

Opinion No. 42-4147

September 1, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Chas. G. Witt, Director Textbook Division Department of Education Santa Fe, New Mexico

{*240} We have your letter of August 27, 1942, wherein you request an opinion of this office on whether or not it would be legal to charge students a deposit, returnable on withdrawal or at the end of the year, for the use of state textbooks.

There are no provisions in our laws relating to free textbooks which authorize the charging of a deposit upon the distribution of such textbooks. Chapter 112, Section 5, of the Laws of 1933, provides:

"Said free text books shall be distributed to the children of this state attending schools in this state, and the parents or guardians of such children shall be responsible for the loss, damage or destruction of books issued to their children or wards, and no books shall be issued to the child or ward of any parent or guardian who refuses to pay for such book damaged, lost or destroyed by such child or ward, unless the parent or guardian is, in the opinion of the board, financially unable to pay for such loss, damage or destruction."

This section was specifically not repealed by Chapter 76 of the Laws of 1941, and makes the parent or guardian responsible for the loss, damage or destruction of their children's books, and unless such parent or guardian refuses to pay for such loss, damage or destruction, this section requires that free textbooks be distributed to the children of the state. It would, in my opinion, be inconsistent with this section of our laws to require the payment of a deposit before books are issued. If books are available for distribution, the law requires that they be distributed, subject only to the exception provided in the above quoted section.