

## **Opinion No. 67-64**

April 25, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. Leonard J. DeLayo Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

### **QUESTION**

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1. Does HB 300 by use of the words, "text books" inhibit use of the textbooks fund monies for the purchase and distribution of supplemental educational materials referred to in Section 77-13-2 (D)?
2. Under HB 300, is the State Board Textbook Division authorized to pay transportation costs for transporting text books and supplemental educational materials from text book funds?

#### **CONCLUSIONS**

1. No.
2. Yes.

### **OPINION**

#### **{\*93} ANALYSIS**

The 1967 General Appropriations Act (HB 300) appropriates to the State Board of Education for the 56th Fiscal Year \$ 2,036,000 for free textbooks and states that the money appropriated shall be used only for free textbooks.

Actually, this in itself is no change from prior general appropriable acts. For example, the General Appropriation Act for the 55th Fiscal Year provided \$ 1,736,000 for free textbooks. It has been a long standing administrative practice to treat the term textbooks as including other instructional materials and transportation costs for books and such other instructional materials.

It is our opinion that the additional language in the textbook portion of the 1967 General Appropriation Act was for the purpose of furnishing the Department of Finance and Administration with up-to-date information on the textbook fund. We believe this is still true because the same Legislative Session (1967) enacted a complete codification and revision of the public school laws. This codification and revision was presented by the

Interim School Study Committee. This Bill (SB-13) is a comprehensive School Code of some 207 printed pages and a portion thereof deals at length with textbooks. Section 77-13-1 through 77-13-14 is denominated the "School Textbook Law". Section 77-13-2 defines the book fund as the free textbook fund. It defines instructional materials as "basic school textbooks and supplementary instructional material adopted by the state board pursuant to the School Textbook Law."

Section 77-13-5 provides that "the State Treasurer shall establish a fund to be known as the 'free textbook fund'." Section B thereof provides as follows:

"The book fund shall be used for the purpose of paying for the cost of purchasing instructional material pursuant to the School Textbook Law. Transportation charges for the delivery of instructional material to a school district, a state institution or a private school and emergency expenses incurred in providing instructional material to students may be included as a cost of purchasing instructional material."

Section 77-13-7 (C) provides that:

"Any school district, state institution or private school receiving instructional material {\*94} pursuant to the School Textbook Law is responsible for distribution of the instructional material for use by eligible students and for the safekeeping of the instructional material."

Furthermore, instructional materials are mentioned throughout the new School Code.

We do not believe that the Legislature intended to change the traditional use of the term textbooks which has included instructional materials and transportation costs.

Under the "Pari Materia" rule of construction, in construing a particular statute, all statutes relating to the same general purpose and passed by the Legislature should be construed together as if they were only one. **Torres v. Grant**, 63 N.M. 196, 314 P. 2d 712.

All laws enacted at the same session of the Legislature relating to the same subject matter are in "pari materia" and are to be considered and construed together as if they were different sections of one act. **Mays v. Bassett**, 17 N.M. 193, 125 Pac. 609; **State ex rel Red River Valley Company v. District Court of 4th Judicial District of New Mexico**, 39 N.M. 523, 51 P. 2d 239; **State ex rel State Park and Recreation Commission v. New Mexico State Authority**, 76 N.M. 1, 411 P. 2d 984.

It is to be noted that in the 55th Fiscal Year only \$ 1,736,000 was appropriated for free textbooks -- whereas for the 56th Fiscal Year \$ 2,036,000 was appropriated for free textbooks. In our view such a substantial increase would not have been made if the Legislature had intended to change the traditional use of the term textbooks or eliminate therefrom instructional materials and transportation costs.

A somewhat similar question was presented to the Court in the case of **Affholder v. State**, Neb. 70 N.W. 544. The Textbook Act being challenged in that case provided that "the provisions of this act shall include all school supplies." The title of the Act was, "An act to provide cheaper textbooks and for district ownership of the same." The challenge was based upon the contention that the word "textbook" used in the title was not sufficiently broad to include school supplies. The Court disposed of this contention in the following language:

". . . In other words, it is insisted that the act in question contains two subjects, viz. 'textbooks' which is provided for in the title of the act, and 'school supplies,' which is not mentioned in the title of the act.

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The general object of the act under consideration was to require school districts, at public expense, to furnish textbooks for the use of the children attending school. This object is clearly expressed in the title of the act, and the question is whether the words 'school supplies,' found in the tenth section of the act, are embraced within the meaning of the term 'text-books' 'School supplies,' as used in this act, means maps, charts, globes, and other apparatus necessary for use in schools, and we think that a chart or a map or a globe is as much a text-book as a reader or speller, within the purposes and intention of the act under consideration. . . .

We do not think the term 'text-books' should be given a technical meaning, but that it is comprehensive enough to and does include globes, maps, charts, ink, pens, paper, etc., and all other apparatus and appliances which are proper to be used in the schools in instructing the youth; and we conclude, therefore, that the act under consideration is not broader, than its title, and that the term 'school supplies,' found in the tenth section of {\*95} the act, is not foreign to the term 'text-books' found in the title of the act, but is germane to, and comprehended and included within, the term 'text-books.'" Accord: **Parker v. Board of Education**, 12 Ohio L.J. 186; see 17 A.L.R. 299.

Construing the 1967 General Appropriation Act together with the 1967 School Code, we are of the opinion that the term "textbooks" in the former includes instructional materials as defined in Section 77-13-2, supra, of the School Code. We would add that caution should be exercised by the State Board of Education in deciding what are legitimate supplementary instructional materials.

By: Oliver E. Payne

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