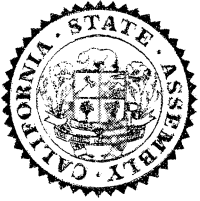


REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

285.4

FOLLOW-UP REPORT ON
DEFICIENCIES OF TEXTBOOK PROCUREMENT
PRACTICES IN CALIFORNIA

APRIL 1978



Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

California Legislature



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April 11, 1978

285.4

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's supplemental report to an October report on deficiencies of textbook procurement practices.

Issue was taken by many publishers who were not afforded the opportunity of having their responses printed with those of the Departments of Education and General Services. Having now reviewed these responses, the Auditor General adheres to his conclusions and recommendations.

The auditors are Curt Davis, CPA, Audit Supervisor; Ronald R. Franceschi; and Donald L. Truitt.

Cordially,

MIKE CULLEN
Chairman

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SUMMARY

In October 1977, the Office of the Auditor General issued Report 285.2, Deficiencies of Textbook Procurement Practices in California. The report identified several areas in which the State of California and local school districts do not always receive the most favorable price for their instructional material purchases. This second report on the subject is issued to provide the 34 publishers involved in the contract comparisons of the original report an opportunity to express their views on the contents of the original report.

While this report provides an opportunity for publishers to defend their position, our conclusions and recommendations as contained in the first report remain the same.

The State and local school districts spend more than \$70 million annually for instructional materials (at least \$41 million by local districts and approximately \$30 million by the State) such as textbooks, film slides, tapes and flashcards which are not purchased under the usual competitive procurement procedures. However, to ensure that favorable prices are obtained, state law requires a supplier to provide California with the lowest prices at which he offers instructional materials for adoption or sale anywhere in the United States and to also reduce the prices to California in the event the prices charged others are reduced.

Our earlier review of state-adopted instructional material prices paid by the State and the local school districts showed that despite the price maximums established by state law, California's prices were as much as 30 percent higher than those of another state purchasing the same material under similar bid offerings and contract dates. These overcharges were made because some publishers do not comply with California law, and the State Department of Education and the local school districts do not adequately monitor the provisions of the law.

In addition, the State and local school districts could obtain lower prices if they arranged longer term contracts for state-adopted textbooks, a practice followed by several other states.

For non-state-adopted textbooks, contract price guarantees are not required by California law, and the California prices reflect the publisher's most current price increases. Consequently, we found that in some cases California school districts are charged up to twice the amount paid by out-of-state jurisdictions which require long-term contract price guarantees.

INTRODUCTION

In October 1977, the Office of the Auditor General issued Report 285.2, Deficiencies of Textbook Procurement Practices in California. The report identified several areas in which the State of California and local school districts do not always receive the most favorable price for their instructional material purchases.

Report 285.2 identified the following major instructional material procurement deficiencies:

- Some publishers surveyed charge California a higher instructional material price for the same textbook title than other states with similar contract dates
- Price guarantees for state-adopted instructional materials are inadequate
- Price guarantees for non-state-adopted instructional materials are inadequate.

These audit results were developed through extensive comparison of 392 instructional material contracts and purchases consummated in California and several other states. The contract and purchase comparisons involved 34 publishers. This second report is issued to provide these publishers an opportunity to express their views on the

contents of Report 285.2. Twenty-five of the 34 publishers contacted and the Association of American Publishers, Inc. have responded to our request for comments.

For purposes of this report, each of the three identified instructional material procurement deficiencies described in Report 285.2 will be addressed as follows: (1) a restatement of the procurement deficiency, followed by a brief description of the original audit methodology; (2) a summary of publisher responses, followed by selected excerpts from some of the publishers' statements (the entire texts of publisher statements are included in Appendices A-1 through A-27); (3) the Auditor General's response to publisher statements; (4) current conclusions; and (5) a restatement of the recommendation contained in the original report (285.2).

DISCUSSION OF AUDIT RESULTSMANY PUBLISHERS CHARGE CALIFORNIA
MORE THAN OTHER STATES

In our initial report, we compared the prices paid by the State Department of Education on 285 state-adopted instructional material titles with the prices offered to the states of Arkansas, Florida, Indiana and Texas. Of the 285 titles compared, 248 were priced higher in California. The average overcharge for the 248 titles priced higher was 6.6 percent, with individual price differences ranging from less than one percent to nearly 30 percent. The California price was lower for 28 titles and 9 titles were priced the same. Table I illustrates some of the price differences.

TABLE I
Sample of Price Differences
for 1977-78

<u>Book Title</u>	<u>State Department of Education Price^{1/}</u>	<u>Other State's Price</u>	<u>Difference</u>
Patterns of Language (Grade 1)	\$2.73	\$2.40	\$.33
Sources of Identity	8.25	7.95	.30
Growth in Spelling (Grade 7)	4.14	3.87	.27
The Charlie Brown Dictionary	3.84	3.45	.39
Activities in Mathematics First Course	5.80	5.37	.43

^{1/} Excludes California sales tax, but includes cost of transportation.

The California textbook prices used in our survey included transportation costs to the local school districts but excluded California sales and use tax. The textbook prices for Arkansas, Florida and Texas were FOB to a depository located within the respective states. Those states or their school districts pay the local transportation costs which reportedly range from less than 1 percent to about 2 percent of the textbook price. Depository costs, which usually range from 7 percent to 15 percent of the textbook price, are paid by the publishers. All textbooks must be purchased from depositories in those states, whereas California allows publishers to maintain their own depositories or select a private depository.

PUBLISHERS' COMMENTS

Fifteen of the 25 publishers responding attributed California's higher prices exclusively to the cost of shipping textbooks to local school districts. Three publishers attributed the higher prices to shipping costs and alleged that we misstated contract approval dates. Two publishers acknowledged errors in their prices to California. Four publishers had no direct comment regarding this audit result. One publisher attributed all price differences to the other states' earlier contract dates.

The following excerpts are representative of the arguments which the publishers made to defend their position. Their complete statements are included in Appendices A-1 to A-27.

- On Sheet 2 of the Attachment to us comparing contract prices to California and Florida for the same texts in the same period of time, in every case the differences are attributable to shipping costs which the Auditor has failed to include in the Florida prices but has included in the California prices. (See Appendix A-1.)
- In point of fact, however, we sell the book at the same net price, of \$3.45 exclusive of taxes, in both states. In California, however, we must include as part of the bid the unit shipping cost – and it is this charge that accounts for the entire difference. In Arkansas, the shipping cost is billed separately after the books have been shipped from the Depository. (See Appendix A-24.)
- The bid list price for each of these 5 titles to both Florida and California is the same \$4.16. The net price difference of \$3.12 (Florida) and \$3.33 (California) results from California's requirement that contract prices must be bid f.o.b. California school address – therefore the discount is 20% but the net price includes local shipping costs. In Florida each account must pay school destination shipping charges. (See Appendix A-2.)
- WORLD OF VOCABULARY, BOOK 1 was submitted for adoption in California and in Arkansas during the same year and at the then current catalog price of \$2.25 per copy. It is Globe's policy to add shipping charges to the current catalog price, 14¢ was added to bring the California price up to \$2.39. Although California permits publishers to add shipping charges, Arkansas refused to accept this charge and listed this title at \$2.25 per copy. The difference is 14¢ for shipping. (See Appendix A-10.)
- The Random House pricing factor for the additional delivery requirements of the California contracts, and for contracts of other jurisdictions that impose similar requirements, was 3%. In the comparisons that you have provided, none of the California prices exceeds the corresponding Arkansas or Florida price by more than 3%. (See Appendix A-23.)
- Since many states and other adopting agencies prefer to have transportation charged separately, and since our wholesale school price does not include transportation, it is our uniform policy for any purchaser asking for a transportation included price (such as California) to add a transportation charge of 4% of the wholesale school price (except in the case of items for which the

wholesale school price is \$50 or more, in which case the addition for transportation is 2%.) Accordingly, in each case HBJ's bid price to California for any book that we offer for adoption under California state contract is the wholesale school price with transportation included, and, at the time of our bid to California, such price is the lowest price, F.O.B. destination point, being then offered by us to any other purchaser in the United States. (See Appendix A-12.)

- A comparison of the two prices for GROWTH IN SPELLING clearly indicates that the only difference between the two contract prices is the 7% additional to cover transportation to satisfy the requirement of California that the publishers bid a price which will include delivery to each individual school. (See Appendix A-17.)
- The discrepancy in prices for our KEYS TO GOOD LANGUAGE series between California and Arkansas that you referred in your letter of November 4, 1977, is an error on our part, and we certainly appreciate your bringing this to our attention. (See Appendix A-7.)

AUDITOR GENERAL'S RESPONSE

The practice of charging California schools the added costs of transportation to local school districts is not in conformance with subdivision (a) of Education Code Section 60061. Early in 1977 we requested the Legislative Counsel to define the California Legislature's intent of Section 60061 of the Education Code as it relates to publishers' transportation costs. Education Code Section 60061 states:

A publisher or manufacturer shall:

- (a) furnish the instructional materials offered by him at a price in the State of California which, including all costs of transportation to that place, shall not exceed the lowest price at which the publisher offers said instructional materials for adoption or sale to any state or school district in the United States. (Emphasis added.)

As to publisher's requirements under this section, we asked the Legislative Counsel the following question:

May a publisher which provides textbooks for California school districts pursuant to contract with the State Board of Education charge more for such textbooks than that charged elsewhere in the country, if the actual transportation costs to a destination in California are greater than the transportation costs incurred in delivering textbooks to any other state or school district in the nation?

In Opinion No. 2890 (Appendix C-1), issued on May 6, 1977, the California Legislative Counsel stated:

A publisher which provides textbooks for California school districts pursuant to contract with the State Board of Education is not permitted to charge more for such textbooks than that charged elsewhere in the country if the actual transportation costs to a destination in California are greater than the transportation costs incurred in delivering textbooks to any other state or school district in the nation.

The California Legislative Counsel further stated:

The maximum price that can be charged for textbooks, including all costs of transportation to a destination in California, is determined solely by reference to the lowest price at which the publisher offers the textbooks for adoption or sale to any other state or school district in the nation. The payment of transportation costs is entirely the responsibility of the publisher or manufacturer. (Emphasis added.)

It is, therefore, our opinion that a publisher which provides textbooks for California school districts pursuant to contract with the State Board of Education is not permitted to charge more for such textbooks than that charged elsewhere in the country if the actual transportation costs to a destination in California are greater than that incurred in delivering textbooks to any other state or school district in the nation.

Based on this opinion, the practice of charging California schools the added costs of transportation to local school districts is not in conformance with subdivision (a) of Education Code Section 60061. (See Appendix B-1.)

While many publishers attributed higher prices to transportation costs, we found that:

- Individual price differences between California and other states were not always reflective of transportation costs, and the range of price differences varied from California paying a lower price to California paying a 30 percent higher price
- The amount of transportation costs charged to California varied among publishers; for example, one publisher charged three percent of the contract price, whereas another charged seven percent of the contract price. Basing transportation charges on a percent of contract price appears inappropriate and allows the value, not the weight, to influence the charge.

We also disagree with those publishers that attributed the higher prices charged to California schools to a combination of added transportation costs and our alleged use of incorrect contract approval dates. In all price comparisons used for our state-adopted instructional material survey, the comparison states approved their contracts after

California. Instructional materials that were under contract with the comparison state prior to California's contract date were not used in the comparisons. This procedure conforms with the California Department of Education's interpretation that textbook prices are established when contracts are consummated by the adopting state, and prices established under prior contracts are not applicable.

CONCLUSION

Based on the Legislative Counsel's opinion relating to publishers' requirements to pay all transportation costs incurred in delivering textbooks to California schools, we see no reason to change our previous conclusion as stated in Report 285.2. We conclude that the State and local school districts are overcharged for instructional materials purchased for elementary schools. These overcharges occur because many publishers do not comply with the provisions of Section 60061 of the Education Code and because the State and the local school districts have taken no affirmative action to monitor publisher compliance.

RECOMMENDATION

We still recommend that, to improve California's instructional material purchase practices, (1) the Legislature define the intent of Section 60061 as it relates to publishers' pricing requirements and (2) the State Department of Education:

- Determine the amount overcharged by publishers and take all necessary steps to promptly recover these overpayments
- Improve publisher compliance with the provisions of Section 60061 by providing clear guidelines for publishers to follow
- Monitor publisher pricing procedures to assure that California receives the lowest instructional material prices available in accordance with applicable statutes.

PRICE GUARANTEES FOR STATE-ADOPTED
INSTRUCTIONAL MATERIALS ARE INADEQUATE

Under current procedures, publishers offering instructional materials for state adoption in California schools must offer these materials at an agreed-upon sum for a period of two years. This contractual arrangement gives the State Board of Education a two-year price guarantee on all state-adopted instructional materials. Several other states have similar contractual arrangements, but they obtain four-year to six-year price guarantees. The contractual arrangements between the publishers and the various states, including California, do not require purchase minimums.

We compared the prices of 46 textbook contracts that were renewed in California during fiscal year 1976-77 with contracts issued in other states. The new California contract increased prices an average of 25.8 percent over the preceding two-year contract. By contrast, states such as Tennessee and Texas, with a longer-term initial contract, enjoy the lower price for three years longer than California.

It is important to note that a longer-term contract provides lower overall prices, yet the purchaser is not obligated to purchase under the contract. Thus, the argument that long-term contracts hinder a teacher's freedom of choice, or that the textbook may become outdated prior to contract maturity, is without foundation.

PUBLISHERS' COMMENTS

Some publishers that responded to this issue disagreed that California's two-year contracts for state-adopted textbooks should be extended to provide long-term price guarantees which are equal to the contract periods required by some other states. The publishers say that California does not provide guaranteed purchase volumes and inflationary trends cause difficulties when they are forced to submit bid prices a year or more before a long-term contract goes into effect. They also state that most of the textbooks are purchased during the first three years of long-term contracts.

The Association of American Publishers, Inc., (see Appendix A-3) expressed the following viewpoint:

The AAP believes that severe price limitations such as mandatory long-term adoptions at fixed prices without a guarantee of substantial sales during the early years of the extended contract period severely impair the ability of the educational publishing industry to produce up-to-date instructional materials of the highest quality. Rather than seeking further price concessions, price relief in the form of shorter-term contracts or price adjustments on existing contracts has been instituted or is being considered today in many adoption states in recognition of the cost pressures of today's inflationary business environment.

The Nystrom Company (see Appendix A-20) stated the following:

The States in their understandable attempt to obtain the most favorable pricing situation for themselves have inadvertently exerted pressure on prices to rise, and have produced other inequities. For example, a State that insists on a four-year contract has an unfair advantage over another State that more reasonably contracts for two. Various States demand specialized treatment but then complain that publishers are not being consistent. Speaking for ourselves, we have always done the best we could to treat all States (and, indeed, all customers) with complete impartiality.

The Economy Company (see Appendix A-7) commented:

In any event,...under the best of circumstances the rules, regulations, and long range guessing about production costs create a very confusing atmosphere for preparing bids, and the California bid is certainly the most complicated, and requires the most long range guessing.

Should you truly wish to purchase books at the lowest possible price, I respectfully suggest to you that you assist in allowing the price to be forced down by the competition of the free marketplace, and abandon multi-year contracts with the uncertainties caused by the rampant inflation in the printing industry. Additionally, your listing is now very broad and includes nearly all major programs, but the double selling expense still goes on in an adoption situation. We sell for a year to the committee and then, if listed, sell to each school.

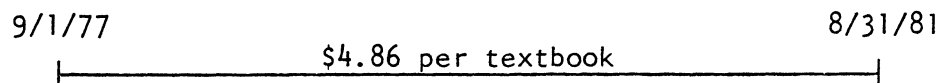
AUDITOR GENERAL'S RESPONSE

We have not determined the actual inflationary trends associated with the publishing industry, but we have accumulated examples which illustrate the effect of California's two-year contracts. The price increases appear to vary with the publisher and may be further affected by the individual textbook.

