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## ARIZONA ATTORNEY GENERAL

January 25, 1955  
Letter Opinion  
No. 55-12-1

The Honorable C. L. Harkins  
Superintendent of Public Instruction  
State Capitol Building  
Phoenix, Arizona

My dear Mr. Harkins:

For the purposes of the following conclusion, I am to assume these facts:

Sometime during the past administration of your office, it was considered to be of interest to the state and to the educators in the state, to have as a textbook in the elementary schools, a history of the state of Arizona. Following this policy, a compilation was made of individual county histories by employees of the Department of Public Instruction and by educators who were contributing to this work. The heroic share of the editing was made by employees on the state pay roll employed by your department. The manuscript is not complete but is now undergoing the final editing and re-writing preparatory to printing. I am assuming also that the manuscript is owned completely by the state of Arizona. The completed manuscript was approved by the State Board of Education and approved by the executives of the Department of Public Instruction and after such approval, consideration was had for printing the manuscript and binding the text material in a form suitable for elementary school grades.

The State Board of Education negotiated with the Laidlaw Brothers, Inc. Publishing Co. for editing, and printing, and publishing the completed compilation.

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The editing and printing and binding and final publication of this text material was not let by notice and call for public bid. The negotiations between the Department of Public Instruction and the Laidlaw Brothers, Inc. culminated in a contract between the State Board of Education and Laidlaw Brothers, and the contract provides for printing and binding the history as well as for editorial services.

The editing of the manuscript is not complete. The Laidlaw Brothers have done some work on this contract.

State boards have no power to furnish free textbooks except by special legislation, HONAKER v. STATE BOARD OF EDUCATION, 42 W. Va. 170; 32 A.L.R. 413; BOARD OF EDUCATION v. DETROIT, 45 N.W. 585, and as a consequence of such rule of law, the operations of the state board in this particular field are narrowly construed and must be conducted in strict conformance with the statutes enabling the selection of text material.

The making of contracts involving the determination of the kind and the number of books and the prices to be paid are not a mere ministerial act of the board or its members, MITCHELL v. KEARNS, 16 Pa. Superior Court 357, and the fact that textbooks are purchased without authority and received by school authorities; and, even where they may be used by the schools under the direction of the state board, does not impose a liability on the part of the state to pay for such text materials in the event of purchase. HONEYCREEK SCHOOL TOWNSHIP v. BARNES, 119 Ind. 213, 21 N.E. 747; 17 A.L.R. 299.

The Arizona statutes require advertising for bids for furnishing textbooks, 54-1103, A.C.A. 1939, and the Arizona statutes provide for a form of contract to be entered into by the State Board of Education with the "publisher" who is successful in the public bid for the furnishing of the textbooks selected by the state board for use in the public schools, 54-1104, A.C.A. 1939, as amended in 1952.

In view of the preceding sections cited, we conclude the state legislature has minutely directed the field for the

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selection of textbooks to be used in public schools; and, in consideration of the narrow rule for construction first mentioned in this opinion, we feel there is little discretion left in the state board to deviate from this course.

We find, therefore, that the contract made with the Laidlaw Brothers, Inc. is extra-legal for the reason of the failure to comply with state law in securing textbooks.

Very truly yours,

ROBERT MORRISON  
The Attorney General

By: GORDON ALDRICH  
Assistant to The  
Attorney General

GA:lr

It should be noted, previous opinions of this office, (48-70 and 49-34) have issued to the State Department of Education and to the Superintendent of Public Instruction holding in effect that the statutory method as set out in Sections 54-1102, et seq. and 54-102, et seq., is exclusive; and further, that the terminology used with reference to "textbooks" means a completed book; and that, as a consequence, the State Board of Education is not authorized to adopt unprinted material.