

June 17, 1947

Mr. Rollah E. Aston, Director,
State Textbook Service,
Department of Public Instruction,
State House,
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Aston:

We have your inquiry of June 17, 1947, regarding the purchase of dictionaries in which you refer to our opinion holding that the Department of Public Instruction was bound by their contract with the American Book Company. You now ask our opinion as to the effect of a letter recently received by you from the American Book Company and your letter states as follows:

"In view of this letter from the manager of the American Book Company at Cincinnati, can the State Board of Education legally purchase 'THE WINSTON DICTIONARY FOR CHILDREN' as authorized subject to consistency of contract with other publishers at its meeting May 19, 1947?"

You advise that on June 11, 1947, you wrote the American Book Company asking their permission to use another dictionary in grades four and five and suggesting a supplemental contract with them. You also furnish a copy of their reply in which they state as follows:

"You will recall that several years ago our dictionary was on the adopted list for use in certain specified grades. You wished to use the book in certain other grades, and our position was that it certainly made no difference to us where the book was used as far as grades were concerned. We would be rather inconsistent now if we would make any 'to do' about the fact that you wish to move the use of our book up to certain grades and eliminate its use in certain lower grades, even though you have a contract with us for the use of the DICTIONARY FOR BOYS AND GIRLS from grades 4-8 inclusive.

Furthermore, you may feel assured that we are not going to try to force the use and purchase of Webster's DICTIONARY FOR BOYS

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AND GIRLS at \$1.02 when the open territory net price of this book is \$1.56 beginning July 1. For the last several years we have had difficulty in supplying the market on this particular volume and we could have sold all of the books that we manufactured at prices far in excess of the contract price in the State of Arizona. So you can readily see that it is not our intention to in any way embarrass your Board on the matter of the existing contract, and we believe that our word in this whole matter should be sufficient".

This letter is signed by S. S. Stalter, Manager.

It is our opinion that your letter to the book company and their reply to you would constitute a waiver by the book company under the terms of the contract applying to them and also constitute a waiver by the Department of Public Instruction of your right to demand from the book company the dictionary for grades four and five. You would therefore be justified in entering into another contract for the purchase of these books for grades four and five.

Very truly yours,

JOHN L. SULLIVAN,
Attorney General

PERRY M. LING,
Assistant Attorney General

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