

## Opinion No. 38-1958

May 23, 1938

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. H. R. Rodgers Superintendent of Public Instruction Santa Fe, New Mexico

{\*236} I have considered your letter of May 23rd wherein you have cited Section 1, Chapter 119, Laws of 1931, which in part defines the powers of the State Board of Education in this language:

"To purchase and loan textbooks to all pupils in all public day and evening schools of all elementary, junior high and high school grades."

and Section 1, Chapter 112, Session Laws of 1933, which provides:

"The State Board of Education, in accordance with the following provisions of this act, shall contract with and order from the publisher or publishers textbooks for use by the school children in this state as now is or hereafter may be required by law."

which section also contains the following provision:

"The money necessary to furnish free textbooks for all children in the schools of the State of New Mexico, from the first to eighth grades inclusive, and with the expense of distribution and accounting shall be paid out of the Free Text Book Fund, as is now or may hereafter be created for such purposes."

Also in your letter you cite Section 2 of said Chapter 112 of the Laws of 1933 which provides in part that "contracts shall be entered into for books from the first grade to the eighth grade inclusive."

The first question presented is whether or not the 1933 law making specific mention of the free textbooks for the first to the eighth {\*237} grades inclusive repeals the 1931 law which grants the power to the State Board of Education to purchase and loan textbooks not only to elementary but to junior high and high school grades.

This power is granted in accordance with the provisions of subdivision 2 of said Section 1 which says "if and when the legislature shall create a state school building, text book and rural aid fund or make any funds available for such purposes."

In other words, the department has the power under the 1931 law to provide such free textbooks to elementary, junior high and high school grades when funds for such purposes have been made available by law.

I also as a matter of fact may state that under the present school set-up, junior high work is the work of the seventh and eighth grades.

This being true, the only apparent conflict in the two statutes would be that portion in the 1931 law which has application to high school grades.

It is a universally accepted fact that courts do not favor repeals by implication.

Also we have a universal rule of law, and which is generally accepted by the courts, that statutes upon the same subject matter must be interpreted harmoniously if possible in order that effect may be given to both acts and this rule is followed unless the conflict between the two acts is so patent that there is no possibility of arriving at a harmonious construction.

The enumerated powers of the State Board of Education were originally set forth in Chapter 148 of the Laws of 1923 and at that time such enumeration contained no provision for the State Board of Education to furnish free textbooks. It was to specifically cure this deficiency in the statute that the 1931 law was adopted.

The 1933 law is amendatory of the old 1929 law which provided for free textbooks for use in the public schools in this state, the cost of which, together with the expense of distribution and accounting, was to be paid out of the common school fund of the state.

You will recall that this old law was held to be unconstitutional, the use of the fund constituting a diversion of constitutional monies.

I do not believe that by the enactment of Chapter 112 of the 1933 law that the Legislature intended to deprive the State Board of Education of the power to furnish free textbooks to high school grades, and apparently under both the 1931 and the 1933 law all free textbooks are to be paid for from the same free textbook fund "if and when created."

I do believe, however, that the Legislature by the 1933 statute manifested its intention to provide first for free textbooks from the first to the eighth grades inclusive and that upon the completion of this program the State Board of Education should have the power to furnish free textbooks also for the highschool grades.

As a matter of extrinsic evidence I am informed upon good authority that the most expensive grades in the schools are the seventh and eighth grades and while ordinarily we do not consider extrinsic evidence in interpretation of statutes, nevertheless I call this fact to your attention for the information of the State Board of Education and it is possible that the Legislature determined this question before it enacted said Chapter 112 of the Laws of 1933. At any rate, we are permitted to assume that the Legislature did make final determination of all pertinent facts before enacting said statute.

In further support of my statement that there is no conflict between the two acts, I wish to point {\*238} out that a free textbook fund by Chapter 138 was created by the same session of the Legislature which enacted Chapter 112. Therefore, the State Board of Education had the full power to furnish free textbooks to the high school grades when the 1933 law was enacted and I am unable to see where by such enactment of the 1933 law any intention upon the part of the Legislature is shown to deprive the State Board of Education of the power which it possessed by legislative enactment at that time.

Trusting the foregoing has sufficiently answered your inquiry, I am,