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OPINION
OF
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Opinion No. 88-37

BY: Andrea R. Buzzard
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TO: Honorable Leonard Lee Rawson
State Representative
1681 Alta Vista Place
Las Cruces, New Mexico 88001

QUESTION:

Do local school boards have the authority to prohibit citizens of this state from inspecting instructional material used in a public school within the district?

CONCLUSION:

No.

ANALYSIS:

Section 14-2-1 NMSA 1978 (1987 Supp.) provides:

Every citizen of this state has a right to inspect any public records of this state except:

A. records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions;

B. letters of reference concerning employment, licensing or permits;

C. letters or memorandums which are matters of opinion in personnel files or students' cumulative files;

D. as provided by the Confidential Materials Act [14-3A-1, 14-3A-2 NMSA 1978]; and

E. as otherwise provided by law.

As used in this section, "records of this state" includes records in the possession of a public school. See Sections 14-2-2 and 14-2-3 NMSA 1978 (1987 Supp.); Att'y Gen. Op. 69-89 (1969); Att'y Gen. Op. 61-137 (1961-62); Att'y Gen. Op. 59-158 (1959-60).

Section 14-2-1 does not define "public record." In State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977), the New Mexico Supreme Court relied on MacEwan v. Holm, 226 Or. 27, 359 P.2d 413 (1961) in broadly defining "public record." MacEwan involved a similar Oregon statute that did not define "public record." The New Mexico Supreme Court quoted from MacEwan:

Writings coming into the hands of public officers in connection with their official functions should generally be accessible to members of the public so that there will be an opportunity to determine whether those who have been entrusted with the affairs of government are honestly, faithfully and competently performing their function as public servants. [citation omitted] "Public business is the public's business. The people have the right to know. Freedom of information [about public records and proceedings] is their just heritage.... Citizens ... must have the legal right to ... investigate the conduct of [their] affairs."

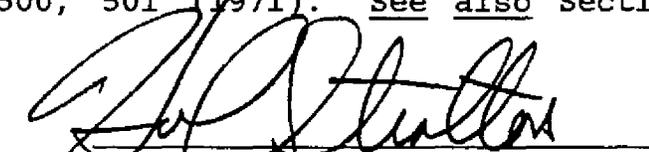
Id. at 795, 568 P.2d at 1241 (quoting 226 Or. at 38, 359 P.2d at 418) (emphasis in original). Webster's Third New International Dictionary at 2,641 (1961) defines "writing" as "something written as a written composition: a book, pamphlet, poem, article or other literary production."

The Instructional Material Law, Sections 22-15-1 to 22-15-14 NMSA 1978 (Repl. 1986), provides funding and regulates the purchase of a school district's "instructional material." Section 22-15-2C defines "instructional material" as "school textbooks and supplementary instructional material adopted by the state board

pursuant to the Instructional Material Law." Public school students are entitled to free use of instructional material. Section 22-15-7A. The "instructional material fund", established by the state treasurer, pays the cost of a school district's instructional material. Section 22-15-5. School districts are responsible for the material's safekeeping and distribution to eligible students. Section 22-15-7C.

The state board of education adopts, with parental involvement, a list of books from which local school boards may choose Section 22-15-8A. In selecting books, school boards must "give written notice to parents and shall invite parental involvement in the adoption process ... [and] shall also give public notice, ... [to] include publication in a newspaper of general circulation in the school district." Section 22-15-8B. Thus, instructional material used by a local school district is funded publicly, and is selected in a public forum after notice and with public involvement.

In Alarid, the New Mexico Supreme Court, in construing the public policy behind Section 14-2-1, stated: "The citizen's right to know is the rule and secrecy is the exception. Where there is no statute or countervailing public policy, the right to inspect public records must be freely allowed." 90 N.M. at 797, 568 P.2d at 1243. Instructional material are "writings" that are in public officials' custody. No New Mexico statute forbids disclosure to New Mexico's citizens of a school's textbooks. No countervailing public policy militates against such disclosure. The statutory exceptions contained in Section 14-2-1 do not apply. It is, therefore, our conclusion that a New Mexico citizen is entitled to inspect a school district's instructional material. We note, however, that this right not unlimited and can be subject to "reasonable regulations as to appropriate times when and places where they may be inspected ... and such reasonable supervision by the custodian thereof as may be necessary." Ortiz v. Jaramillo, 82 N.M. 445, 446, 483 P.2d 500, 501 (1971). See also Section 14-2-2 NMSA 1978.


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