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Opinion No. 64-2
R-57
December 18, 1963

REQUESTED BY: W.W. DICK, SECRETARY
ARIZONA STATE BOARD OF EDUCATION

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: Does the State Board of Education have jurisdiction or authority to prevent the teaching of evolution in public schools in the State of Arizona ?

ANSWER: Yes. As limited in body of opinion.

The Constitution of the State of Arizona, Article XI, Section 2, provides that the general conduct and supervision of the public school system shall be vested in a State Board of Education, a State Superintendent of Public Instruction, County School Superintendents, and such governing boards for the State institutions as may be provided by law.

The powers and duties of a State Board of Education are set forth in Title 15, Chapter 1, Section 102, Arizona Revised Statutes. The enumerated powers and duties with which we are concerned in arriving at an answer to your question are:

"The State Board of Education shall:

...

12. Ascertain that the school laws are properly enforced.
13. Aid in the enforcement of laws relating to schools, health, compulsory education, child labor and child conservation.
14. Exercise general supervision over and regulate the conduct of the public school system.
15. Prescribe and enforce a course of study in the common schools.
16. Prescribe the subjects to be taught in all common schools.

- . . .
18. Prescribe text books for the common schools and shall prepare a list of three text books for each grade and each subject taught in the common schools for the selection by the school district of one book from such list for each student. The book so selected shall be purchased by the school district direct from the publisher as provided in this title. Text books selected pursuant to the provisions of this titled shall not changed during the next five years."

The Supreme Court of the State of Arizona has stated that the State Board of Education has only such powers as the Legislature may prescribe. Harkins v. School District #4, Maricopa County, 79 Ariz. 287, 288 P.2d 771.

In reviewing the powers of the Board as found in §15-102, A. R.S., we find that the Board may prescribe and enforce a course of study in the common schools; prescribe subjects to be taught in all common schools, and prescribe textbooks for the common schools. It is clear that within the sphere of these powers the State Board of Education in the exercise of its discretion may prevent the teaching of evolution or other topics. In other words, in prescribing the subjects to be taught in the common schools, the State Board of Education may prescribe the subjects which have no reference to evolution.

In addition, the State Board, in selecting the textbooks to be prescribed for the common schools, may elect, in its discretion, to select only those textbooks which are void of material on the topics of evolution. It should be noted, however, that §15-102(18) states that, "textbooks selected pursuant to the provisions of this title shall not be changed during the next five years." Therefore, the Board would be without authority to withdraw the use of any prescribed textbooks until after expiration of the time limit stated in the statute, or upon order of a court to suppress an objectionable textbook.

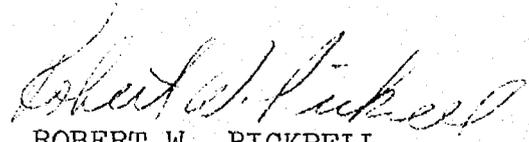
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The Arizona Legislature, in prescribing the powers of the State Board of Education, has not delegated authority to the Board to affirmatively act in preventing the teaching of any topic in the common schools of this State. However, under the Board's power to exercise general supervision over and regulate the conduct of the public school system and to aid in the enforcement of laws relating to schools, the Board may act to prevent the teaching of any subject that violated the Constitution of the United States or the Constitution or laws of the State of Arizona.

Whether or not the teaching of any specific subject or topic in the schools of Arizona violates the law or Constitutional rights of any citizen depends upon the facts and circumstances of each particular case. In addition, there could be a dispute as to what constitutes the teaching of evolution and whether or not what is being taught is actually the teaching in theory or fact that man descended from a lower order of animals.

Although the teaching of a particular subject in a given case may or may not be an infringement on the constitutional rights of a citizen, we must also be mindful that to prohibit the teaching of a particular subject which has long been accepted and adopted as a part of the curriculum might well infringe on a valuable right of others - the right to receive an education. Meyer v. State of Nebraska, 262 U.S. 390, 67 L.ed. 1042, 43 S. Ct. Rep. 625.

Where the question of infringement on constitutional rights is dependent on the facts and circumstances of a particular case, it is the opinion of the Attorney General that in fairness to all concerned, such decision should be resolved in an adversary proceeding by a court of competent jurisdiction and not by the State Board of Education.


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