

Opinion No. 44-4572

September 1, 1944

BY: C. C. McCULLOH, Attorney General

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

We have your letter of August 31, 1944 wherein you state:

"The State Board of Education adopted these books, published by Ginn and Company, last June, with the idea that they were to be used by the Catholic schools."

You further state that the county superintendent of Rio Arriba county has placed an order for enough books for all the schools of his county. In view of this fact situation, you request an opinion of this office concerning whether or not you have the right to use these text books in the public schools. We call your attention to the provisions of Section 55-1701 of the New Mexico 1941 Compilation:

"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, * * *."

In view of the above section, your question can only be answered by determining what action the State Board of Education has taken in connection with the books which you refer to and whether or not the State Board has approved the use of such books in the public schools. Unless the State Board has specifically approved these books for the use of the public schools, they may not be furnished to the public schools until they are approved for such purpose.

It occurs to me, however, that your attention should be called to the provisions of Section 55-1102 of the New Mexico 1941 Compilation which should be considered by the State Board of Education in adopting school books for use in the public schools. This section provides:

"No teacher shall use any sectarian or denominational books in the schools or teach sectarian doctrine in the schools, and any teacher violating the provisions of this section shall be immediately discharged, his certificate to teach school revoked, and be forever barred from receiving any school moneys and employment in the public schools in the state. Provided that this section shall not be construed to interfere with the use of school buildings for other purposes authorized by the county board after school hours."

In view of this section, you should carefully study all books before adopting same to determine whether or not their usage would be prohibited by Section 55-1102 of the New Mexico 1941 Compilation.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE,

Asst. Atty. General