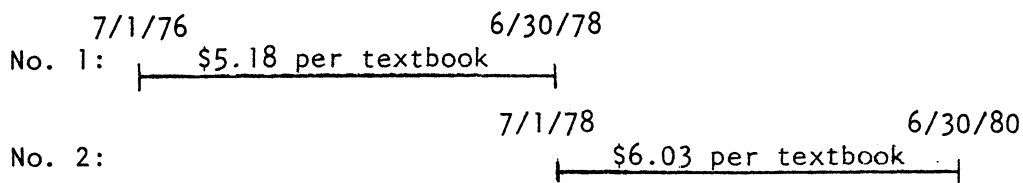
The following example is illustrative of the price differential experienced by California compared to a state with a longer-term contract. In 1975, Texas and California signed a contract with a publisher for a textbook. The Texas contract was signed November 1975 for a price of \$4.86 per book, effective from September 1, 1977 through August 31, 1981. The California contract was signed June 1975 for a price of \$5.18 per book, effective from July 1, 1976 through June 30, 1978. In May 1977, the publisher resubmitted his offer to California for the two-year period July 1, 1978 through June 30, 1980. The resubmitted bid was \$6.03 per textbook, or \$1.17 per textbook higher than the price that will be charged to Texas through August 1981. Table II below illustrates the price differentials:

TABLE II

Texas Contract:



California Contracts:



The California Department of Education responded as follows regarding California's standard textbook contracts (see Appendix C-1):

Regarding the recommendation to revise California's standard textbook contract to extend the present two-year contract to six years, the State Board of Education currently contracts with textbook publishers for a maximum term of six years. State law provides that every two years the State Board must, when applicable, retain, add and/or delete textbooks from the state adopted list. Textbooks initially adopted, and under contract, for six years are automatically "retained" on each of the two succeeding biennial lists. The net effect is that, although a State Board contract guarantees the availability of textbooks (and other types of instructional material) for up to six years, present state law precludes the Board from imposing a price guarantee for longer than two years.

CONCLUSION

California pays more for textbooks than some other states because short-term contracts allow more frequent price increases.

RECOMMENDATION

The State Department of Education should request legislation to revise California's standard textbook contract to extend the present two-year contract in accordance with longer contracts in other states to achieve similar economies.

PRICE GUARANTEES FOR-NON-STATE-ADOPTED
INSTRUCTIONAL MATERIALS ARE INADEQUATE

Local school districts do not have price guarantee contracts and publishers may charge them the current catalog price. Consequently, the prices of textbooks purchased locally which are not adopted by the State reflect the publishers' most recent price increase. In contrast, out-of-state jurisdictions with fixed contracts pay the price that was in effect when their contracts were signed, a lesser price than the current catalog price.

We compared the prices of 61 non-state-adopted textbooks purchased in three states and five California school districts. In all comparisons except one, the other states paid a lower price than the California school districts. The higher prices charged in California were up to more than double the other states' prices.

PUBLISHERS' COMMENTS

Some publishers cite that the differential in prices between California's noncontract prices and the other states' contracted prices are entirely accounted for by the differences in prices existing at the date the contract state required bids and the date that California school districts ordered the same title. The position of the Association of American Publishers, Inc., is:

- Statewide adoptions in many of their restrictive provisions can represent an archaic and educationally-inflexible method of textbook acquisition. While the AAP does not seek as a matter of industry policy to secure abolition of state textbook adoptions, it does seek reform of the most restrictive features of such programs. The Auditor General has failed to make a credible case for expansion of state control over local option in California and, in particular, has ignored the significantly adverse non-economic effects that such a shift of policy could have on the quality of education and on the ability of local school districts to secure the most up to date materials in a manner consistent with local needs. (See Appendix A-3.)

Statements by publishers include:

- The facts of price differentials in the attachment are correct. The implications in the letter based on these facts reflect a lack of understanding on the part of California officials of the textbook adoption process in California and other states.

South-Western Publishing Co. sells only in the secondary and post-secondary markets in California. In these markets California is "open territory." Texas holds state adoptions at the secondary level.

The differences indicated on your attached sheet arose from the fact that we were required to bid prices in Texas on the contract which were effective September, 1977, in October, 1976, prior to a price increase January 1, 1977. The prices paid in California in April, 1977, were the same prices quoted to all customers in all states at that point in time (South-Western Publishing Co.). (See Appendix A-27.)

- As to all local purchases in the State of California of books which are under the State's adoption contract the price charged by HBJ is the price fixed by the adoption contract. As to all other books the price charged in each case is our then current wholesale school price, F.O.B. Petaluma, California (Harcourt Brace-Jovanovich, Inc.). (See Appendix A-12.)

In addition, some publishers believe that local school districts are not authorized state contract prices when state-adopted textbooks are purchased with local funds. In such instances, the school districts would be charged the higher "regular catalog" price. A July 1977 letter from D.C. Heath (see Appendix E-1) expresses this publisher's viewpoint.

Dear Mr. Voss:

This is in reply to your letter of June 28, 1977 in which you requested our interpretation of the California Education Code Section 60061 concerning textbook pricing.

In our opinion, contract prices established in an adoption agreement between a publisher and the State Board of Education in California apply only to orders placed by the Board in accordance with the contract. Since our contract is with the State Board and not with a school district, if a school district wishes to purchase state-adopted textbooks directly from a publisher with local funds, they would not be entitled to the contract prices, but they would pay instead the regular catalog price offered to all school customers and in effect at the time the order is received. This same price is offered to school districts purchasing non-state-adopted textbooks with local funds.

AUDITOR GENERAL'S RESPONSE

In Report 285.2 we recommended that the State Department of Education:

Review the textbook purchasing contracts of California school districts to ascertain the potential savings if textbook purchase contracts were negotiated on a statewide basis.

There was and is no intent on our part to "make a credible case for expansion of state control over local option in California..." as attributed earlier in the position statement of the American Association of Publishers, Inc. Instead, it is our intent to disclose that under the

current system, purchase agreements between publishers and local school districts do not offer price guarantee protection such as that offered to states with long-term price guarantees. For example, in our survey of 61 non-state-adopted textbooks other states paid a lower price than California in all comparisons except one. During the initial 13 months of a new contract in the comparison states, California school districts paid an average of 12 percent more for the same textbooks. In subsequent years the average price paid by California school districts increased even greater. For example, during the final two years of Tennessee's five-year contracts, the California prices averaged nearly 49 percent higher for 20 textbooks compared.

CONCLUSION

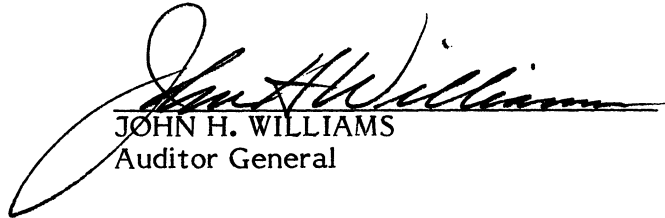
California school districts spend at least \$41 million annually for instructional materials. The California textbook prices are significantly higher than prices paid by some other states. The textbooks are purchased in California and the other states simultaneously; however, California school districts pay a higher price because they do not have contracts guaranteeing prices.

Because local school districts in California do not enter into long-term purchase agreements with publishers, the California school districts will continue to pay a higher price for instructional materials than is paid by some out-of-state jurisdictions.

RECOMMENDATION

The State Department of Education should review the textbook purchasing contracts of California school districts to ascertain the potential savings if textbook purchase contracts were negotiated on a statewide basis.

Respectfully submitted,



JOHN H. WILLIAMS
Auditor General

Date: April 5, 1978

Staff: Curt Davis, CPA, Audit Supervisor
Ronald R. Franceschi
Donald L. Truitt



ADDISON-WESLEY PUBLISHING COMPANY

SAND HILL ROAD, MENLO PARK, CALIFORNIA 94025

(415) 854-0300

December 29, 1977

Mr. Wesley E. Voss
Assistant Auditor General
California Legislature
925 L Street, Suite 750
Sacramento, California 95814

Dear Mr. Voss:

We are pleased to have an opportunity to reply to the California State Auditor General's report entitled "Deficiencies of Textbook Procurement Practices in California" and to know that our response will be included in an additional report issued by your office.

Addison-Wesley adheres strictly to, and carefully monitors, a pricing procedure by which it is assured that no school district purchasing our texts for the first time during any school year will pay more than any other school district in the country also buying under a new contract. There will, however, be minor differences in billings to each district because of differences in the way shipping charges are billed and local sales taxes over which we have no control.

As evidence of this procedure at work, see the first specific reference attached to your November 4 communication to us. You will see that the Florida contract price for our text, The American Experience, is exactly the same as the noncontract California price for texts contracted for in the same period of time. The Auditor has failed to include shipping costs for both the Florida price and the California price although such costs occur in both instances. The cost for this text under a new contract made a year later will be higher to California and to any other school system outside California purchasing the texts for the first time. We can also supply you with many cases in which Florida school districts purchase texts from us for the first time this year at higher cost than California prices established through contracts originated at an earlier time. In the case of the California price comparison with the Tennessee prices on the same sheet, the bulk of the Tennessee texts were purchased as much as five years earlier.

A fact of publishing economics is important to emphasize in this connection. Because of the uncertainties of sales forecasting, no publisher--certainly not this publisher--can afford the inventory risk of an initial printing of a multi-year supply of a title. Instead of printing and stockpiling, he must print conservatively, but realistically

December 29, 1977

according to his immediate needs, and then reprint from time to time as needed in each succeeding sales year. I need not remind you of the constant increases in the cost of paper, printing, binding, and marketing which simply must be reflected in the pricing of books each year. California spends less than one percent of its education budget on texts, and we wonder what an audit of the other 99 percent, costs for buses, salaries, construction, etc., would show when compared to costs over five years ago.

On Sheet 2 of the Attachment to us comparing contract prices to California and Florida for the same texts in the same period of time, in every case the differences are attributable to shipping costs which the Auditor has failed to include in the Florida prices but has included in the California prices. Moreover, the California prices are all off by three-tenths of a percent since he did not consider that shipping costs were included in the California price and incorrectly backed out the sales tax on the shipping cost. When the shipping charges and sales taxes have been properly removed from the California price, it will be seen that the Florida and California prices are exactly the same: further evidence of the scrupulous care we take to make sure that no school district in the United States purchasing texts for the first time during the same year pays more or less for the same text.

Addison-Wesley is and always has been impeccably fair and honest in dealing with all of its customers, including the State of California, where its national School Division headquarters are located and where it employs over 200 tax-paying Californians. Moreover, we have worked hard under adverse and complex conditions to keep textbook costs as low as possible. Because of our efforts and those of others in the industry, the prices of textbooks have increased far less than other materials in the past ten years.

Sincerely yours,



Edgar P. Thomas
Vice President and Director
School Division

EPT:w

enclosure

Office of the Auditor General

Publisher: Addison-Wesley

LOCAL PURCHASE PRICES WITH NO CONTRACT

Textbook	Florida Price	Contract Effective Date In Florida	California Price	Date Purchased In California	Difference
The American Experience	\$8.97	4-76 thru 3-80	\$8.97	5-76	\$.00
The American Experience	8.97	4-76 thru 3-80	8.97	5-76	.00
The American Experience	8.97	4-76 thru 3-80	8.97	6-76	.00
The American Experience	8.97	4-76 thru 3-80	8.97	7-76	.00
The American Experience	8.97	4-76 thru 3-80	9.84	2-77	.87
The American Experience	8.97	4-76 thru 3-80	9.84	3-77	.87
The American Experience	8.97	4-76 thru 3-80	9.84	3-77	.87
Textbook	Tennessee Price	Contract Effective Date In Tennessee	California Price	Date Purchased In California	Difference
Elements of Calculus & Analytical Geometry	\$7.80	7-72 thru 6-77	\$9.90	7-76	\$2.10
Geometry--Moise, Docuns	5.01	7-72 thru 6-77	7.20	7-76	2.19
Shanks: Pre-Calculus Math	6.99	7-72 thru 6-77	2.00 6.99	4-77	2.01

NOTE: The California sales tax has been deleted in all comparisons.

Publisher: Addison-Wesley

TEXTBOOK PRICES UNDER STATE CONTRACT

Textbook	Grade Level	Florida Price	California Price	Difference
Success With Mathematics--Book 1	7-8	\$ 6.12	\$ 6.51	\$.39
Duplicating Masters--Instructional	7-8	9.90	10.52	.62
Duplicating Masters--Independent Practice	7-8	16.50	17.54	1.04
Diagnostic Tests	7-8	5.82	6.19	.37
Achievement Tests	7-8	5.82	6.19	.37
Success With Mathematics--Book 2	7-8	6.12	6.51	.39
Duplicating Masters--Instructional	7-8	9.90	10.52	.62
Duplicating Masters--Independent Practice	7-8	16.50	17.54	1.04
Diagnostic Tests	7-8	5.82	6.19	.37
Achievement Tests	7-8	5.82	6.19	.37
Success With Mathematics--Book 3	7-8	6.12	6.51	.39
Duplicating Masters	7-8	29.70	31.58	1.88

NOTE: The California sales tax has been deleted in all comparisons.

ALLYN AND BACON, INC.

470 ATLANTIC AVENUE

BOSTON

RICHARD S. CARROLL
VICE PRESIDENT

November 10, 1977

Mr. Wesley E. Voss
Assistant Auditor General
Office of the Auditor General
California Legislature
925 L Street, Suite 750
Sacramento, California 95814

Dear Mr. Voss:

Mr. Ansbro has asked me to respond, in my capacity as Director of our Elementary and High School Division, to your letter of November 4, 1977. I have carefully checked the list of our titles and prices that you provided. The listing below provides an explanation for the noted price differentials.

TEXTBOOK PRICES UNDER STATE CONTRACT

Challenge of Our Times: (5 titles)
Technology: Promises & Problems
Prejudice & Discrimination
Nations In Action
Choices & Decisions
Lands of Africa

The bid list price for each of these 5 titles to both Florida and California is the same \$4.16. The net price difference of \$3.12 (Florida) and \$3.33 (California) results from California's requirement that contract prices must be bid f.o.b. California school address -- therefore the discount is 20% but the net price includes local shipping costs. Florida prices are bid at 25% discount, f.o.b. our Tallahassee, Florida warehouse. In Florida each account must pay school destination shipping charges.

LOCAL PURCHASE PRICES/NO CONTRACT

Our prices are normally effective from October 1 of each year through the following September 30. The only recent exception to our price increase policy occurred May 1, 1974, when we effected a special price increase, following a two-year federal price control program.

The differential between California non-contract prices and

and other states' contracted prices is entirely accounted for by the existing Allyn and Bacon catalog price at the time of the state price bid vs. the current Allyn and Bacon catalog price at the time a California school account ordered the same title.

Textbook

Stein Refresher Math

Texas bid May 1976 at List \$8.80, Net \$6.60 from our 1976 Catalog.

California orders placed from November 1976 through March 1977 at List \$9.96, Net \$7.47 from our 1977 Catalog.

Textbook

Magruder's American Government	Tennessee List \$8.64
Leinwand-Pageant of World History	Tennessee List \$8.24
Inquiries In Sociology	Tennessee List \$7.96

All of the Tennessee contract prices shown were bid in June 1973 from our 1973 Catalog. The California orders shown were placed as follows:

- 7/74 Special May 1, 1974 Prices - List \$9.96
- 7/76 1976 Catalog - List \$10.96
- 3/77 1977 Catalog - List \$12.96
- 4/75 1975 Catalog - List \$11.48
- 10/76 1977 Catalog - List \$12.96
- 7/74 Special May 1, 1974 Prices - List \$8.80
- 6/76 1976 Catalog - List \$9.32

The above listed California orders all received a 25% discount f.o.b. our Belmont, California warehouse.

Textbook

Vista Hispanica

Nueva Vista

All of the Tennessee contract prices shown were bid in June 1975 from our 1975 Catalog. The California orders shown were placed as follows:

- 10/76 1977 Catalog - List \$10.96
- 9/76 1976 Catalog - List \$8.36 (Until 10/1/76)
- 10/76 1977 Catalog - List \$9.00
- 11/76 1977 Catalog - List \$9.00

Textbook

Refresher Mathematics

Fundamentals Of Math

Both of these earlier editions were bid in June 1971, from our 1971 Catalog, to Tennessee at \$6.40 List, and \$5.92 List, respectively. The California orders shown, for later revisions of these titles, were placed as follows:

- 12/76 1977 Catalog - List \$9.96
- 3/77 1977 Catalog - List \$11.96

Mr. Wesley E. Voss

-3-

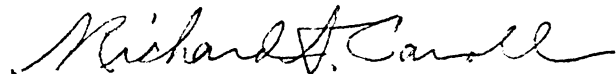
November 10, 1977

In all of the examples listed in your report, California non-adopted orders were supplied at the current lowest net price which is List less 25%, f.o.b. Belmont, California.

