 28 is entitled "Other State Fund Allocations" (emphasis added). It has been held that "there is a very decided difference between an appropriation and an allocation," State v. District Court of First Judicial District, 78 P.2d 937 (Sup. Mont. 1938). Generally, an allocation is an apportioning of funds, whereas an appropriation is an authorization to spend those funds. In Attorney General Opinion H-507 (1975) we held Item 28b to constitute an appropriation, for we believed the intent of the Legislature as expressed in the concurrent resolution deleting the word "estimated" from Item 28b was to "appropriate a certain sum" for textbooks. Acts 1973, 63rd Leg., R.S., ch. 654, S.C.R. No. 119, p. 2301. In that opinion we did not discuss the distinction between allocations and appropriations. The distinction is significant, for the Constitution empowers the Board of Education to allocate a sufficient sum from the Available School Fund to the Textbook Fund for the provision of textbooks. Tex. Const., art. 7, sec. 3. However, in our view money may be expended from the Textbook Fund only pursuant to a specific appropriation. Tex. Const., art. 8, sec. 6. Compare Tex. Const. art. 7, sec. 5. Thus the Legislature's power in this instance is to appropriate the Textbook Fund rather than to determine its composition. See also Education Code, §12.02. In our opinion the legislative intent in Item 28b was to make such an appropriation of the Textbook Fund notwithstanding the use of the word "allocation."

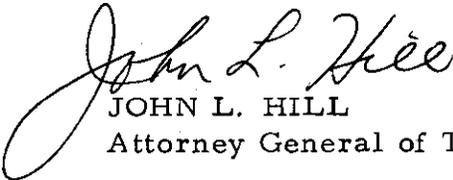
In Attorney General Opinion H-507 (1975) we held that the Legislature could constitutionally limit appropriations from the Textbook Fund. See also Attorney General Opinion O-561 (1939). While we noted the deletion of the word "estimated" from Item 28b, we did not consider the textual appropriation of "all income to and balances in . . . the State Textbook Fund, except as otherwise appropriated by this Legislature" which directly follows Item 28. The meaning of this further appropriation is not clear, as it may be read as appropriating the entire Textbook Fund as constituted by the Board of Education. We believe that at a minimum its effect was to appropriate the balance on hand at the beginning of the biennium as well as the unexpended balance from the 1973-74 fiscal year, for these sums are not "otherwise appropriated." It is therefore our opinion that the 63rd Legislature appropriated (a) \$26,119,862 from the Textbook Fund for the 1973-74 fiscal year, (b) \$20,268,006 from the Fund for the 1974-75 fiscal year, (c) the balance in the Textbook Fund remaining from the previous biennium and (d) any unexpended balance remaining from the 1973-74 appropriation. We understand these balances to be 4.2 million and 2.0 million respectively. The entire appropriation available for use during the 1974-75 fiscal year was therefore approximately \$26.5 million. This amount is and has been available for the purchase of textbooks. Attorney General Opinion H-507 (1975) indicated that the 1974-75 appropriation was only \$20,268,006 but the question in that opinion involved only the deletion of the word "estimated" from the amount appropriated, while the question of appropriation of unexpended balances was not raised. To the extent that language in Attorney General Opinion H-507 (1975) implies that the balances in the Textbook Fund are not available for expenditure under the appropriation language chosen by the Legislature, that language is incorrect. It is our understanding that the State Board of Education has purchased textbooks in the amount of approximately \$23,068,000, and it is therefore apparent that the Board's expenditures for textbooks are well within its appropriation.

Senate Bill No. 559 would appropriate the unexpended and unappropriated balances in the Textbook Fund to pay those contracted obligations which are above the limitations set out in Item 28, *supra*. In addition, the Bill would limit expenditures for this purpose to 2.8 million dollars.

Section 1 of the Bill would have no effect. There are presently no contracted obligations above the appropriation for the 1974-75 fiscal year. In addition, the 63rd Legislature appropriated the balances in the Fund at the beginning of the biennium and those remaining from the \$26,119,862. Since, in our understanding, these amounts represent the entire balance in the Fund, there are no unexpended and unappropriated balances at present.

Section 2 of Senate Bill No. 559 would limit the expenditures of the Board for the purposes provided in section 1 to 2.8 million dollars. While the Legislature may limit expenditures from the Textbook Fund, section 2, as written, would have no effect, for there will be no expenditures for the purpose provided in section 1, there being no obligations beyond the amount appropriated by the 63rd Legislature.

Very truly yours,


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APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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