



COMMONWEALTH OF VIRGINIA

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July 27, 2009

The Honorable Robert G. Marshall
Member, House of Delegates
P.O. Box 421
Manassas, Virginia 20108-0421

Dear Delegate Marshall:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the Prince William County School Board complied with the regulations of the State Board of Education concerning the adoption of textbooks, which require textbook evaluation criteria to have the “official approval” of the local board.

Response

It is my opinion that a local school board may select and use textbooks that are not approved by the Board of Education, provided it complies with the Board’s regulations governing such selection. It further is my opinion that a local school board must give “official approval” of criteria to be used for review and assessment of textbooks at the local level. Finally, it is my opinion that whether the evaluation committee in this instance had “official approval” is a factual determination, and I must decline to respond.¹

Background

You relate that in 2006, the Prince William County School Board (“School Board”) adopted the textbook series “Investigations in Number, Data, and Space” for use as the primary math text in kindergarten through the fifth grade. Further, you note that the State Board of Education² (“State Board”) has approved the “Investigations” texts for use in kindergarten through the fourth grade.

¹Although I decline to respond to the specific question, I have offered general guidance concerning the Commonwealth’s statutes and regulations governing the adoption of textbooks.

²See VA. CODE ANN. § 22.1-8 (2006) (vesting general supervision of schools in Board).

The School Board has established an instruction/regulation governing the selection process for the adoption of state and local textbooks:

[II.] D. Develop evaluative criteria to be used by committees in textbook examination and selection. Textbook evaluation shall include but not be limited to: alignment with the Virginia Standards of Learning and the Prince William County Public Schools' curriculum; factual accuracy; a logical sequence of instruction; age/grade/reading level appropriateness; and freedom from ethnic, racial, sex, religious, age, and political bias.^[3]

You state that the School Board adopted the "Investigations" text for use in the fifth grade. You note that at least one parent has expressed concern about this decision and has asserted that the criteria did not have the "official approval" of the School Board. The parent contends that the School Board has failed to comply with the regulations of the State Board.

Applicable Law and Discussion

The Constitution of Virginia "apportions various responsibilities for the creation and maintenance of Virginia's system of public education among the General Assembly, the State Board of Education, and the local school boards."⁴ Article VIII of the Virginia Constitution vests the broader, statewide responsibilities in the General Assembly,⁵ in the State Board,⁶ and in the Superintendent of Public Instruction.⁷ Article VIII, § 7, provides that "[t]he supervision of schools in each school division shall be vested in a school board."⁸ The constitutional scheme for public education makes the authority and responsibilities of local school boards subject to direction and limitation from the State Board and the General Assembly.

Consistent with this triune scheme, the General Assembly enacted § 22.1-238, which provides, in relevant part, that:

A. The Board of Education shall have the authority to approve textbooks suitable for use in the public schools and shall have authority to approve instructional aids and materials for use in the public schools. The Board shall publish a list of all approved textbooks on its website and shall list the publisher and the current lowest wholesale price of such textbooks.

B. Any school board may use textbooks not approved by the Board provided the school board selects such books in accordance with regulations promulgated by the Board.

³ See Prince William County Public Schools, Regulation 653-2, INSTRUCTION, pt. II(D), at *2 (Sept. 22, 2004), available at http://www.pwcs.edu/admin/pwcs/admin_pdfs/R653-2.pdf [hereinafter "Instruction"].

⁴ Dennis v. County Sch. Bd., 582 F. Supp. 536, 543 (W.D. Va. 1984).

⁵ VA. CONST. art. VII, §§ 1-3.

⁶ *Id.*, §§ 2, 4, 5.

⁷ *Id.*, § 6.

⁸ See also § 22.1-28 (2006) (parallel statute).

Pursuant to § 22.1-238,⁹ the State Board has promulgated regulations (the “Regulations”) governing the adoption of textbooks by local school boards, including textbooks that have not been approved by the State Board.¹⁰ The Regulations set forth the substantive and procedural requirements for such adoption.¹¹ These procedural requirements include the local board’s appointment of an evaluation committee, which shall first consider the state-approved textbooks.¹² The Regulations also address the standards by which the local evaluation committee will measure textbooks: “Criteria to be used by the evaluation committee in the review and assessment of textbooks must have the official approval of the local school board.”¹³

As previously noted, the State Board has approved the “Investigations” texts for use in kindergarten through the fourth grade. No further action by a local board is required for the use of textbooks that have been approved by the State Board.¹⁴ State law permits local school boards to approve the use of textbooks that have not been approved by the State Board, provided the local boards comply with regulations adopted by the State Board.¹⁵ The School Board directs the curriculum supervisor in the content area to develop evaluative criteria to be used by the committees charged with the evaluation of textbooks.¹⁶

This Office has received information from you as well as unsolicited information from other sources related to the textbook approval by the School Board. Based on the information that was received, it is unclear what actually occurred at the School Board level.

Whether the criteria used by the evaluation committee had the “official approval” of the local board is dependent upon the facts. This Office historically has declined to render opinions that involve determinations of fact rather than questions of law.¹⁷ It also is important to recognize that any inquiry into whether a local school board has complied with the Regulations of the State Board appropriately is the province of the State Board. An administrative agency’s interpretation of its own enabling authority, while not absolute, is entitled to reasonable deference.¹⁸

Conclusion

Accordingly, it is my opinion that a local school board may select and use textbooks that are not approved by the Board of Education, provided it complies with the Board’s regulations governing such

⁹ See also § 22.1-16 (2006) (granting authority to State Board to promulgate regulations necessary to carry out its powers and duties).

¹⁰ 8 VA. ADMIN. CODE §§ 20-230-10 to 20-230-40 (2002).

¹¹ *Id.* §§ 20-230-30, 20-230-40.

¹² *Id.* §20-230-30(1), (3).

¹³ *Id.* § 20-230-30(5).

¹⁴ See § 22.1-238(A) (Supp. 2009); 8 VA. ADMIN. CODE § 20-230-20.

¹⁵ See § 22.1-238(B).

¹⁶ See *supra* note 3 and accompanying text.

¹⁷ See 1991 Op. Va. Att’y Gen. 122, 124.

¹⁸ See 1991 Op. Va. Att’y Gen. 157, 158.

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selection. It further is my opinion that a local school board must give “official approval” of criteria to be used for review and assessment of textbooks at the local level. Finally, it is my opinion that whether the evaluation committee in this instance had “official approval” is a factual determination, and I must decline to respond.¹⁹

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Mims". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

William C. Mims

6:060; 1:941/09-022

¹⁹See *supra* note 1.