State contract prices are normally required to be bid, including adoptions in California, one year before the texts actually are placed in use in the state. The only difference in the net contract price that California pays for texts that are bid elsewhere, in the same Catalog time period, i.e. usually 10/1 through 9/30, is directly attributed to including local shipping charges in the net price - a unique California requirement.

Thank you for giving us the opportunity to comment on the prices of our texts sold in California.

Sincerely,

A handwritten signature in cursive script, reading "Richard A. Carroll". The signature is written in dark ink and is positioned to the right of the typed name "Richard A. Carroll".

rsc:h

cc: Mr. William B. Ansbro

APPENDIX A-3

Association of American Publishers, Inc.

Harold T. Miller Chairman
Townsend Hoopes President
Austin J. McCaffrey Senior Vice President
Thomas D. McKee Vice President
Richard P. Kleeman Vice President

One Park Avenue
New York, N.Y. 10016
Telephone 212-689-8920
Cable • BOOKASSOC NEWYORK

December 21, 1977

Mr. John Williams
Auditor General
California Legislature
State Capitol
Sacramento, California 95814

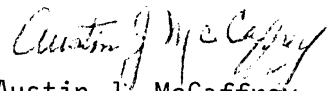
Re: Report 285.2

Dear Mr. Williams:

I am submitting in this communication a response by the School Division of the Association of American Publishers, Inc., to Report 285.2 "Deficiencies of Textbook Procurement Practices in California." If you desire any further information or wish to discuss the issues noted in our statement, we would be pleased to do so.

We appreciate this opportunity to present our views and hope that they will be helpful to you.

Sincerely,


Austin J. McCaffrey
Senior Vice President

Enc.



Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

California Legislature



JOHN H. WILLIAMS
AUDITOR GENERAL

*copy -
Legal Dept.*

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NATE HOLDEN
LOS ANGELES

June 29, 1977

Mr. Phillip Yoder
Regional Vice President
Scott-Foresman Publishing Co.
855 California Avenue
Palo Alto, California 94304

RECEIVED

JUN 30 1977

SCOTT, FORESMAN & CO
Palo Alto, California

Dear Mr. Yoder:

As a publisher that offers instructional materials for sale or adoption within the State of California, we would appreciate your interpretation of the California Education Code Section 60061 concerning textbook pricing. In this regard, please describe the price limitations you place on textbook sales under the following conditions:

- (a) A contract is established with the State of California for textbooks adopted in grades K-8.
- (b) A school district purchases state-adopted textbooks directly from the publisher with local funds.
- (c) A school district purchases non-state-adopted textbooks with local funds.

If you have any questions concerning this request, please feel free to contact Don Truitt of the Auditor General's staff (916) 445-2221.

Sincerely,

John H. Williams
JOHN H. WILLIAMS
Auditor General

JHW:DT:lc



One Park Avenue
New York, N. Y. 10016
Telephone 212 689-8920

December 23, 1977

TO: Legislative and Agency Officials in Sacramento

FROM: Austin J. McCaffrey

SUBJECT: Report 285.2 "Deficiencies of Textbook Procurement Practices"

I am enclosing a copy of the response to Report 285.2 of the Office of Auditor General by the Association of American Publishers, Inc. We appreciate this opportunity to share with you our views and hope that the information will contribute toward a better understanding of the issues raised in the Report.

AJM:rcl
encl.

**Statement of the Association of American Publishers
Commenting on the California Auditor General's Report
"Deficiencies of Textbook Procurement Practices in California"**

The Association of American Publishers (AAP) is a not-for-profit trade association organized under the laws of the State of New York. Its 330 members include most of the major commercial book publishers in the United States and many small and non-profit publishers, including university presses, religious organizations and scholarly associations. AAP members publish a majority of all books and related materials produced in the United States. The 56 members of AAP's School Division produce more than 80% of all educational books and instructional materials sold to elementary and high schools, school libraries and individual elementary and high school students and teachers in the fifty United States. The AAP and its School Division thus have a vital and continuing interest in education and in the ability of book publishers to fulfill their role in the total educational process.

It is in this spirit that the AAP submits these comments concerning the California Auditor General's Report 285.2, "Deficiencies of Textbook Procurement Practices in California." This statement is not presented in order to assess any individual AAP-member publisher's compliance or non-compliance with the requirements of California law. Its sole purpose is to relate the book publishing industry's general views with regard to a number of consequential questions of legal, educational and fiscal policy raised by the California Auditor General's recent report.

Summary of AAP Views

i) Alleged publisher overcharges. The Auditor General has concluded that educational publishers often overcharge California for state adopted textbooks in violation of Section 60061 of the State Education Code.

AAP POSITION: While the AAP cannot comment on individual publisher's legal compliance, it would appear that the Auditor General's analysis is based upon a general misapprehension of the nature of the textbook adoption process and, in particular, of the nationwide system of so-called "most-favored-nation" requirements that govern the state-by-state pricing practices of the educational publishing industry.

ii) Monitoring compliance with Section 60061. Based upon this doubtful finding of widespread overcharges, the Auditor General has concluded that the Department of Education fails to monitor and secure compliance with the requirements of Section 60061.

AAP POSITION: The AAP is unaware of any general failure of compliance with the requirements of Section 60061 by educational publishers in California and must therefore disagree that the Department of Education has failed to secure such compliance. Indeed, the AAP knows California's Department of Education to be among the most effective state educational agencies in the United States.

iii) Price guarantees for state adopted materials. Influenced by his doubtful finding of widespread publisher overcharges, the Auditor General has concluded that California may be demanding inadequate price guarantees for state-adopted instructional materials. On this basis he recommends longer-term, fixed price contracts for state adoptions.

AAP POSITION: The AAP believes that severe price limitations such as mandatory long-term adoptions at fixed prices without a guarantee of substantial sales during the early years of the extended contract period severely impair the ability of the educational publishing industry to produce up-to-date instructional materials of the highest quality. Rather than seeking further price concessions, price relief in the form of shorter-term contracts or price adjustments on existing contracts has been instituted or is being considered today in many adoption states in recognition of the cost pressures of today's inflationary business environment.

iv) Price guarantees for non-state-adopted materials. Based upon a narrow and inaccurate assessment of current practice, the Auditor General now urges expanded state control over local textbook purchasing.

AAP POSITION: Statewide adoptions in many of their restrictive provisions can represent an archaic and educationally-inflexible method of textbook acquisition. While the AAP does not seek as a matter of industry policy to secure abolition of state textbook adoptions, it does seek reform of the most restrictive features of such programs. The Auditor General has failed to make a credible case for expansion of state control over local option in California and, in particular, has ignored the significantly adverse non-economic effects that such a shift of policy could have on the quality of education and on the ability of local school districts to secure the most up to date materials in a manner consistent with local needs.

v) The State Instructional Materials Fund surplus. The Auditor General has concluded that the uncommitted surplus of approximately \$9.6 million in the State Instructional Materials Fund ought to be distributed either to the State General Fund or to local school districts for additional textbook purchases.

AAP POSITION: AAP believes that the uncommitted surplus in the State Instructional Materials Fund, as a matter of law as well as sound public policy, ought to be dedicated to the purpose for which it was intended -- that is, to the purchase of instructional materials at the state or local level. This is also the position, as we understand it, of the Legislative Counsel of California. (Letter of November 25, 1977 to Hon. Mike Cullen)

vi) State printing of textbooks. The Auditor General now finds that savings generated by the State Printer are not as great as reported and that the State Printer has at times selected textbooks for manufacture that could have been purchased for a lower price directly from the publisher.

AAP POSITION: The AAP believes that the U.S. publishing industry has proven its ability to manufacture and provide finished books and related services to the nation's schools on an efficient and responsible commercial basis. California is unique among the fifty states in declining to avail itself of this industry expertise but, instead, requiring that certain educational materials be manufactured by the California State Printer under so-called "plate lease" licenses. Having made this basic policy decision, we suggest it is for the state to assess whether the State Printer is providing economies and efficiencies that justify this unique system.

Alleged Publisher "Overcharges" Within
A Nationwide Most-Favored-Nation System

As noted, it would not be appropriate for the AAP to undertake to defend individual publishers concerning specific instances of alleged "overcharges" with regard to the price of textbooks bid or offered for adoption in California. Pricing is and must be a matter for individual action by each publisher. It is expected that individual publishers will assess the particular facts and circumstances bearing upon the Auditor General's findings and, where appropriate, file individual statements regarding their compliance with California law.

On the other hand, focusing exclusively upon the industrywide implications of the Auditor General's analysis, the AAP believes that it would be appropriate to comment upon the nature of the textbook adoption process in general and, in particular, upon what the AAP suggests may have been the Auditor General's misunderstanding of the most-favored nation requirements that govern -- and strictly constrain -- the state by state pricing practices of individual members of the educational publishing industry.

Although it may differ in certain respects from the ordinary competitive bidding system, the state adoption process is a highly competitive one in which state purchasing agencies may seek and secure, among many other protections, binding price guarantees on instructional materials submitted for adoption. The most pervasive price constraint within this process is provided by what has developed into a nationwide, interdependent system of so-called "most-favored-nation" statutory or contract clauses. As many as forty-three of the fifty states have some form of most-favored-nation clause requiring publishers to bid or offer prices in each state as low as are being bid or offered in all other states.

This nationwide system has meant, for publishers who wish to do business on a national basis, that whatever price they individually determine for their instructional materials at a given time must, by force of this network of state laws, be strictly carried over by the publisher from state to state throughout the country. Correlatively, this national system has made it imperative that no state demand preferential price treatment as a requirement for doing business in that state. In short, the network of most-favored-nation clauses imposes a mutual obligation upon publishers and adopting states to demand and provide no more nor less than equal treatment on a given date. In recognition of the severe constraints on publishers imposed by this nationwide system, to our knowledge no state has sought more than equal treatment.

No meaningful study of publisher compliance with the state's most-favored-nation requirement can be undertaken without a sensitivity to this interdependence of practice. Thus, in AAP's view, California must interpret its legal requirements in a manner consistent with the requirements and practices prevailing among all of the most-favored-nation states. We suggest, therefore, that the intent of the California Legislature, in enacting Section 60061 must have been to secure treatment equal to that accorded elsewhere, and no more. To do otherwise would be to demand unequal, preferential treatment thereby putting publishers to the intolerable dilemma of violating their commitments in other most-favored-nation states or ceasing to do business in California.

Undeniably, if an individual publisher has -- for whatever reason -- erroneously bid its materials at a price higher than that offered in other states at the same date, then it has failed to meet its obligation to the state. If, however, publishers have complied with their obligation of equal treatment, then they can be required to do no more. For example, if it is

established that publishers have bid or offered a basic price equal to that bid or offered in other states at the same time, but that their total bid price appears higher because it was made during a different time period, or because it includes a charge for delivery or transportation, or for sales tax or for any other services or features not provided to other states, then, it is respectfully submitted, California may not construe this as a violation of its most-favored-nation clause without doing violence to the finely-tuned network of similar clauses throughout the nation. We suggest that the Auditor General may have failed to take such factors into account in his investigation and that this may have led to erroneous findings of overcharges by publishers in the state of California.

The Case Against More Onerous Price
Guarantees for State Adopted Materials

Based upon the questionable premise that overcharges by educational publishers are widespread, the Auditor General recommends that still further restrictions should be considered for the purpose of securing maximum price advantages for the State of California. The AAP believes that such actions are entirely unwarranted by the Auditor General's findings. Moreover, excessive price limitations could severely damage the publishing industry and impair its ability to provide materials of the highest quality. At the same time it could also limit the ability of the State of California to attract bids from the greatest number of publishers for the widest variety of instructional materials.

The Auditor General's recommendations come at a time when, rather than seeking further price concessions from publishers, price relief in the form of shorter-term contracts or price adjustments on existing contracts has

been instituted in many adoption states or is presently being considered, in recognition of the cost pressures of today's inflationary business environment.

The trend away from lengthy contract periods at fixed prices or, at the very least, toward a guarantee of a substantial percentage of sales during the early years of the contract period, results from a recognition of the changing nature of state adoptions. When state adoptions came into being in the early part of this century only one textbook, or a very few textbooks, were adopted or selected for a subject area. The contract could be a guarantee of very substantial sales, the majority of which were made in the first year or two of a contract. Today, in California as in certain other states the contract guarantees no special sales potential -- only the right to be listed on an order form -- since a wide range of materials are adopted for each grade in each subject area to provide the broadest-possible flexibility and choice for different schools, differing educational programs and in recognition of the differing needs and abilities of students. This is needed, and good, but little change has been made to adjust the conditions of marketing textbooks either to these new multiple adoption patterns or to present inflationary economic conditions.

One policy that has been adopted in California allows for price adjustments at the end of the second and fourth years of the contract period, even though the bulk of the state's purchases usually are made in the first two years. To understand how onerous more restrictive price policies could be one need only contemplate the effect on publishers, particularly smaller publishers, if California were to move to a longer-term price guarantee -- six years, for example -- in combination with an interpretation of its most-favored-nation

clause as requiring bids at the lowest price available nationally regardless of contract dates. This would mean that a publisher who bids a book at \$3.00 in 1978 in State X requiring a six-year guarantee could find itself required to guarantee that \$3.00 price for a total of twelve years, or through the year 1990, if it wished to sell that book in California and if in 1984 California were to demand a six-year guarantee based upon the original contract price bid in State X. The practical effect would mean publishers could never, under any circumstances, increase prices.

Ultimately, of course, the short-term price advantages that could be secured through such onerous price restrictions within the national system of state adoptions might well be lost to the extent that individual publishers find it impossible to survive or remain profitable without anticipatorially adjusting their initial bids on instructional materials in all states. The present wide range of published educational materials would undoubtedly shrink. Publishers' ability to continue serving the California market could even be severely threatened. In short, the attempt by a state to secure short-term preferential advantage is likely, in the end, to be self-defeating.

Local Option in the Selection of Instructional Materials

It may be true, at least initially, that a four or six-year statewide adoption, at fixed prices, of all instructional materials to be purchased in California (K-12) could result in cost savings as compared to the present system of materials acquisition. It is essential, however, that such short-term fiscal savings be balanced against equally-important non-economic considerations.

an important consideration when purchasing educational

materials. A balancing of priorities is obviously needed and the publishing industry can have no fundamental objection to such an ongoing process within the educational community. We do suggest, however, that nothing in the Auditor General's report would justify a radical shift away from California's present system of local option in the purchase of instructional materials for grades 9 through 12.

As already noted, statewide adoptions can represent an archaic and educationally inflexible method of textbook acquisition. They often lead to a diminution of the variety and currency of materials available for use in the schools and almost inevitably diminish the ability of local school districts and teachers to adjust the local curriculum to varying local needs. With local option, substantial educational benefits can be achieved by taking advantage of the superior ability of classroom teachers to select, when available, the instructional materials most suited to their individual needs and established goals. In the last analysis, any educational system can only be judged upon its ability to enhance the learning of each child within the system. In AAP's view, a move away from such flexible decision-making authority at the local level is not justified by the questionable findings of the Auditor General with regard to alleged deficiencies in textbook procurement in California.



AMERICAN BOOK COMPANY

450 West 33rd Street, New York, New York 10001 212 594-8660

Donald A. Eklund, President

Cable Address: AMBOOKCO NEWYORK
WU Telex Number 214253

January 6, 1978

Mr. John H. Williams
Auditor General
California Legislature
State Capital
Sacramento, California 95814

RE: REPORT 285.2

Dear Mr. Williams:

I am responding to the first section of Report 285.2 issued by your office entitled "Deficiencies of Textbook Procurement Practices in California." In this section, you state that most publishers charge California a higher textbook price than other states with similar contract dates.

On Page 8 of the Report, one of American Book Company's titles Patterns of Language-Grade 1 is cited. Your report shows the California price as \$2.73 (excluding California sales tax) and the other state's price as \$2.40. The discrepancy in price can be explained by two factors:

1. The California price includes the cost of transportation. California requires publishers to bid a price, which will include delivery to each individual school.
2. The contract date for California is later than the contract date for the other state. In each instance, the contract price represents the current catalog price of Patterns of Language-Grade 1 at the time the contract was signed.

Our contract with the State of Arkansas was signed on 9/13/76. The catalog price of Patterns of Language-Grade 1, at that time, was \$2.40. On October 1, 1976, American Book Company published a new catalog and raised the price of this book to \$2.55. The California contract was signed on February 1, 1977. Please note, on Page 2 of this letter, how the contract price was broken down.

