



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

March 25, 1977

The Honorable Oscar H. Mauzy
Chairman
Senate Education Committee
State Capitol
Austin, Texas 78701

Letter Advisory No. 127

Re: Constitutionality of
Senate Bill 140, which
would provide textbooks
to students in nonpublic
schools.

Dear Senator Mauzy:

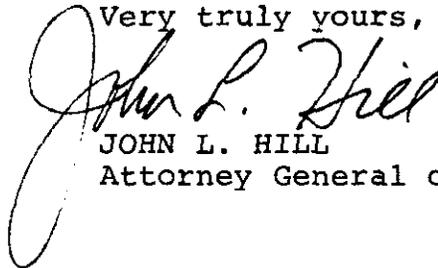
You have asked our opinion on the constitutionality of Senate Bill 140, which would provide for the distribution of state owned textbooks to the pupils of nonpublic schools.

Senate Bill 140 is identical to House Bill 1020 of the 64th Legislature. The constitutionality of that bill under the First Amendment to the United States Constitution and article 1, section 7 of the Texas Constitution was discussed extensively in Letter Advisory No. 105 (1975), and we concluded that the courts would probably hold the bill to be constitutional.

The United States Supreme Court has reaffirmed the case on which Letter Advisory No. 105 was based, in Meek v. Pittenger, 421 U.S. 349 (1975). You suggest, however, that we reexamine our conclusion relating to the Texas Constitution in light of the decision of the South Dakota Supreme Court in McDonald v. School Board of Yankton, 246 N.W.2d 93 (S.D. 1976). Decisions of courts of other states, even if based on identical facts, are no more than persuasive, and they are persuasive only to the extent their reasoning is regarded as logical. Mauzy v. Legislative Redistricting Board, 471 S.W.2d 570, 573 (Tex. 1971). The basis of the decision in McDonald is the South Dakota court's conclusion that the lending of textbooks to students would constitute a benefit or aid to sectarian institutions. As the dissent points out, the United States Supreme Court has concluded on at least three separate occasions that any benefit accrues to the parents and students and not to any sectarian institution. Meek v. Pittenger, 421 U.S. 349 (1975); Board of Education v. Allen, 392 U.S. 236 (1968); Cochran v. Louisiana State Board of Education, 281 U.S. 370 (1930).

While the Texas and South Dakota constitutional restrictions are not precisely the same as the First Amendment of the United States Constitution, they do require a finding of benefit to a sectarian institution. We believe the decisions of the United States Supreme Court make clear that Senate Bill 140 would not violate the First Amendment of the United States Constitution. As the decision in McDonald v. School Board of Yankton makes equally clear, the Supreme Court of this State is not obligated to give the provisions of the Texas Constitution an interpretation identical to that given the First Amendment by the United States Supreme Court. In the absence of any clear indication that the Texas Supreme Court would rule Senate Bill 140 to be violative of the Texas Constitution, however, we believe that Letter Advisory No. 105 properly found the decision of the United States Supreme Court to be persuasive. While it is possible that, based upon evidence in a particular case, a court will find that there is a benefit to a particular sectarian institution [see e.g. Board of Education v. Allen, 392 U.S. at 244, n.6, 248] or that the program is administered in an unconstitutional manner, it is our opinion that Senate Bill 140 probably would be found by the courts to be facially constitutional.

Very truly yours,

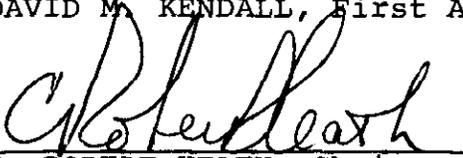


JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee