

Opinion No. 13-1000

March 12, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Alvan N. White, State Superintendent of Public Instruction, and Secretary of State Board of Education, Santa Fe, New Mexico.

SCHOOLS.

Opinion as to form of resolution of State Board of Education relative to text book of Dr. Frank H. H. Roberts.

OPINION

{*165} I have your letter of yesterday in which you set out copy of a resolution of the State Board of Education adopted January 25, 1913, relative to preparation by Dr. Frank H. H. Roberts of a civil government and history of New Mexico with reference to the provisions of Chapter 41 of the Laws of 1912, and you ask whether the resolution is in keeping with the law and if the board was fully authorized to enter into such an agreement with Dr. Roberts.

Reference to the statute shows that all the State Board of Education is directed or authorized to do is to adopt text books on the subject of the history and civics of the State of New Mexico, and to fix the price at which they shall be sold, not to exceed \$ 1.00 per volume. The State Board has not, so far as is disclosed by your letter, fixed the price at which the text book or text books shall be sold and probably that would be impracticable until the book is actually printed and bound. The only question for consideration is as to whether the board has adopted any text books, that being the other duty or power given to it.

The resolution of the board to be considered in this connection reads as follows:

"That Dr. Frank H. H. Roberts be instructed to proceed forthwith to prepare in manuscript from a Civil Government and History of New Mexico and submit duplicate proofs from the publishers, said proofs to be carefully examined by the Department of Education and suggestions made thereon; and further that upon approval of such proofs by the State Department of Education, said book shall proceed at once to be published and said book shall be sold at a price not to exceed one dollar, in accordance with Chapter 41, Laws of 1912."

I am of opinion that the proper construction to be placed upon this resolution, although it is not as full and explicit as it ought to have been, is that the Board adopted the text book to be prepared by Dr. Roberts and that the provision as to the proofs being examined by your department and that upon the approval of your department the book

should at once be published, and mere steps in the making {^{*166}} of the book and getting it ready for publication, which does not impair the fact of the adoption or delay it for any further action by the Board of Education. It is quite clear that the board did not contemplate the necessity of any further action on its part, and, while the resolution does not say in so many words that the book is adopted, yet I cannot see how any practical meaning can be given to it which does not include the inference of the intention of the board to make such adoption.

The adoption of a text book or text books being clearly within the power and also a duty of the board, I believe that its action was in keeping with the law.