Mr. John H. Williams
Auditor General - California

January 6, 1978

Patterns of Language-Grade 1	-	\$2.55
Transportation Charges	-	.18
California Tax	-	<u>.15</u>
Total	-	<u>\$2.88</u>

Therefore, it is obvious that in each contract, we have agreed to provide books at the current catalog price. In the Arkansas contract, the contract price is \$2.40 (the catalog price at that time). In the California contract, the contract price (minus California tax) is \$2.73. This figure represents a catalog price of \$2.55 plus transportation charges of \$.18.

American Book Company does business in all of the 50 States. We must abide by the laws of all of these States. California asks us to bid a price which includes delivery to the schools. To deliver books to California schools, at the same price as they are shipped FOB shipping point to the other States, would violate our contracts with these States.

Our records indicate that both our bid date and contract date with the State of Arkansas for the above title preceded our bid and contract dates with the State of California.

Our records also show that, at the time of our contract with the State of California, our price did not exceed our then current price for the book.

It is our understanding that the above facts are consistent with California's applicable law.

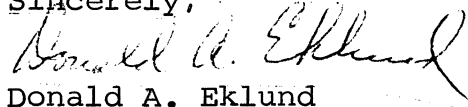
Mr. John H. Williams
Auditor General - California

January 6, 1978

We also believe, as do many other publishers, that we are bound by the price we bid on the date we actually make our bid. That would be the price at which we obligate our Company to deliver books.

If we thereafter change our prices, subsequent bids to other school districts would be at the increased prices. To follow any other course, e.g., adhering to prices based upon arbitrary bid and other dates set by any of the States, would be contrary to the responsible conduct of our business.

Sincerely,

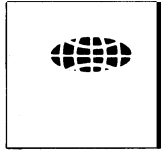


Donald A. Eklund
President

/blm

Palmer Method® handwriting

The A. N. Palmer Company



APPENDIX A-5

1720 WEST IRVING PARK ROAD ■ SCHAUMBURG, ILLINOIS 60193 ■ AREA 312-894-4300

December 27, 1977

Mr. Wesley E. Voss
Assistant Auditor General
California Legislature
Joint Legislative Audit Committee
925 L Street, Suite 750
Sacramento, California 95814

Dear Mr. Voss:

Thank you for sending us the Joint Legislative Audit Committee's Report to the California Legislature on the text-book procurement practices in California.

The A. N. Palmer Company has been in the handwriting business for 94 years. A good portion of this time our textbooks and teaching aids have been used in California. We, therefore, are very anxious to comply with the laws that govern the State.

We shall be happy to cooperate in any fashion you and the State of California deem appropriate. In this instance though, I believe you are incorrect in your basic assumption that California pays more for Palmer Method handwriting books than any other state contracted during the same period of time.

The California price for our textbooks is broken down in the following manner:

Textbook price:	\$1.50
(Same as Arkansas)	
Transportation charges (retained by depository):	<u>.12</u>
	\$1.62
Sales tax (retained by depository and paid to the State):	<u>.09</u>
Total bid price	\$1.71

You can plainly see from this illustration the amount of money paid by California to The A. N. Palmer Company is the same as that price paid in Arkansas. It is my understanding that most depositories in this country bill the State Department of Education for actual transportation charges incurred by that depository for shipment of state adopted materials. This is not true in California.

If you and your staff were to make the same arrangements with Vroman Inc. (California depository), the price of our textbooks would appear as you wish them to appear. We would gladly delete this charge from our pricing, but the possibilities of Vroman's remaining a viable organization without someone else paying for transportation costs would appear slim.

Please let me repeat this once more for clarity. We do not receive one penny of the \$.12 difference as it appears in your letter of November 4, 1977. This amount is to reimburse the depository for transportation costs incurred for shipping our textbooks to the local school districts. This reimbursement is very common for depositories across the country.

If I may be of any further assistance to you or your staff, please do not hesitate to contact me.

Sincerely,

THE A. N. PALMER COMPANY

A handwritten signature in cursive script that reads "Darrell J. Moon". The signature is written in dark ink and is positioned below the typed name.

Darrell J. Moon
General Manager

DJM:dls

cc: Mr. Earl Humphreys
Dr. James V. Moon

CREATIVE GROWTH WITH HANDWRITING

December 27, 1977

Mr. Wesley E. Voss
Assistant Auditor General
Joint Legislative Audit Committee
Office of the Auditor General
925 L Street, Suite 750
Sacramento, CA 95814

Dear Mr. Voss:

I have your interesting letter of November 4 reporting on the study made by the California State Auditor General on the subject of "Deficiencies of Textbook Procurement Practices in California."

I do wish to respond to the apparent variance between the price of our textbook series entitled "Creative Growth With Handwriting" as compared between the State of California and the State of Arkansas.

There is no difference in the price of our text "Creative Growth With Handwriting" delivered under the terms of the contract for the State of Arkansas from that delivered under the terms of the State of California according to our interpretation of the two contracts. Both California and Arkansas require a publisher to furnish their books from a shipping point within their state. In the case of Arkansas, our \$1.77 school list price is F.O.B. the Arkansas Book Company, Little Rock, Arkansas. In the case of California, the \$1.77 price is F.O.B. Vromans Book Depository, Pasadena, California.

There is an additional clause in the California State contract which, by our interpretation, requires that we add to the bid price the cost of shipping a copy of "Creative Growth With Handwriting" between Vromans Depository and the school district destination. Our estimate of \$.09 per copy for local distribution required by the State of California and not required by the State of Arkansas is the explanation for the difference in the contract prices which you have referred to.

We believe it is clear that the requirement of the California Contract for delivery of a book within the state is a unique service provided to the State of California above and beyond that provided the State of Arkansas. To have included that service in the basic price of our text (\$1.77) and not to have included it in the State of Arkansas where it is not required under their contract would have been a violation of our understanding of the uniform price policy. We have

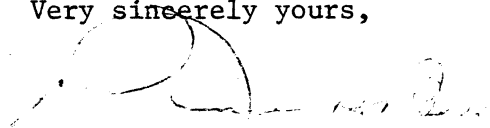
Mr. Wesley E. Voss

- 2 -

December 27, 1977

made a good faith effort in all of the states with which we do business to meet the terms of their contracts as we interpret them and to provide them in all cases as required with a uniform basic price. I think the illustration which you have picked will verify our good faith effort. Thank you for your interest.

Very sincerely yours,



Richard H. Bell
President

RHB:pj

Educational
Publishers

PO Box 25308
1901 North Walnut
Oklahoma City
Oklahoma 73125

Telephone
405 528 8444



The Economy Company

January 9, 1978

Mr. Wesley E. Voss
Assistant Auditor General
California Legislature
925 L Street, Suite 750
Sacramento, California 95814

Dear Mr. Voss:

The discrepancy in prices for our KEYS TO GOOD LANGUAGE series between California and Arkansas that you referred in your letter of November 4, 1977, is an error on our part, and we certainly appreciate your bringing this to our attention.

Attached is a recap of all our current contracts for KEYS TO GOOD LANGUAGE, and it would appear that we inadvertently favored Arkansas and Louisiana over Idaho, California, the Archdiocese of Indianapolis, the Archdiocese of Gary, Indiana, and Philadelphia.

Please be assured that this was simply a clerical error. The person in our company concerned with the clerical aspects of all adoptions has left our company, and we have discovered that several inconsistencies occurred during the last several months of this person's employment. We do not offer this information as an excuse, merely as an explanation of what happened.

In any event, Mr. Voss, under the best of circumstances the rules, regulations, and long range guessing about production costs create a very confusing atmosphere for preparing bids, and the California bid is certainly the most complicated, and requires the most long range guessing.

Mr. Wesley E. Voss
January 9, 1978
Page 2

Should you truly wish to purchase books at the lowest possible price, I respectfully suggest to you that you assist in allowing the price to be forced down by the competition of the free marketplace, and abandon multi-year contracts with the uncertainties caused by the rampant inflation in the printing industry. Additionally, your listing is now very broad and includes nearly all major programs, but the double selling expense still goes on in an adoption situation. We sell for a year to the committee and then, if listed, sell to each school.

There are tremendous expenses incurred in the selection process, both by the State of California and by all the publishers involved in the process. And, obviously, the publisher's expenses are added to the selling price of the books.

There is no doubt that publishers and educators would be happy to see the complicated and expensive adoption process come to an end. Perhaps this brief explanation of how the process contributes to higher prices will assist you in making decisions that will result in cost savings for all schools and districts everywhere.

We appreciate the opportunity to be of service to the schools of California, and we particularly appreciate the professional attitude of the personnel in the California State Department of Education. When our company may be of help to you, Mr. Voss, please let us know.

Sincerely yours,


Ford C. Price
P R E S I D E N T

FCP:mne

RECAP OF KL CONTRACTS

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40			
	ALABAMA	ARKANSAS	CALIF.	IDAHO	LOUISIANA	OREGON	ARCH. INDIANAPOLIS	ARCH. DIOCESE OF EARY	NEW YORK CITY	PENNSYLVANIA																																	
BID PRICE: KL-2	# 138	# 138	# 147	# 142	# 138	-	# 147	# 147	# 138	# 147																																	
KL-3-6	174	174	189	189	174	159*	189	189	174	159*																																	
DATE BID SUBMITTED	4-30-75	2-25-76	12-75 (approx)	10-4-76	2-26-76	1-15-75	11-15-74	5-9-77	7-1-75	11-15-74																																	
DATE CONTRACT BEGINS	1-21-76	7-1-77	7-1-77	7-1-77	1-1-77	7-1-75	9-1-77	4-1-77	1-1-76	9-1-77																																	
LENGTH OF CONTRACT	6 1/2 yrs.	5 yrs.	6 yrs.	5 yrs.	5 yrs.	6 yrs.	6 yrs.	5 yrs.	5 yrs.	5 yrs.																																	
DATE CONTRACT EXPIRES	4-30-82	6-30-82	1-31-83	12-31-81	1-31-82	6-30-81	5-31-83	5-31-82	12-31-80	4-30-78																																	
* Price administered from form # 1.53 effective 7-1-77																																											

12-15-76
Yankee Station

ENCYCLOPÆDIA BRITANNICA
EDUCATIONAL CORPORATION

December 27, 1977

Please Reply
ENCYCLOPÆDIA BRITANNICA
EDUCATIONAL CORPORATION
2494 Teagarden Street
San Leandro, Calif. 94577
(415) 483-8220

Wesley E. Voss
Assistant Auditor General
Joint Legislature Audit Committee
925 L. Street, Suite 750
Sacramento, Ca. 95814

Dear Mr. Voss:

Your letter of November 4, questioning the California Adoption price of Language Experiences in Reading was addressed to the wrong company. This media kit is produced by Encyclopaedia Britannica Educational Corporation, 425 N. Michigan Ave., Chicago, Ill. 60611.


You have pointed out a \$3.45 difference between the Arkansas and California price. That difference is exactly the difference between our F.O.B. destination charge and our F.O.B. Shipping Point charge. California requires we bid delivered price to individual school districts.

Next, your analysis points to a differential between Arkansas and California prices for Teacher Editions. This material is not a textbook, therefore there is no teacher edition.

We were requested to bid prices for individual components within each media kit to allow schools to replace items lost or destroyed. We did not bid a price for Teacher Editions of a textbook.

Thank you for the opportunity to respond to the Joint Legislative Audit Committee report #285.2.

Sincerely,


George Loftus
Regional Manager

gl/a
cc: R. Wagner
O. Johnson

Publisher: Encyclopedia Britannica

TEXTBOOK PRICES UNDER STATE CONTRACT

Textbook	Grade Level	Arkansas Price	California Price	Difference	Arkansas Price for Teachers' Editions FREE*	California Price for Teachers' Editions
Language Experiences In Reading	1-3	\$249.50	\$252.95	\$3.45	*	\$7.40

* Arkansas requires one free teacher's edition for every 25 pupils' editions purchased.
 NOTE: The California sales tax has been deleted in all comparisons.



15 November 1977

Mr. Wesley E. Voss
Assistant Auditor General
Suite 750, 925 L Street
Sacramento, California 95814

Dear Mr. Voss:

You sent me a letter regarding the report entitled Deficiencies of Textbook Procurement Practices in California. With that letter you included a sheet which purported to compare local purchase prices of a Follett textbook in Tennessee and in California.

The information shown on that sheet was of dubious validity.

The book being sold in Tennessee was a 1971 copyright edition of World History. It was sold in Tennessee under terms of a contract whose prices were established in October 1973.

The book being sold in California is a 1974 copyright edition with significant revisions and changes. Your form indicated that purchases were made in 1976.

I do not believe I need to point out that significant inflation occurred between 1973 and 1976.

At least in the instance you have marked in the sheet you sent to me you are comparing two different items sold at widely different times. I do not believe such a comparison has any validity.

There is one further point that ought to be made. If any state were to force publishers to sell books at the lowest price at which any previous editions of the book were ever sold in the past, that state would soon find that few publishers would care to do business there. In a time of rampant inflation, it is a sure ticket to bankruptcy to sell new products today at the prices of old products several years ago. Few publishers care to go bankrupt.

If all the information on which the report is based is similar to the information you sent to me, I wonder how useful the report can be.

Sincerely yours,

Robert J. R. Follett
President

cc: Howard Roberts, Ralph Abell



GLOBE BOOK COMPANY, INC. 175 Fifth Avenue, New York, N.Y. 10010 (212) 777-4141

January 5, 1978

Mr. Wesley E. Voss
Assistant Auditor General
Joint Legislative Audit Committee
925 L Street
Sacramento, CA 95814

Dear Mr. Voss:

In reply to your letter of November 4, concerning Deficiencies of Textbook Procurement Practices, we request that our comments be included in the additional report to be issued by your office. You claim in your letter that our response should be forthcoming by January 10.

In reference to your enclosure, TEXTBOOK PRICES UNDER STATE CONTRACT:

WORLD OF VOCABULARY, BOOK 1 was submitted for adoption in California and in Arkansas during the same year and at the then current catalog price of \$2.25 per copy. It is Globe's policy to add shipping charges to the current catalog price, 14¢ was added to bring the California price up to \$2.39. Although California permits publishers to add shipping charges, Arkansas refused to accept this charge and listed this title at \$2.25 per copy. The difference is 14¢ for shipping.

WORLD OF VOCABULARY, BOOK 1 has a Teaching Guide rather than a Teacher's Edition, as specified on your form. These Guides were quoted as free items at the ratio of one Guide for each room set of books ordered. However, California requested a quotation for additional Guides over and above the permitted purchase ratio. The additional Guides were quoted at 50¢ per Guide. The price you show for a Teacher's Edition, to the best of our knowledge, is non-existent.

We appreciate the opportunity you have given us to reply to your findings as they relate to Globe.

Very truly yours,

Lester Leventhal
President

LL:jb
Enc.

Publisher: Globe Book Co.

TEXTBOOK PRICES UNDER STATE CONTRACT

Textbook	Grade Level	Arkansas Price	California Price	Difference	Arkansas Price for Teachers' Editions FREE*	California Price for Teachers' Editions
World of Vocabulary--Book 1	7-8	\$2.25	\$2.39	\$.14	*	\$1.71

* Arkansas requires one free teacher's edition for every 25 pupils' editions purchased.

NOTE: The California sales tax has been deleted in all comparisons.



GLOBE BOOK COMPANY, INC. 175 Fifth Avenue, New York, N.Y. 10010 (212) 777-4141

January 6, 1978

Mr. Wesley E. Voss
Assistant Auditor General
Joint Legislative Audit Committee
925 L Street
Sacramento, CA 95814

Dear Mr. Voss:

In reply to your letter of November 4, concerning Deficiencies of Textbook Procurement Practices, we request that our comments be included in the report to be issued by your office.

In reference to the enclosure, LOCAL PURCHASE PRICES WITH NO CONTRACT:

MINORITIES: USA (paperbound) was submitted for adoption in Tennessee in 1973 at the then current catalog price of \$3.90 per copy, plus shipping charges of 26¢ per copy for a total of \$4.16. This was in 1973.

MINORITIES: USA (paperbound) was sold to school districts everywhere in the United States, including California, in 1974 and in 1975 (without contract) at the then current catalog price of \$4.35 plus 26¢ postage and 26¢ sales tax for a total of \$4.87. This was in 1974 and 1975.

MINORITIES: USA (paperbound) was submitted for adoption in the State of California in 1975 at the then current catalog price of \$4.35 plus postage and sales tax for a total of \$4.87. The price submitted for the adoption of this book in California in 1975 did not differ in any way from the price offered to anyone else in 1975.

