Opinion No. 32-416

March 16, 1932

BY: E. K. Neumann, Attorney General

TO: Mrs. Georgia L. Lusk, Supt. of Public Instruction, Santa Fe, New Mexico.

*{*149}* In your letter of March 16th, you wish to know the opinion of this office as to whether or not it is possible to make changes in text books in any year so long as changes are not made in more than two subjects, and in this connection you direct our attention to the laws of 1923 and the laws of 1925 relative to this matter.

Section 105, Chapter 148 of the Laws of 1923, and which now appears in the 1929 Compilation of Laws as Section 120-105, provides in part as follows:

"The state board of education shall have the following powers: (a) To adopt a system of school books for use in the first eight grades of the public schools and in the name of the state to contract with the publishers of such books for the purchase and delivery thereof, under such regulations as said board may prescribe. Provided, however, that on the adoption of a uniform series of text books, such series shall not be changed during the period of six years next succeeding such adoption, and no adoption shall be made prior to June 15, 1927."

In 1925 the Legislature by Chapter 75 of the Session Laws of that year enacted a new, separate and distinct law containing two sections, the latter section being a repealing clause of all laws and parts of laws in conflict therewith.

Section 1 of said act and which now appears in our Compilation as Section 120-1601 provides:

"The state board of education shall have the power to adopt a system of school books for use in the first eight grades of the public schools, and in the name of the state to contract with the publishers of such books for the purchase and delivery thereof, under such regulations as said board may prescribe. Provided, however, that from and after the adoption of a system of school books as herein provided, changes may be made by the said board in such system or series of books, in not to exceed two (2) school subjects in any one year; and Provided further, that said board shall not make any changes in the system or series of the text books now in use, prior to January 15, 1927."

There can be no question but that this later act repealed that part of the 1923 Law above quoted and gave the State Board of Education the right to make changes in the system adopted in not to exceed two school subjects in any one year.

However, in 1931, the Legislature passed Chapter 119, of the Session Laws of 1931, said act being amendatory of the 1923 Law.

The first paragraph of this amendatory law is in exactly the same language as the 1923 Law, except that in the amendatory act of 1931, the following language was added:

"And provided that this adoption shall not apply to the seventh and eighth grades in a school district having a junior high school approved by the State Board of Education."

Under this state of the law we are confronted with this question; "is the 1925 act now in force and can the State Board of Education make a change in two school subjects each year, or is the 1931 act now the law and has the 1925 act been repealed by implication?"

In 25 R. C. L. at page 906, Section 157, we find this language:

"Most of the older and some of the more recent cases hold that such an amendatory act, or the amendment of a repealed section, is a *{*150}* nullity. But the decided weight of authority and the better opinion is that an amendatory statute is not invalid, though it purports to amend a statute which had previously been amended, or for any reason had been held invalid."

We find that this majority rule has been followed also in cases of repealed statutes as well as amended statutes, and in Worthington v. District Court, 132 P. 230, wherein the court cited People v. Canvassers, 143 N. Y. 84; 37 N. E. 649, an act of the New York Legislature of 1883 purported to amend Section 160 of an act of 1856. It was contended that the 1856 Law had been repealed by an act of 1864. It is to be noted that the facts in the case cited are exactly on all fours with the matter under consideration.

The court concluded that the amendatory act was valid and in force in this language:

"The enactment of this law is put into the form of an amendment of a law, which was standing upon the statute books, and whether that earlier law, by force of subsequent legislation, had become inoperative is wholly immaterial. The only question is: Has the Legislature, in the enactment complained of, expressed its purpose intelligently and provided fully upon the subject? If it has, then its act is valid and must be upheld. That is the case here. The act of 1883 contains all that is provided for in the particular section of the act of 1856, and gives full power to the boards of supervisors with respect to the formation of school commissioners' districts. A law thus explicit and complete may not be disregarded or invalidated because of a possible mistake of the Legislature with respect to the existence of the statute in amendment of which the act is passed. It is an enactment of a law, in any view."

Also in the Worthington case, supra, the court quoted from the Supreme Court of Massachusetts in its opinion in Commonwealth v. Kenneson, 143 Mass. 419, 9 N. E. 763, this language:

"The defendant contends that St. 1886, c. 318, Sec. 2, is inoperative, because it purports to be an amendment of the Pub. Sts. c. 57, Secs. 5, 9, and he says that said section 9 was repealed by St. 1885, c. 352, Sec. 6. The argument is that an amendment of a repealed statute is a nullity. * * * The intention of the Legislature is plain that, after St. 1885, c. 352, took effect, instead of Pub. Sts. c. 57, Sec. 9 the sixth section of St. 1885, c. 352 should be in force, and that after St. 1886, c. 318, took effect, section 2 of this statute should be in force, instead of section 6 of St. 1885, c. 352. The sections in each statute are complete in themselves, and, being substitutes for each other, stand like independent enactments. The only defect in the statue is that St. 1886, c. 318, Sec. 2, refers to Pub. Sts. c. 57, Sec. 9, and not to this section as amended; but the intention is evident."

Section 18 of Article 4 of our State Constitution, provides:

"No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but each section thereof as revised, amended or extended shall be set out in full."

Certainly the amendatory act of 1931 has complied with this requirement of our constitution, and from the majority rule as announced in 25 R. C. L., supra, and from the operations in the foregoing cases, we are forced to conclude as follows:

1. That the 1923 act was repealed in so far as the adoption of text books is concerned by the 1925 act and from the effective date of the 1925 act until the effective date of the 1931 act, the State Board of Education had the power to make changes in its adoption system of text books in not to exceed two school subjects in any one year.

2. That by the act of 1931, the 1923 act was reenacted and revived and placed in force together with the proviso hereinbefore quoted and added thereto.

3. That the 1925 act was repealed by implication by the 1931 act.

*{*151}* It is, therefore, our opinion that the State Board of Education is bound by the provisions of Chapter 119 of the Laws of 1931, and that under this act no change can be made within six years after the adoption of a uniform system of text books and no subjects can be changed as formerly provided in the 1925 Law.

By Frank H. Patton,

Asst. Attorney General