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January 27, 2006

FILE # ML-44582-06
I.D. # 44582

RQ-0436-GA

Honorable Greg Abbott
Texas Attorney General
PO Box 12548
Austin, TX 78711-2548

Re: Funding for State Textbooks

Dear General Abbott:

I am writing to seek your opinion regarding the meaning of the term "textbook" in the Texas Constitution. The State Board of Education ("Board") has both constitutional and statutory duties to provide free textbooks for the schoolchildren of Texas. My question involves the term "textbook" as it is used in Article VII, Section 3 of the Texas Constitution and in statutes implementing the requirement of that section that "free textbooks" be provided to the public free schools.

The Board is required by Article VII, Section 3(b) of the Texas Constitution to "set aside a sufficient amount of available funds to provide free textbooks for the use of children attending the public free schools of this State."¹ Although the Board has provided hundreds of million of dollars each state fiscal biennium through its management of the Permanent School Fund² to provide funding for textbooks, the state budget is not always sufficient to purchase new textbooks to keep up with that state curriculum. It is in this context of shortfalls for the funding of textbooks that I ask your opinion.

¹ Chapters 28 and 31 of the Texas Education Code create a structure whereby the Board establishes a state curriculum, issues "proclamations" for textbooks covering the curriculum, then adopts textbooks for use in the public schools. The Board's administrative rules regarding the textbook adoption process can be found at 19 Tex. Admin. Code Chapter 66. See also information at the Texas Education Agency website, <http://www.tea.state.tx.us/textbooks/>

² The Board manages the Permanent School Fund ("PSF") under Article VII, Section 5 of the Texas Constitution and determines a percentage of the value of the PSF to be distributed as the Available School Fund. Pursuant to Article VII, Section 3 and Section 31.021, Texas Education Code, a part of the Available School Fund is set aside for the purchase of textbooks. Attorney General's Opinion H-507 (1975) held that the Board could not spend more for textbooks than the amount appropriated by the Legislature.

The Texas Education Code Section 31.002 contains definitions of “textbook”, “electronic textbook” and “technological equipment³”:

(1) "Electronic textbook" means computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, on-line services, an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means.

(3) "Textbook" means a book, a system of instructional materials, or a combination of a book and supplementary instructional materials that conveys information to the student or otherwise contributes to the learning process, or an electronic textbook.

(4) "Technological equipment" means hardware, a device, or equipment necessary for:

(A) instructional use in the classroom, including to gain access to or enhance the use of an electronic textbook;
or

(B) professional use by a classroom teacher.

Attorney General’s Opinion O-2440 (1940) considered the term “textbook” in the context of a tax on textbook publishers. It concluded that the term “would include any manual of instruction or book containing a presentation of the principles of a subject intended to be studied by the pupil and used as a basis of instruction by the teacher”.

We understand the term “textbook” to mean a compilation of instructional content used by the teacher or student to convey the curriculum. Although the current statute includes electronic instructional medium such as CD-ROMs or on-line curriculum, there have been Legislative proposals to use funds designated for textbooks⁴ for hardware (e.g., laptop computers) more consistent with the definition of “technological equipment”. The Board has been a national leader in encouraging the use of technology in the classroom, but I am concerned that funds dedicated to buying textbooks may be diverted from their constitutional purpose to equipment and other hardware.

³ The purpose for the definition of “technological equipment” is unclear as that term is not used in Chapter 31 of the Education Code. The definition may be an oversight from a 2003 amendment to Chapter 31 of the Education Code that moved the state technology allotment to Chapter 32. See, Acts 2003, 78th Leg., Ch. 201.

⁴ Funds for textbooks are set aside from available funds by the State Board under Article VII, Section 3(b) of the Texas Constitution. Funds so set aside are deposited into the State Textbook Fund created under Section 31.021, Texas Education Code. Pursuant to Subsection 31.021(d), funds in the Textbook Fund do not lapse but remain in the fund until spent for the purchase of textbooks.

My question is as follows:

Must an item purchased with funds set aside for textbooks, or to be considered as fulfilling the state's constitutional obligation to provide free textbooks, be exclusively or predominantly for the purpose of conveying curriculum content to students and not predominantly hardware or other equipment?

Thank you for your consideration of this request. Should you have any questions, please feel free to contact me or David Anderson, General Counsel, Texas Education Agency at (512) 463-9720.

Sincerely

A handwritten signature in cursive script that reads "Geraldine 'Tincy' Miller". The signature is written in black ink and is positioned below the word "Sincerely".

Geraldine "Tincy" Miller, Chair
State Board of Education