MINORITIES: USA (paperbound) was adopted by the State of California under a 1976 contract at \$4.87 per copy which included sales tax and shipping charges. This price was then already one-year-old, a definite advantage to school districts in California. On the basis of the above, we do not find a deficiency in the textbook procurement practices.

Very truly yours,

Lester Leventhal
President

LL:jb
Enc.

Publisher: Globe Book Co.

LOCAL PURCHASE PRICES WITH NO CONTRACT:

Textbook	Tennessee Price	Contract Effective Date in Tennessee	California Price	Date Purchased In California	Difference
Minorities In The U.S.A.-- Paperbound	\$4.16	7-74 thru 6-79	\$4.35	4-75	\$.19
Minorities In The U.S.A.-- Paperbound	4.16	7-74 thru 6-79	4.87	6-76	.71
Minorities In The U.S.A.-- Paperbound	4.16	7-74 thru 6-79	4.87	7-76	.71

NOTE: The California sales tax has been deleted in all comparisons.



HARCOURT BRACE JOVANOVIICH, INC.

757 THIRD AVENUE, NEW YORK, NEW YORK 10017

KEITH A. FOILES, VICE PRESIDENT
DIRECTOR, SCHOOL DEPARTMENT

November 30, 1977

Mr. Wesley E. Voss
Assistant Auditor General
Joint Legislative Audit Committee
Office of the Auditor General
Suite 750, 925 L Street
Sacramento, California 95814

Dear Mr. Voss:

We are responding to the invitation in your letter of November 4, 1977 to Mr. William Jovanovich that we comment on the report you had enclosed. Our response is limited to a statement of our procedures in complying with California's legal requirements. While we are not commenting on the many questions raised by the report, our silence in that respect should not be construed as concurrence with any of the recommendations made in the report nor acknowledgment of its correctness or accuracy.

Textbook Prices Under State Contract

HBJ has one price only for school materials at any time. That price, which is used in all bidding on adoption contracts and for all sales not under contract, is our then current "wholesale school price". It is the only price at which our school publications are offered to any school or school system anywhere in the United States. We do not consider prices to which we are committed under pre-existing adoption contracts with other states (entered into at a time when we had a different wholesale school price) to constitute continuing offers to such states at the old wholesale school price. Indeed almost all of the purchases under such contracts are invariably made in the first year of the contract.

Since many states and other adopting agencies prefer to have transportation charged separately, and since our wholesale school price does not include transportation, it is our uniform policy for any purchaser asking for a transportation included price (such as California) to add a transportation charge of 4% of the wholesale school price (except in the case of items for which the

November 30, 1977

wholesale school price is \$50 or more, in which case the addition for transportation is 2%). Accordingly, in each case HBJ's bid price to California for any book that we offer for adoption under California state contract is the wholesale school price with transportation included, and, at the time of our bid to California, such price is the lowest price, F.O.B. destination point, being then offered by us to any other purchaser in the United States.

We do not interpret the California requirements to mean that we should charge California a delivered price which is lower than the delivered price charged to other states, i.e. we do not believe California requires us to provide free transportation to California while charging other states 4% for F.O.B. destination pricing.


You will note that the price difference stated in the first page of the list of HBJ prices enclosed with your letter is, in each case, 4%, representing the amount charged for transportation.

Local Purchase Prices With No Contract

As to all local purchases in the State of California of books which are under the State's adoption contract the price charged by HBJ is the price fixed by the adoption contract. As to all other books the price charged in each case is our then current wholesale school price, F.O.B. Petaluma, California.

If you have any questions about the foregoing we will be glad to respond. Mr. Lance Day, our Regional Manager in California; Mr. Ralph Caulo, our National Sales Manager; or Mr. Edward Klagsbrun, our legal counsel, will be happy to meet personally with you or persons you designate to answer such questions.

Yours very truly,



Keith A. Foiles

KAF:irj



Edward A. Miller
Vice President and
General Counsel

10 East 53d Street, New York, New York 10022

January 9, 1978

California Legislature
Joint Legislative Audit Committee
Office of the Auditor General
925 L Street - Suite 750
Sacramento, California 95814

Attention: Mr. Wesley E. Voss
Assistant Auditor General

Dear Mr. Voss:

This is in response to your letter dated November 4, 1977 enclosing a report entitled Deficiencies of Textbook Procurement Practices in California and two schedules concerning prices paid by California and certain other states for Harper & Row publications.

One schedule, "Textbook Prices Under State Contract," compared the price paid by Arkansas (\$2.97) with the price paid by California (\$3.17) for the book Words I Like To Read and Write. A second schedule, "Local Purchase Prices With No Contract," compared the prices paid by Texas (\$6.99 and \$7.95) with the prices paid by California (\$8.00 and \$9.09) for two French textbooks.

Both schedules omit significant facts concerning the date of submission of bid and acceptance of contract. Thus the bid for Words I Like To Read and Write was submitted to Arkansas January 30, 1976 and was accepted and became a binding contract September 13, 1976. The California bid for that book was delivered October 29, 1976 and the contract is dated November 1, 1976. Similarly, the bid for the two French textbooks was submitted to Texas on August 24, 1976 and a contract entered into on November 13, 1976. The purchases by California of the two French textbooks were not pursuant to a pre-existing contract.

The accompanying report states that "...cost comparisons were limited to contract and bid offerings that were dated in other

Mr. Voss

-2-

January 9, 1978

states later than in California" (p. 12). It is apparent from the foregoing facts that this was not true in the case of the Harper & Row comparisons and indeed the bid date and the contract date in each instance preceded the bid and contract dates in California.

The report discloses a difference of opinion concerning whether, in determining if prices charged to California comply with legal requirements, the State should compare the California prices with bids then being submitted to other states or with any outstanding unaccepted bid submitted to another state. In other words, should California use the bid date or the contract date?

We submit that practicalities require the use of the bid date. Harper & Row has bids outstanding at all times. Generally the laws require that bids be submitted at a price no higher than the publisher's then existing price. If California were to add a further requirement--that any bid submitted by a publisher also could not exceed the price of any outstanding unaccepted bid--the result would be that publishers could never raise prices. This necessarily follows because publishers, dealing with 50 states and numerous smaller jurisdictions within states, have bids outstanding at all times. We submit that California should not insist on an interpretation of its law which would lead to such an impossible result. And the bid date interpretation which we urge does not put California at a disadvantage vis-a-vis Arkansas or other states, because California is just as free as Arkansas and the other states to follow their procedure on bids.

We appreciate the opportunity to supply additional facts and comment on the report and we hope that our views will be given consideration.

Very truly yours,


Edward A. Miller

EAM:tf



APPENDIX A-14
D.C. Heath and Company

125 Spring Street
Lexington, Massachusetts 02173
Telephone (617) 862-6650

December 19, 1977

Mr. Wesley E. Voss
Assistant Auditor General
Office of the Auditor General
Suite 750
925 L Street
Sacramento, California 95814

Dear Mr. Voss:

I am pleased to respond to your invitation to comment on the matters cited in your letter to me of November 4, 1977, particularly the enclosures which compare various Heath prices to California with those prevailing in certain other states.

Patterns of Communicating - 1 & 2, Grades 7 and 8

Bid prices to Arkansas and California were based on our 1976 catalog net price of \$6.45 per copy; this price became effective on October 1, 1975.

Arkansas:

Price of \$6.45 bid February 10, 1976, for a contract effective July 1, 1977 through June 30, 1982.

California:

Price of \$6.45 bid February 20, 1976, for a contract effective for a period of two to six years beginning July 1, 1977.

The 19 cents per copy differential cited in your enclosure represents the "normal average shipping cost from the California depository to any school in California" in accordance with bidding instructions given publishers in a memorandum from Mr. Walter Johnson, Chief, Textbook Distribution Office dated June 7, 1974. In Arkansas such shipping costs are not included in the bid price, but are passed on to local school systems by the depository as additive to their orders.

Heath Elementary Mathematics, Grades 1 through 6

Bid prices to Texas and California were based on our 1975 catalog net price of \$2.67 per copy for grades 1 and 2 and \$4.68 per copy for grades 3 through 6; these prices became effective October 1, 1974.

Texas:

Grades 1 and 2:

Price of \$2.67 bid July 14, 1975, for contract effective for a period of five years beginning September 1, 1976.

Grades 3 through 6:

Price of \$4.68 bid July 14, 1975, for contract effective for a period of four years beginning September 1, 1977.

California:

Grades 1 and 2:

Price of \$2.67 bid February 2, 1975, for contract effective July 1, 1976, through June 30, 1978.

Grades 3 through 6:

Price of \$4.68 bid February 2, 1975, for contract effective July 1, 1976, through June 30, 1978.

The 8 cents per copy differential for grades 1 and 2 and the 14 cents per copy differential for grades 3 through 6 again represents shipping costs from the California depository to local schools as indicated above.

PSSC Physics, 4th Edition

Texas:

Our 1976 catalog net price was bid April 30, 1976, for a contract effective for a period of five years beginning September 1, 1977.

California:

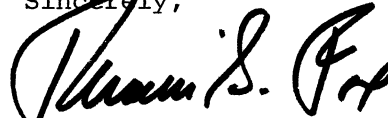
As you are aware, California does not adopt textbooks at the high school level. The \$9.96 price cited in your enclosure is our 1977 catalog net price which became effective on October 1, 1976. The price adjustment is a result of increased costs to Heath of paper, printing, and binding.

From the above information, it should be evident that Heath's prices to California are identical to those offered other states, and that any suggestions of overcharging California are without merit.

As a general comment, it should be noted that long term, fixed price contracts are of enormous concern to the textbook publishing industry. We know of no other industry in which this practice prevails without commitments to purchase specific quantities over a time period. Indeed, a number of states have already responded to trade association efforts to minimize the impact of such contracts,

and they are now allowing periodic price escalations in acknowledgment of the inflationary aspects of doing business. It is our hope that California will not adopt additional regulations or administrative procedures that would further inhibit publishers' willingness to provide up-to-date, effective instructional materials to the children of California.

Sincerely,

A handwritten signature in black ink, appearing to read "Francis S. Fox". The signature is written in a cursive, flowing style with a large initial 'F'.

Francis S. Fox
President and Publisher

/alb

HOLT, RINEHART AND WINSTON

CBS Inc., 383 Madison Avenue
New York, New York 10017
(212) 688-9100

APPENDIX A-15

Dear Sir:

December 20, 1977

We have recently received a copy of the report entitled "Deficiencies of Textbook Procurement Practices" and would like to respond to the allegation that we have been overcharging for textbooks under contract in California.

We enclose a copy of the comparison of Florida and California contract prices that accompanied the report.

First, we call to your attention the following errors in the figures presented:

- (1) Florida price of Drillmasters, Book 8, is \$19.95, not \$19.98, which is the Florida contract price of our Metrication Masters, Books 3-8.
- (2) California price for "The Americans: A History of the U.S." should read \$8.94, not \$8.49.
- (3) California price for "The Americans: A History of the U.S. -- Classroom Unit" should read \$165.36, not \$207.00, for a "Difference" of \$6.36, not \$48.00. (The price was decreased in a letter to the California Department of Education dated January 6, 1976, prior to the beginning of the contract.)

Beyond the above errors, the document enclosed makes a comparison of our lowest net wholesale prices f.o.b. school destination (i.e. "California Price" column) and our lowest net wholesale prices f.o.b. shipping point (i.e. "Florida Price" column). Florida, as with the majority of state adoption states, requires only that we quote a contract price f.o.b. our depository in the state, whereas the California requirement is that we quote a total unit cost to include California sales tax and shipping direct to school destination.

Thus, for California we used our standard 21% discount from List Price which provides a 4% allowance for shipping direct to school destinations (or, in the case of certain non-book items such as the "Classroom Unit" referred to in (3) above, we add in a standard 4% of the regular net price for shipping). Whenever requested by a

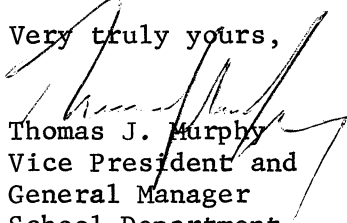
Joint Legislative Audit Committee - 2

customer to submit a quotation f.o.b. school destination, we quote our prices at 21% from List Price, or add in 4% of the regular net price to certain non-book items as previously indicated.

If California were to require that bid prices be quoted f.o.b. a state depository (as required in Florida) or f.o.b. our own warehouse, we would quote our regular 25% from List Price, or our regular Net Price in the case of certain non-book items. On such a basis, Holt, Rinehart and Winston does not bear the cost of shipping beyond its own warehouse or the state depository.

We trust that this information serves to clarify the difference between the Florida and California prices itemized on the enclosure.

Very truly yours,



Thomas J. Murphy
Vice President and
General Manager
School Department

Mr. Mike Cullen, Chairman
The Joint Legislative Audit Committee
Office of the Auditor General
Suite 750
925 L Street
Sacramento, California 95814

Encl.

cc Jacque T. Ross

TEXTBOOK PRICES UNDER STATE CONTRACT

Textbook	Grade Level	Florida Price	California Price	Difference
Holt School Mathematics--Book 7--Workbook	7	\$1.65	\$ 1.74	\$.09
Holt School Mathematics--Book 7-- Drillmasters	7	19.95	17.38	(2.57)
Testmasters	7	9.80	10.19	.39
Holt School Mathematics--Book 8-- Workbook	8	1.65	1.74	.09
Drillmasters	8	19.98 ⁽⁵⁾	17.38	(2.57)
Testmasters	8	9.80	10.19	.39
The Americans: A History Of The U.S.	8	8.49	8.49 ⁽⁹⁴⁾	.45
The Americas: History Of U.S.-- Classroom Unit	8	159.00	207.00 <u>165.36</u>	48.00

NOTE: The California sales tax has been deleted in all comparisons.



December 29, 1977

Mr. Wesley E. Voss
Assistant Auditor General
California Legislature
925 L Street, Suite 750
State Capitol
Sacramento, California 95814

Dear Mr. Voss:

This is in response to your November 4 letter addressed to our president, Mr. Harold T. Miller. In your letter you make several claims and misstatements concerning the prices of instructional materials offered to the state of California. Below are answers to your statements numbered 1, 2, and 3 (appearing at the bottom of page 1 of your letter).

1. "Most publishers charge California a higher textbook price than other states with similar contract dates."

Houghton Mifflin certainly does not offer California a higher textbook price than other states. And, because of "Most-Favored-Nations" clauses in all state contracts, I find it hard to believe that any publisher would do this (see my Addendum A, "Most-Favored-Nations Clauses"). Houghton Mifflin's policy is to bid prices that are in effect on the date bids are due.

As I'm sure your representative learned when researching this project, California law requires publishers to bid prices to California which include both tax and transportation. I call your attention to the State Department of Education's 1975 form (see Addendum B) on which publishers submitted bids. Please note the last four columns: Column 10, "Single net price per unit or copy"; Column 11, "Statewide sales or use tax per unit or copy"; Column 12, "Shipping cost per unit or copy"; and Column 13, "Total unit cost." The eight titles which you claim Houghton Mifflin bid at a higher price in California than elsewhere (your first attachment) were bid using this 1975 form. Had your representative looked at our bid, he would have seen that for 8 of the 9 titles shown, the "Single net price" (appearing in Column 10) is EXACTLY the same price as was bid to Florida and Texas, the states to which you allege we bid lower prices. (On the ninth title, California received a LOWER bid price than Texas because the title was bid to

California more than two years earlier than to Texas. In fact, because of the unreasonably long time it takes California to select instructional materials, Texas is using the 1976 edition of this book, while California is using the 1973 edition.) It appears that your representative began with the prices in Column 13, "Total unit cost" (including tax and transportation), subtracted the tax, and left the transportation on the net price, then compared that inflated net price to the straight net price bid in other states. Your representative undoubtedly misinterpreted the reference to transportation costs in Education Code Section 60061(a): "A publisher or manufacturer shall: (a) Furnish the instructional materials offered by him at a price in the State of California which, including all costs of transportation to that place..." (my underlining). "To that place" refers to the publisher's shipping point in California, not to the school customer. Houghton Mifflin offers no bid, in any state, that includes free transportation from shipping point to school customer. It is perfectly obvious that to give California free transportation to schools could violate "Most-Favored-Nations" agreements in other states by giving California a price advantage that is not passed on to other states.

2. "The California two-year contract for state-adopted textbooks allows more frequent price increases than other states with four-year to six-year contract price guarantees."

While it is true that some states still have four- to six-year contracts, an increasing number now allow for price adjustments in the second and third year of the contracts. The large majority of schools in this country pay publishers' current catalogue prices.

3. "Non-state adopted textbooks are not protected by contract price guarantees and California school districts frequently pay a much higher price than states requiring contracts for all textbooks."

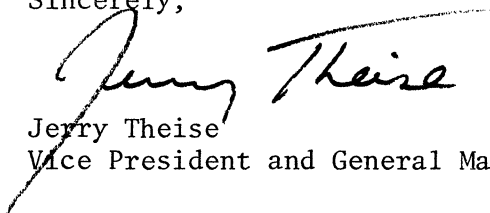
I do not feel that long-term contracts are in the best interest of good education. They encourage the use of obsolescent instructional materials, and the price advantages to schools are more imagined than real. I should also point out here that California already gets a three-year price guarantee from Houghton Mifflin Company. Contrary to your statement on page 14 of Report 285.2, which says, "...the bids are usually received about four months prior to the contract finalization date," the State Department of Education calls for bids about 16 months prior to finalization of contract. Houghton Mifflin bids current prices at that time, and the contract guarantees that 16-month-old price for another two years.

Additionally, regarding the economics of publishing, I would like to mention the following:

- . California spends relatively little on instructional materials -- considerably less than 1% of the total educational budget, and considerably less per pupil than is spent in the majority of other states.
- . With his option to print textbooks, the State Printer can make his decision to print or not to print as late as March or April of the ordering year. The publisher, who prints to meet national and international needs, cannot usually choose printing schedules that coincide with California's adoption cycle. So the publisher must anticipate these needs, print the books, and quite possibly be left with a costly overstock if the State Printer elects to print those books.
- . Finally, is it reasonable for you, in our inflationary economy, to expect long-term contracts? For what other commodities does California expect multi-year price guarantees?

Houghton Mifflin Company is proud of its 145-year reputation as a leader in publishing for the schools. We are honest and straightforward in all our dealings, and must reject categorically any suggestion that we have overcharged the state of California, intentionally or unintentionally. I believe that your office, had it worked in a spirit of cooperative problem-solving with individual members of the instructional materials industry and the State Department of Education, might have resolved these matters happily, without embarrassing all three of us with the public dissemination of inaccurate information.

Sincerely,


Jerry Theise
Vice President and General Manager

cc: Mr. Harold T. Miller

To: Mr. Voss

California Education Code Section 60061(a) is an example of what is known as a "Most-Favored-Nations Clause." Similar to comparable clauses in all state instructional materials contracts, it says:

"A publisher or manufacturer shall: (a) Furnish the instructional materials offered by him at a price in the State of California which, including all costs of transportation to that place, shall not exceed the lowest price at which the publisher offers said instructional materials for adoption or sale to any state or school district in the United States."

Legal opinions and decisions (e.g., the 1947 Texas Attorney General's ruling) support publishers bidding prices no higher than those offered elsewhere at the time of the bid. That amounts to the bidding of current catalogue prices. You seem to want publishers to bid the lowest price at which the item is being sold, regardless of when it was originally bid. (As a matter of fact, page 3, paragraph 2, line 6 of your "Deficiencies of Textbook Procurement Practices in California" does state, "Section 60061 requires a publisher to provide California with the lowest prices at which he sells instructional materials anywhere in the United States." 60061 does not say "sells," it uses a term with a distinctly different connotation: "offers.")

Let's consider what's fair and reasonable. On page 14 and 15 of your "Deficiencies of Textbook Procurement Practices in California," you suggest that the Legislature may have intended for California to receive the lowest price available nationally, regardless of contract dates. Assuming the publisher bids a book in California in 1977, that same book could have been bid in another jurisdiction as early as 1971. Even though the cost of current production of that book would have increased significantly in the six intervening years, you would have the publisher bid the book in California at a six-year-old price which would result in a loss on first-year sales. And then, make it available at that price for another three or four years!

mitted for California Adoption

Single royalty per copy 7	Royalty per copy		Single net price per unit or copy 10	Statewide sales or use tax per unit 11	Shipping cost per unit or copy 12	Total unit cost 13
	Sliding scale 8	Stepped scale 9				

October 21, 1977

Mr. John H. Williams
Auditor General
California Legislature
State Capitol
Sacramento, California 95814

Re: Report 285.2

Dear Mr. Williams:

I am responding to the first section of Report 285.2 issued by your office and regarding the "Deficiencies of Textbook Procurement Practices in California."

I believe this report could also have been entitled "Deficiencies of Audit Report Procedures" because it is obvious that the report reflects incomplete research and lack of understanding of the topic. As such, it does not reflect a true picture and contains numerous errors.

From personal observation, I cannot comment regarding the question of publisher overcharges for publishers other than Laidlaw Brothers. However, I believe that if other publishers are given the opportunity, each can show that the overcharges alleged in the report are not, in fact, overcharges but a misinterpretation of the facts. I will speak only to one example from the report since it concerns a Laidlaw Brothers' publication.

On page 8 of the report, one of Laidlaw Brothers' titles--GROWTH IN SPELLING, Grade 7--is cited. The explanation regarding this price difference is simple and clearcut. There is no question of time differential or contract period because the book was not published until 1976 and both prices cited are from 1977 bids.

In Laidlaw Brothers 1977 Price List, GROWTH IN SPELLING has a net wholesale price, FOB our shipping point, of \$3.87. This is the price listed for the other states and is correctly shown

in the report. Laidlaw Brothers, as does most publishers, annually establishes three prices for each of our publications:

1. Net wholesale price, FOB our shipping point.
2. List price, FOB customer. This price is net wholesale price plus 33-1/3% and is used for those situations that require a list price. Few, if any, books are actually sold at this price and none to school customers.
3. Net wholesale price, FOB customer. This price is used for customers who require a delivered price. The net wholesale price, FOB customer, is net wholesale FOB our shipping point plus 7% for transportation.

A comparison of the two prices for GROWTH IN SPELLING will clearly indicate that the only difference between the two contract prices is the 7% additional to cover transportation to satisfy the requirement of California that the publishers bid a price which will include delivery to each individual school.

Under the laws of most states, to deliver books to California schools at the same price as they are shipped FOB shipping point to other states would put us in jeopardy for all of our contracts. California is requesting an additional service; that is, a price that includes delivery to the schools, and this delivery cost must be added to the basic net wholesale price used in other contract situations where delivery is not included as an element of the bid price but is paid separately by the customer on receipt of the materials.

Another clear error in this report is on page 12 in the paragraph that discusses Ohio. While it is true that Ohio establishes a maximum price at which publishers sell to local school districts, the report does not indicate that the Ohio maximum price is the current national price at which the publisher proposes to sell the particular publication to all schools during the specific year.

California never gets a price except for the transportation requirement that exceeds the price in Ohio. The conclusion drawn by the report with regard to what would be the outcome of the situation in California if similar procedures were adopted as in Ohio is wholly misleading.

I think that I can speak for most publishers in saying that no one deliberately attempts to have California pay any price higher than is required by the special conditions under which books are sold in California. For some reason or other, there is a considered attempt in California to continuously smear the publishers in their relations with the Department of Education and with local school districts. The publishing industry is just as honorable and just as honest in its dealings with California as is possible. Had your auditors submitted this report in rough draft to the publishers, I am confident that these issues could have been completely resolved so that this report and the bad picture that it unfairly paints of the publishing industry would never have been released.

Cordially yours,

Robert R. Laidlaw
President

RRL:me

bcc: Reg Wahl

Webster Division

McGraw-Hill Book Company

1221 Avenue of the Americas
New York, New York 10020



January 11, 1978

Mr. Wesley E. Voss
Assistant Auditor General
State of California
925 L. Street, Suite 750
Sacramento, CA 95814

Dear Mr. Voss,

This letter is written as a direct reply to your November 4, 1977, letter to Mr. Alexander J. Burke on the subject of "Deficiencies of Textbook Procurement Practices in California".

In your letter, you relate to three (3) general textbook procurement issues as spelled out in the California State Auditor General's Report. At this time, I would like to direct this reply to each issue as it applies to the four (4) specific McGraw-Hill Book Company titles spoken of in your letter.

Item #1 - Most publishers charge California a higher textbook price than other states with similar contract dates.

Reply - We would like to call your attention to an apparent discrepancy in your comparison of the California contract price and the Arkansas contract price. California via their bid form requires publishers to include both shipping charges and sales tax in the contract price. When publishers bid educational material in most other states they are not required to include shipping charges and sales tax in the contract price.

	<u>Single Net Price Per Copy</u>		<u>Shipping</u>	<u>Sales</u>	<u>California</u>
	<u>Arkansas</u>	<u>California</u>	<u>+ Charge</u>	<u>+ Tax</u>	<u>= Contract Price</u>
Exploring English	\$ 5.25	\$ 5.25	\$.32	\$.32	\$ 5.89
Our Common Language	5.34	5.34	.32	.32	5.98

While in your letter you state that the sales tax has been deleted from the California price, in all fairness you should also delete the shipping charges as noted above. When you delete both the shipping charges and the sales tax from the California price, you can see as in the example above that the California price is identical to the contract price in Arkansas.

While we cannot speak for other publishers, we strongly feel that McGraw-Hill is in complete legal compliance with the nationwide system of so called, "most favored nation" requirements, that govern the state by state pricing practices of the publishing industry with respect to the adoption of educational products.

Mr. Wesley E. Voss
Page 2
January 11, 1978

Item #2 - The California two-year contract for state-adopted textbooks allows more frequent price increases than other states with four-year to six-year contract price guarantees.

Reply - Enclosed you will find two separate documents:

1) Gregg/Webster Pricing History of Selected Titles - This schedule highlights and substantiates the price increases and contractual prices on the four titles listed in your memo to Mr. Burke.

2) Index of McGraw-Hill Book Company Manufacturing Costs and Wholesale Prices (1972-1977) - This index uses the first quarter of 1972 as the base period equal to 1.00. This index shows that our manufacturing cost has risen to 41% over 1972. What this report fails to show is a second round of paper cost increases which should raise this percentage even higher.

The purpose for including both of these documents is to show that while McGraw-Hill has increased its prices for educational materials, offsetting cost increases for such things as paper, presswork and binding have more than offset these price increases.

As the Association of American Publishers (AAP) has stated on several occasions, severe price limitations from mandatory long-term adoptions, at fixed prices, without sales guarantees during the early years of a contract, or without price escalation clauses, can severely impair a publisher's overall profitability. This crippling effect could eventually preclude publishers, in particular, the small houses, from producing high quality and up-to-date educational material. Also, such an occurrence would greatly limit the ability of California, or any state, from attracting bids from the greatest number of publishers for the widest variety of educational materials and programs.

Going back in history, when state adoptions first came into being, only one, two, or five books were adopted in a given subject area. The adoption contract, in other words, was a guarantee of substantial sales usually in the early years of the contract. Today, California is adopting a far greater number of titles and still getting the benefit of long-term price guarantees while the basis for such guarantees have long since evaporated.

For California, or any state, to even consider putting textbooks under longer-term (that is, four to six years) price guarantees, particularly in today's inflationary economy, would be, we feel, highly discriminatory.

Item #3 - Non-state adopted textbooks are not protected by contract price guarantees and California school districts frequently pay a higher price than states requiring adoption contracts for all textbooks.

Mr. Wesley E. Voss
Page 3
January 11, 1978

Reply - Listed below is a recap showing the price variance between the two
(2) non-adopted titles listed in your letter to Mr. Burke.

	<u>Single Net Price Per Copy</u>				
	<u>Tennessee</u>	<u>Date Bid</u>	<u>California</u>	<u>Date Purchased</u>	<u>\$ Variance</u>
General Recordkeeping	\$5.43	10/72	\$ 7.05	9/76	\$ 1.62
Algebra, Book I	5.25	10/71	6.99	5/76	1.74

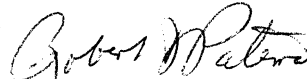
As you can see, General Recordkeeping has increased by \$1.62 or 30%, and Algebra by \$1.74 or 33%, but both increases occurred over a period of many years. If you weigh each of these percentage increases against the McGraw-Hill Book Company Manufacturing Costs and Wholesale Price Index, which we have attached for your review, I think you will clearly see that these price increases are far lower than the cost increases we have incurred over the same period of years.

I feel that it is also important to note that 84% of Tennessee's purchases of Algebra I and 52% of the purchases of General Recordkeeping were bought in the first two years of the contract. Three years into the contract these percentages were 95% for Algebra I and 98% for General Recordkeeping.

The textbook industry is a free enterprise and must return a fair profit to its investors if it's to continue to supply states like California with quality educational materials. To extract long-term price guarantees from the private sector of our economy, particularly in these times of rampant inflation, might provide some short-term savings to the state of California. Ultimately, however, it serves to weaken the financial stability of the suppliers of your educational materials to eliminate diversity of product, and to discourage new firms from entering into these markets.

Please review this letter and if you have any questions or comments, or wish additional material, please feel free to drop me a line at anytime.

Sincerely,

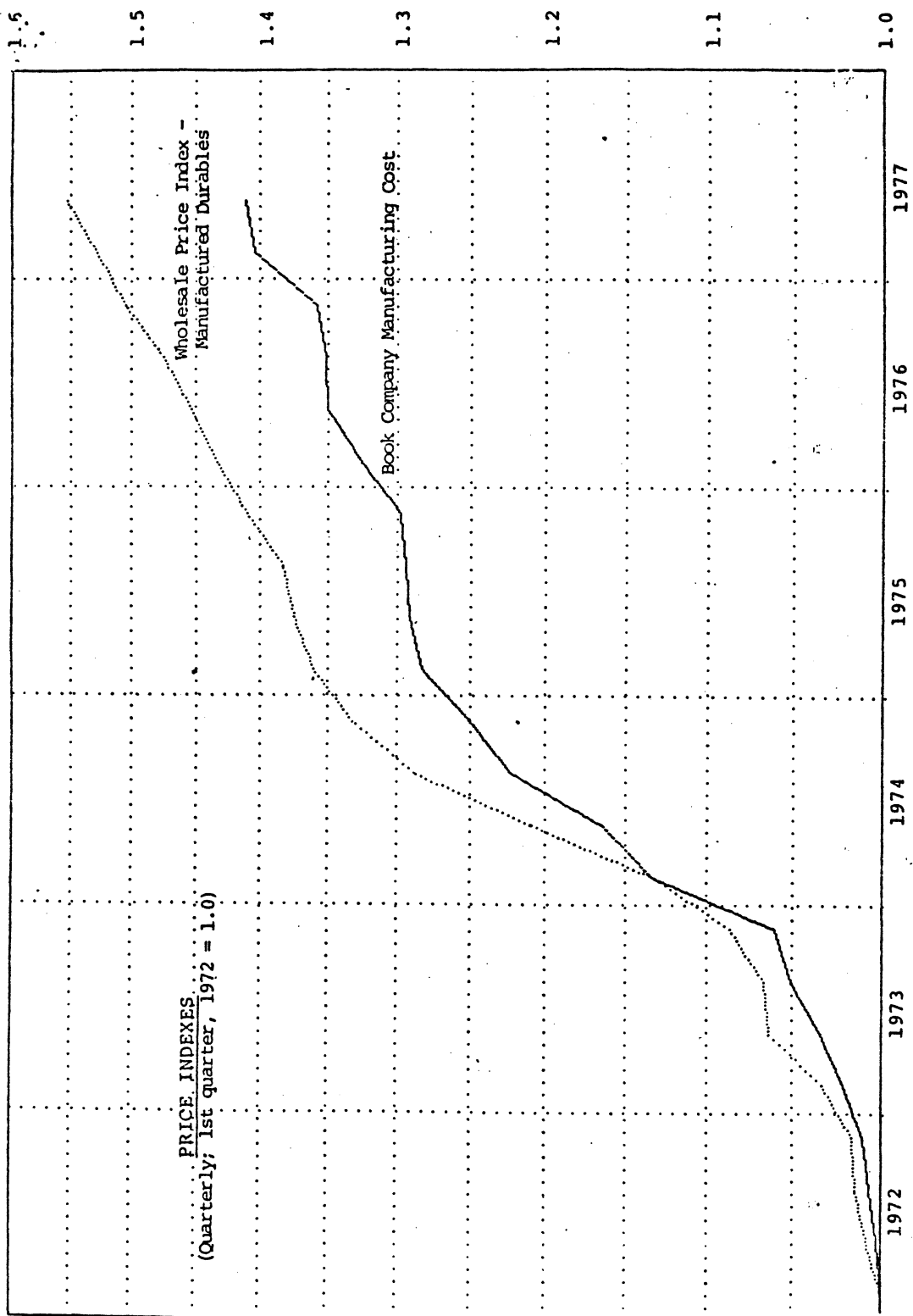


Robert J. Pattera
Controller

/fs
Attachments

GREGG/WEBSTER PRICING HISTORY
OF SELECTED TITLES

Product #	Author/Title	PRICE CHANGES BY YEAR (NET PRICES)									
		DATE OF BIDS IN State California	1970	1971	1972	1973	1974	1975	1976	1977	
# 25317	Guth/Exploring in English *Effective Month of Change	Ark. 5/76	3/76	--	--	\$4.95	\$5.25 (7/74)	\$5.25	\$5.85 (10/76)	\$6.15 6.45 (6/77) (10/77)	
# 25318	Guth/Our Common Language *Effective Month of Change	Ark. 5/76	3/76	--	--	5.04	5.34 (7/74)	5.34	5.97 (10/76)	6.27 6.60 (6/77) (10/77)	
# 03660	Banks/Algebra-Its Elements & Structure *Effective Month of Change	Tenn. 10/71	No Contract	\$5.25	\$5.25	5.67 (3/73)	6.03 (7/74)	6.39 (5/75)	6.99 (2/76)	7.77 8.40 (1/77) (10/77)	
# 30910	Huffman/General Record- keeping 6/e *Effective Month of Change	Tenn. 10/72	No Contract	--	5.43	5.49 (5/73)	5.85 (5/74)	5.97 6.42 (5/75) (11/75)	7.05 7.74 (5/76) (11/76)	8.22 (5/77)	



Manufacturing Costs and Wholesale Price Index

	1972:1	1972:2	1972:3	1972:4
Book Company Manufacturing Cost Index	1.000	1.003	1.007	1.011
Percentage Increase	NA	0.3	0.4	0.4
Wholesale Price Index - Manuf. Durables	1.000	1.009	1.015	1.016
Percentage Increase	NA	0.9	0.6	0.1
	1973:1	1973:2	1973:3	1973:4
Book Company Manufacturing Cost Index	1.021	1.034	1.051	1.060
Percentage Increase	1.0	1.3	1.6	0.9
Wholesale Price Index - Manuf. Durables	1.033	1.063	1.067	1.086
Percentage Increase	1.7	2.8	0.4	1.8
	1974:1	1974:2	1974:3	1974:4
Book Company Manufacturing Cost Index	1.132	1.164	1.223	1.249
Percentage Increase	6.9	2.8	5.0	2.1
Wholesale Price Index - Manuf. Durables	1.131	1.210	1.287	1.330
Percentage Increase	4.1	7.0	6.4	3.3
	1975:1	1975:2	1975:3	1975:4
Book Company Manufacturing Cost Index	1.281	1.290	1.293	1.296
Percentage Increase	2.5	0.7	0.2	0.2
Wholesale Price Index - Manuf. Durables	1.359	1.374	1.382	1.408
Percentage Increase	2.2	1.1	0.5	1.9
	1976:1	1976:2	1976:3	1976:4
Book Company Manufacturing Cost Index	1.324	1.349	1.350	1.356
Percentage Increase	2.2	1.9	0.1	0.4
Wholesale Price Index - Manuf. Durables	1.431	1.451	1.474	1.503
Percentage Increase	1.6	1.4	1.6	2.0
	1977:1	1977:2		
Book Company Manufacturing Cost Index	1.403	1.410		
Percentage Increase	3.4	0.5		
Wholesale Price Index - Manuf. Durables	1.527	1.552		
Percentage Increase	1.6	1.6		

CHARLES E. MERRILL PUBLISHING COMPANY

A BELL & HOWELL COMPANY

GARY D. EISENBERGER
PRESIDENT

1300 Alum Creek Drive Columbus, Ohio 43216 (614) 258-8441

December 14, 1977

Mr. Wesley E. Voss
Assistant Auditor General
Joint Legislative Audit Committee
California Legislature
Sacramento, California 95814

Dear Mr. Voss:

In 1971, I purchased a Ford station wagon for approximately \$3800. In 1976, I purchased a comparably equipped Ford station wagon for approximately \$7600. This substantial cost differential is generally referred to as inflation.

We have inflation in the publishing industry also. Consequently, a textbook that is manufactured today costs more than a textbook manufactured a year ago. And there are indications that the same textbook will cost more to manufacture one year from now than it does today.

Our pricing policies are such that we accept purchase orders, contracts, or bids at our effective price on date of receipt. We generally maintain prices for a concurrent 12 month period.

Enclosed is a copy of the sheet entitled Local Purchase Prices With No Contract originally enclosed in your letter. This document contains several misleading implications and a misstatement of fact. For example, we filed an intent to bid BIOLOGY: LIVING SYSTEMS in the State of Texas on April 6, 1976. Even though the contract did carry an effective date of September 1977, we were required by state law to submit our bid based on our nationally advertised price at the date of filing an intent to bid (April 6, 1976). By early March 1977, we had received instructions for shipping to Texas 90% of the biology texts to be purchased under said contract. During April 1977, our nationally advertised price for BIOLOGY: LIVING SYSTEMS was \$9.36 net to schools, FOB Columbus, Ohio. (See tear sheet from 1977 catalog, page 52, enclosed.) On your enclosure, there appears to be a typographical error on the California price for biology, as substantiated by the enclosed invoices for sales of this title in the state. The price charged to schools within California was our nationally advertised price on the date of invoicing, \$9.36.

Mr. Wesley E. Voss
Joint Legislative Audit Committee
Sacramento, California

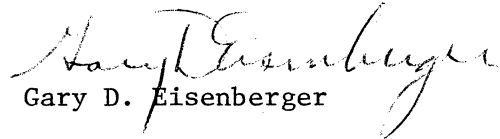
December 14, 1977

- 2 -

The price established for ALGEBRA TWO WITH CIRCULAR FUNCTIONS, copyright 1970, in the State of Tennessee was based upon the 1971 price that was frozen due to federal wage and price controls in effect at that time. The price charged for ALGEBRA TWO WITH CIRCULAR FUNCTIONS to schools within the State of California in April 1977 was our nationally advertised price as of that date, \$8.46 net to schools, FOB Columbus, Ohio. (See tear sheet from 1977 catalog, page 44, enclosed.)

If I can supply you with any additional information regarding this matter, please contact me at your convenience.

Sincerely,


Gary D. Eisenberger

GDE/ljk

Enclosures

Publisher: Merrill Publishing Co.

BOOK 965X

LOCAL PURCHASE PRICES WITH NO CONTRACT

Textbook	Texas Price	Contract Effective Date In Texas	California Price	Date Purchased In California	Difference
1590-4 OKAM--Biology of Living Systems Algebra II--With Circular Functions	\$8.97 Tennessee Price \$5.40	9-77 thru 8-82 Contract Effective Date In Tennessee 7-72 thru 6-77	\$9.46 9.36* 8.46	4-77 4-77	\$0.49, 39 3.36

* See attached invoices.

NOTE: The California sales tax has been deleted in all comparisons.

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 COLUMBUS, OHIO 43216

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 1-90022-357

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 AREA G
 5101 EAST 6TH ST
 LOS ANGELES CA 90022

DATE 4/29/77
 INVOICE NO. 513751
 NO. CARTONS 7
 PACKING SLIP NO. 267314-01
 CUSTOMER ORDER NO. SP0 090136

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 1300 ALUM CREEK DR. COLUMBUS, OHIO 43216

CODE	QTY	TITLE DESCRIPTION	ST	PRICE	DISC	NET AMOUNT	CODE	QTY	NET AMOUNT
7590-4	131	BIOLOGY TEXT 76	11	12.48	25.0	1226.16	7590-4	131	1226.16
PAGE NO. 1				NO. INVOICE COPIES 1				05/10	
SUB TOTAL				1,226.16		SUB TOTAL		1,226.16	
SALES TAX				73.57		SALES TAX		73.57	
SHIPPING AND HANDLING CHG.				58.35		SHIPPING AND HANDLING CHG.		58.35	
TOTAL DUE				1,358.08		TOTAL DUE		1,358.08	

019059
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add file 10/17/77

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 E609 005 1-90034-269

TERR STATE CUSTOMER NO.
 E609 005 1-90034-269

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DATE INVOICE NO.
 3/04/77 430673

DATE INVOICE NO.
 3/04/77 430673

NO. CARTONS PACKING SLIP NO.
 1 256818-01

CUSTOMER ORDER NO.
 SP0 022514

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SPECIAL INSTRUCTIONS

CODE	QTY	TITLE DESCRIPTION	ST	PRICE	DISC	NET AMOUNT	CODE	QTY	NET AMOUNT
7590-4	15	BIOLOGY TEXT 76	11	12.48	25.0	140.40	7590-4	15	140.40
7592-0	1	BIOLOGY 76 EVAL PGM SP1R	11	22.00		22.00	7592-0	1	22.00

PAGE NO.	NO. INVOICE COPIES	DATE	SUB TOTAL	SALES TAX	SHIPPING AND HANDLING CHG.	TOTAL DUE
1	03/04		162.40	9.74	4.29	176.43

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DATE	INVOICE NO.	
7/01/77	560553	

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LOS ANGELES CA90022

CHARLES E. MERRILL PUBLISHING CO.
1300 ALUM CREEK DR. COLUMBUS, OHIO 43216

CODE	QTY.	NET AMOUNT
7590-4	125	1170.00
7591-2	2	21.72

SUB TOTAL	1,191.72
SALES TAX	71.50
SHIPPING AND HANDLING CHG.	71.33
TOTAL DUE	1,334.55

1300 ALUM CREEK DRIVE
COLUMBUS, OHIO 43216

TERR	STATE	CUSTOMER NO.
E609	005	1-90022-357
DATE	INVOICE NO.	
7/01/77	560553	
NO. CARTONS	PACKING SLIP NO.	
8	287577-01	
CUSTOMER ORDER NO.		
001776		

GARFIELD HIGH SCHOOL
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LOS ANGELES CA 90022

SPECIAL INSTRUCTIONS
PLEASE RETURN
RED STUB

ST	PRICE	DISC	NET AMOUNT
11	12.48	25.0	1170.00
11	14.48	25.0	21.72

SUB TOTAL	1,191.72
SALES TAX	71.50
SHIPPING AND HANDLING CHG.	71.33
TOTAL DUE	1,334.55

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LOS ANGELES CA 90022

BILL TO:
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PAYMENT TERMS: NET 30 DAYS

CODE	QTY	TITLE DESCRIPTION
7590-4	125	BIOLOGY TEXT 76
7591-2	2	BIOLOGY TAE 76

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07284-0	Grade 4	6.16	4.62
07285-9	Grade 5	6.80	5.10
07286-7	Grade 6	6.80	5.10
Discoveries In Modern Mathematics ©1968			
05812-0	Course One	8.40	6.30
05814-7	Teacher's Annotated Edition	10.00	7.50
05816-3	Student's Answer Key	—	1.00
05813-9	Course Two	8.40	6.30
05815-5	Teacher's Annotated Edition	10.00	7.50
05817-1	Student's Answer Key	—	1.00

Cat. No.		List	Net
Algebra One ©1970			
05868-6	Student's Text	\$10.08	\$ 7.56
05867-8	Student's Text with Answer Key	10.08	7.56
05869-4	Teacher's Annotated Edition	12.08	9.06
05871-6	Student's Answer Book	—	1.00
05872-4	Spirit Test Booklet	—	8.50
05809-0	Booklet of Visual Masters	—	5.00

1966 edition of student text available subject to availability of stock. Write to the company for price information.

Cat. No.		List	Net
Algebra Two With Circular Functions ©1970			
05874-0	Student's Text	11.28	8.46
05873-2	Student's Text with Answer Key	11.28	8.46
05875-9	Teacher's Annotated Edition	13.28	9.96
05877-5	Student's Answer Book	—	1.00
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Geometry ©1970			
05863-5	Student's Text	10.36	7.77
05864-3	Teacher's Annotated Edition	12.36	9.27
05866-X	Spirit Test Booklet	—	12.00
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 Earth's Matter and Origin
 Erosion
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 The Atmosphere and Hydrosphere
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 Patterns in Matter
 Changes in Matter
 Heat, Light, and Sound
 Electrical and Nuclear Energy

Cat. No.	Focus On Science Modules ©1977	List	Net
	Earth Science Modules		
02457-9	The Universe	\$2.24	\$1.68
02458-7	Earth's Matter and Origin	2.36	1.77
02459-5	Erosion	2.36	1.77
02461-7	Earth History	2.36	1.77
02462-5	The Atmosphere and Hydrosphere	2.52	1.89
02463-3	The Environment	2.52	1.89

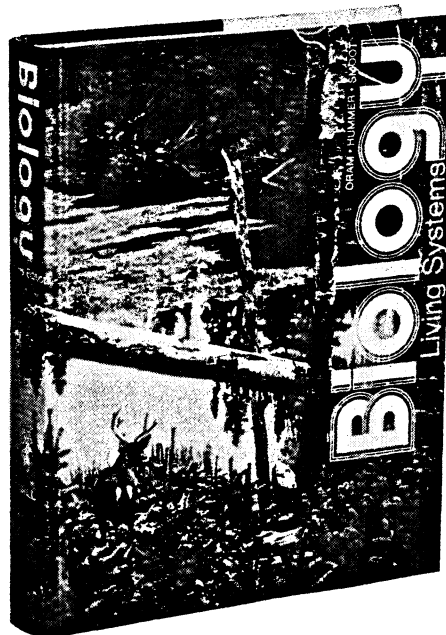
Cat. No.	Focus On Science Modules ©1977	List	Net
	Physical Science Modules		
06726-X	Measurement and Motion	\$ 2.52	\$1.89
06727-8	Properties of Matter	2.24	1.68
06728-6	Patterns in Matter	2.24	1.68
06729-4	Changes in Matter	2.24	1.68
06730-8	Heat, Light, and Sound	2.52	1.89
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02664-4	The Universe	3.40	2.55
02665-2	Earth's Matter and Origin	3.60	2.70
02666-0	Erosion	3.60	2.70
02667-9	Earth History	3.60	2.70
02668-7	The Atmosphere and Hydrosphere	3.80	2.85
02669-5	The Environment	3.80	2.85

**Physical Science Modules,
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06734-0	Patterns in Matter	3.40	2.55
06735-9	Changes in Matter	3.40	2.55
06736-7	Heat, Light, and Sound	3.80	2.85
06737-5	Electrical and Nuclear Energy	3.80	2.85



BIOLOGY: LIVING SYSTEMS ©1976

By Raymond F. Oram
 Consultants: Paul J. Hummer, Jr. and
 Robert C. Smoot

Ⓡ ① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩ ⑪ ⑫

BIOLOGY: LIVING SYSTEMS, Second Edition, is a blend of modern and traditional biology. The text is designed so that students can understand the unifying principles and concepts applicable to life at all levels of organization.

BIOLOGY: LIVING SYSTEMS is built upon these unifying themes—requirement for energy to maintain the organization of living systems, ability of organisms to reproduce, evolution and relationships among organisms, homeostasis and self regulation, taxonomy and the characteristics of major phyla, integration of functions, interaction of organisms and their environment.

One of the key features of the text is controlled readability. New words are printed in bold-face or italic type, spelled phonetically, defined and immediately reinforced. Margin notes highlight important points. Many illustrations, graphs, tables, and full-color photographs are included to aid the student's understanding of the concepts

presented. Learner's goals are presented at the beginning of each chapter so that students will know what they are expected to learn from that chapter.

The environment and ecology have been stressed throughout the text to show the interdependence of living systems. Biology-related consumer and career information appears throughout the text. One of the appendices contains a list of the careers open in biology-related fields. This list includes brief job descriptions and general training requirements.

The **Teacher's Annotated Edition** provides answers to all questions and problems, teaching suggestions, extensive lists of references, and performance objectives.

The spirit duplicating **Evaluation Program** is designed to measure the student's progress and to reveal areas of weakness in understanding biological concepts. Nonreproducible answers are printed on the spirit masters.

Cat. No. List Net

**Biology: Living Systems
 ©1976**

07590-4	Student's Text	\$12.48	\$ 9.36
07591-2	Teacher's Annotated Edition	14.48	10.86
07592-0	Evaluation Program (Spirit Duplicating Masters)	—	22.00



November 22, 1977

Mr. Wesley E. Voss, Assistant Auditor General
Joint Legislative Audit Committee
925 L Street, Suite 750
Sacramento, California 95814

Dear Mr. Voss:

Thank you for giving us the opportunity to comment on Report 285.2--"Deficiencies of Textbook Procurement Practices in California." First we will respond specifically to the sheet included with the copy you sent us, showing prices quoted by Nystrom to California and Florida on the same three items, and then we will make some remarks of a general nature.

When we quoted the items initially--"Man and the Ocean," "China," and "Russia"--the special world of State-adoption proceedings was strange and new to us. Unaccustomed to offering prices intended to be firm for years into the future, we assumed that we could anticipate inevitably rising costs by adjusting current prices upward. The February 17, 1975 quotation to California reflects this assumption.

As we gained more experience, we changed our policy so as to base quotations on the published catalog-price unadjusted for inflationary factors. We then, on December 3 of 1975, sent a letter to various States including California and Florida, reducing previously quoted prices. This explains the footnote on your present supplementary sheet, calling attention to the price reduction we made. Please note that the period of your contract is July 1 of 1976 through June 30 of 1978, and Florida's from April 1 of 1976 through March 31 of 1980; this means that our action took place before either contract was in effect, and therefore California was not charged more than Florida on any sales under the contract.

NYSTROM

3333 Elston Avenue, Chicago, Illinois 60618/(312) 463-1144

Multimedia Learning Systems/Maps/Globes/Models
Division of Carnation Company

Going now to generalities, we will observe that the rules we have been diligently striving to follow were set up for textbook publishers. We have never been a textbook publisher, and consequently have encountered difficulties in trying to maneuver our materials into the regulations.

The long adoption periods that may have been welcome in earlier, steadier years are now unrealistic from our point of view. They can hardly fail to drive prices up to the detriment of all purchasers. Not only are the contract periods lengthy, but also we are asked to furnish quotations as much as a year or more in advance.

The States in their understandable attempt to obtain the most favorable pricing situation for themselves have inadvertently exerted pressure on prices to rise, and have produced other inequities. For example, a State that insists on a four-year contract has an unfair advantage over another State that more reasonably contracts for two. Various States demand specialized treatment but then complain that publishers are not being consistent. Speaking for ourselves, we have always done the best we could to treat all States (and, indeed, all customers) with complete impartiality.

Thank you again for sending us the report, and please let us know if you would like any additional information about Nystrom policies or products.

Sincerely,



Leo A. Halbmaier
Director of Sales Services

LAH:mk
cc: R. B. Flohr



Prentice-Hall, Inc.
Englewood Cliffs, N.J. 07632

Telex No. 13-5423

January 9, 1978

AIR MAIL/SPECIAL DELIVERY

Mr. Wesley E. Voss
Assistant Auditor General
Joint Legislative Audit Committee
Office of the Auditor General
925 L Street - Suite 750
Sacramento, California 95814

Dear Mr. Voss:

On behalf of Prentice-Hall, Inc., I submit herewith my comments concerning the report entitled Deficiencies of Textbook Procurement Practices in California.

1. With respect to the claim that California is charged a higher price than other states with similar contract dates, I wish to point out that the differences indicated in the list enclosed with your letter of November 4 are the result of the simple fact that the California prices are "f.o.b. destination to whatever school or place in California as directed by the Department of Education" (Paragraph 6 of the State Board's Instructional Materials Bid), whereas the prices for the other states cited are f.o.b. our depository.

Accordingly, although our listed California prices appear higher than those charged in the other states, the fact is that our actual bid price is in all cases the same since our California prices include transportation charges which are separately paid by those other states. Thus, if the listed price charged to California were to be the same as charged to Arkansas or Florida, the latter two would be paying a higher price than California since they would, in addition, be paying transportation charges from our depository.

2. We sincerely believe that any extension of the period during which we must guarantee prices for state-adopted textbooks would have serious and harmful effects upon our ability to continue to provide material of the highest quality and latest currency. Such a result would in turn adversely affect the quality of instruction within the school system utilizing such material. Thus, any such extension, while appearing to be of superficial financial advantage, would be destructive of the best educational interests.

The foregoing effect of long term price guarantees within

Mr. Wesley E. Voss

Page 2

January 9, 1978


the framework of a nationwide system of "most-favored nation" contract provisions is graphically demonstrated in the following example: Assume that State X required a six year price guarantee and that in 1978 it were to adopt one of our books bid at \$5.00. Assume also that in 1984, California were also to require a six year price guarantee based upon our lowest price then in effect in State X. This would mean that through 1990 we would be required to charge no more than \$5.00 in California for a book which sold for that very price in 1978!

We respectfully submit that such a situation, in light of our spiraling inflationary environment is not only inequitable, but would inevitably lead to a most profound deterioration in the quality of instructional materials offered to schools throughout the nation.

3. The reasons set forth in the foregoing discussion concerning long-range price guarantees are equally supportive of our conviction that local option in the selection of instructional material is in the mutual best interests of the educational community and textbook publishers. Beyond those reasons, however, we believe that it is self-evident that local option increases the ability of local school districts and educators to adjust curriculum to varying and oftentimes unique needs. Such flexibility enhances the learning opportunities of each child, and that we believe to be the sine qua non of every educational system. Accordingly, we are of the view that any encroachment upon those opportunities would be destructive and most certainly, is unwarranted by the erroneous conclusions of the Auditor General in connection with alleged textbook procurement procedures.

We respectfully request that this response be included in the additional report to be issued by your office and remain,

Sincerely,



James J. Peoples
President
Educational Book Division

JJP/eo

RAND McNALLY & COMPANY

DONALD M. PRINCE, *Vice President*
Education Division

"Our 121st Year"
 December 20, 1977

Mr. Wesley E. Voss
 Assistant Auditor General
 Joint Legislative Audit Committee
 California Legislature
 925 L Street - Suite 750
 Sacramento, California 95814

Dear Mr. Voss:

Thank you for the opportunity to respond to your November 4 letter comparing our textbook prices between California and another state. We have in each case offered the book to California at the same price we were offering the book to any other state. Our response to your listing is as follows:

Textbook Prices Under State Contract

Textbook	Grade Level	Texas Price	California Price	Difference
Words- Hardbound	7 and 8	\$4.29	\$4.63	\$0.34
People and Cultures	7	8.19	8.64	0.45

These books were each offered in both California and Texas at the same price, F.O.B. Rand McNally's plant of manufacture. However, California asked for a delivered price (per contract) to any California destination. The thirty-four (0.34) cents and forty-five (0.45) cents respectively represent the delivery standard charges at the time of contracts.

December 20, 1977
Mr. Wesley E. Voss
Page two

Local Purchase Prices With No Contract

<u>Textbook</u>	<u>Tennessee Price</u>	<u>Contract Effective Date in Tennessee</u>	<u>California Price</u>	<u>Date Purchased in California</u>	<u>Difference</u>
Bio-Science Ecological Approach	\$9.00	7/75 thru 6/80	\$9.00	7/75	\$.00
Bio-Science Ecological Approach	9.00	7/75 thru 6/80	9.90	7/76	.90
Bio-Science Ecological Approach	9.00	7/75 thru 6/80	10.89	10/76	1.89

In the "multi-year" adoption process as it has historically been practiced throughout the United States, it is clearly understood by all concerned that the bulk of purchases will be made in the first year; with only replacements and copies for new enrollees being purchased in the balance of the period.

In the case you cite Tennessee did so order all their texts in the summer of 1975 except for replacements and new students. In California however, the schools order on their own cycles throughout the period of adoption. This practice would penalize a publisher in that it could not anticipate its demand and would be forced to "reprint" at higher costs each year.

Regarding free teacher's editions, it is our policy to give without cost one copy for every classroom set of students' editions purchased, or to honor the state's (or buyer's) request when otherwise specifically requested.

We appreciate very much the opportunity to serve the students and teachers of California and to do business with your state, which is

December 20, 1977
Mr. Wesley E. Voss
Page three

recognized for its leadership in education. I hope our response is helpful to you in your study of textbook purchases in California.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald M. Prince", with a long horizontal flourish extending to the right.

Donald M. Prince

DMP:ct



RANDOM HOUSE, INC.

201 EAST 50TH STREET, NEW YORK, N.Y. 10022
TELEPHONE 212 572-2353

GERALD E. HOLLINGSWORTH
VICE PRESIDENT AND
GENERAL COUNSEL

January 10, 1978

Mr. Wesley E. Voss
Assistant Auditor General
Office of the Auditor General
Suite 750
925 L Street
Sacramento, California

Dear Mr. Voss:

This is with reference to your letter dated November 4, 1977 to Mr. Robert L. Bernstein enclosing a copy of the California State Auditor General's October 1977 report entitled Deficiencies of Textbook Procurement Practices in California.

Also enclosed with your letter was a comparison of prices charged by Random House for certain of its textbooks under contracts with California, Arkansas and Florida. That comparison apparently contributed to the conclusion reflected in the Auditor General's October report that publishers have overcharged the State of California for instructional materials sold under state adoption contracts, in violation of California law.

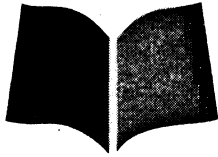
Random House was not given an opportunity to comment on the October 1977 report, or on the comparison provided by your November 4, 1977 letter, before the report was issued. Had we been asked to do so, we would have pointed out that the prices in the California contracts are based on the requirements of those contracts for delivery to multiple destinations throughout the state, whereas the Arkansas and Florida prices reflect the f.o.b. Little Rock and f.o.b. depository requirements of the Arkansas and Florida contracts, respectively. The Random House pricing factor for the additional delivery requirements of the California contracts, and for contracts of other jurisdictions that impose similar requirements, was 3%. In the comparisons that you have provided, none of the California prices exceeds the corresponding Arkansas or Florida price by more than 3%.

I would appreciate your sending me a copy of any supplemental report that is issued.

Sincerely yours

A large, stylized handwritten signature in black ink, appearing to read "G. Hollingsworth". The signature is written in a cursive style with a large loop at the end.

GEH:al



Scholastic

Scholastic Magazines, Inc.
50 West 44th Street
New York, N.Y. 10036
(212) 867-7700

President

December 27, 1977

Mr. Wesley E. Voss
Assistant Auditor General
Joint Legislative Audit Committee
Office of the Auditor General
California Legislature
925 L Street, Suite 750
Sacramento, California 95814

Dear Mr. Voss:

As indicated in my letter to you of November 15, Scholastic welcomes the opportunity to respond to the report of the California State Auditor General entitled Deficiencies of Textbook Procurement Practices in California.

Our book, The Charlie Brown Dictionary, was specifically cited in this report as having a higher selling price in California than in Arkansas.

In point of fact, however, we sell the book at the same net price, of \$3.45 exclusive of taxes, in both states. In California, however, we must include as part of the bid the unit shipping cost - and it is this charge that accounts for the entire difference. In Arkansas, the shipping cost is billed separately after the books have been shipped from the Depository.

Thus, in the case of California, the shipping charge is included in the bid; in the case of Arkansas, it is paid as an extra charge after the books are shipped.

I would also like to point out that while the shipping charge in our California bid for The Charlie Brown Dictionary is accurate for one book, our cost for shipping multiple copies is considerably lower on a per-book basis, and the resulting savings are, of course, passed on to California.

Thank you for arranging to have this response included in the additional report that will be issued by your office. I am pleased to be able to correct the mistaken impression given in the original report about the price of The Charlie Brown Dictionary.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Richard Robinson", written in dark ink.

Richard Robinson

RR:mp

Gordon R. Hjalmarson
Chairman, Chief Executive Officer,
President

December 15, 1977

Mr. Wesley E. Voss
Assistant Auditor General
California Legislature
Suite 750, 925 L Street
Sacramento, California 95814

Dear Mr. Voss:


In Re: Textbook Procurement Practices in California

This is in response to your letter of November 4, 1977, and to the October Report of the Office of the Auditor General to the Joint Legislative Audit Committee, entitled "Deficiencies of Textbook Procurement Practices in California," Report 585.2.

In our opinion, the above report is completely erroneous and appears based upon a lack of understanding of the national system of textbook adoptions that has evolved over the years.

To assist your appreciation and understanding, we have prepared, and there is enclosed, a detailed memorandum on the Report. We firmly believe it clearly discloses that Scott, Foresman and Company has not priced its materials to California in violation of California law or that of any other state.

Please include our response in the additional report to be issued by your office.

Sincerely,

Gordon R. Hjalmarson
Chairman, Chief Executive Officer,
and President

CC: John H. Williams, Auditor General
Joint Legislative Audit Committee Members (8)
Wilson Riles, Superintendent of Public Instruction and
Director of Education
William D. Whiteneck, Deputy Superintendent of Administration,
Department of Education
Jacque T. Ross, Assoc. Superintendent and Chief, Division
of Administrative Services, Department of Education
Thomas Griffin, Esq.
Roger D. Wolfertz, Esq.

Memorandum of Scott, Foresman and Company

(continued)

Historically, publishers were willing to accept a price fixed for a number of years because only a limited number of books were adopted, so the prospects for substantial sales were enhanced. Furthermore, as much as eighty-five percent (85%) of the books sold under a state adoption contract are sold in the first year or two of the contract.

Adoption cycles vary from adopting authority to adopting authority. As noted earlier, length of a contract and opportunities for price adjustment, if any, also vary considerably. Further compounding a publisher's dilemma is the fact that it has absolutely no control over when a state may call for an adoption or establish a bid submission date, how long a period of time the selection process may require, the actual date a contract is actually issued and executed, or the effective date when the period of adoption or use formally commenced. Because of the system, then, we have always held, and we believe the other states understand and agree, that a publisher's lowest price warranty can only be related to the date on which an offer is submitted.

To our knowledge, no state legislature has ever stated, as a matter of legislative intent, that it required preferential treatment under such a Most Favored Nation clause which, by definition, requires equal treatment.

In certain respects, the California adoption process is unique. No other state requires an alternative plate lease royalty bid whereby the state, not the publisher, has the right to print the adopted materials for sale in that state. No other state presently requires a publisher to bid prices which include costs of transportation ("prepaid prices"), although certain cities in open territory, such as New York, also purchase on that basis. No other state requires the expenditure in time and money necessary to appropriately market materials due to California's size and the complexity of its approval process. Only California imposes upon itself the burden of the sales and use taxes which artificially inflate California's educational materials budget.

The explanation for the apparent "overcharges," at least as far as Scott, Foresman and Company is concerned, is relatively simple and could have been readily available to the Auditor General's Office, had anyone only asked. In those instances where they have compared contracts where offers were submitted during the same time period (which, by the way, was not always done by the Auditor General's staff), the price differentials, if any, represent the cost of transportation. As stated earlier, Scott,

MEMORANDUM OF SCOTT, FORESMAN AND COMPANY
ON THE
REPORT TO THE CALIFORNIA LEGISLATURE
OF THE
OFFICE OF THE AUDITOR GENERAL,
"DEFICIENCIES OF TEXTBOOK PROCUREMENT PRACTICES IN CALIFORNIA,"

By letter dated October 11, 1977, Assemblyman Mike Cullen, Chairman of the Joint Legislative Audit Committee, submitted the above Auditor General's report of textbook procurement (the "Report"), to the membership of the California Senate and Assembly.

Chairman Cullen, in his letter, stated that "in violation of California law, the Department of Education usually pays more for the same textbooks than do other states." It is clear from such a remark that Chairman Cullen has been seriously misled by the unfounded "conclusions" of the Report, which are, unfortunately, based upon a fundamental lack of understanding.

While Scott, Foresman and Company obviously cannot speak for its competitors, we firmly believe that its pricing policies in California adhere strictly to both the letter as well as the spirit of the California law.

Due to the complexity of the textbook adoption process nationally, an explanation of how the system actually works seems in order. Twenty-three of the fifty states select (adopt) educational materials on a state level. The twenty-seven states that leave adoption decisions to the local school district or community are called "open territory" customers. State adoptions and certain city adoptions in open territory are generally evidenced by a written agreement, which may run from one to six years in duration. Publishers are usually required to "freeze" or hold their prices under such contracts for periods ranging from one to six years. Certain states, such as Arkansas and Oregon, and cities, New York, for example, permit price adjustment after two years.

Since approximately forty-three of the fifty states have some form of so-called "Most Favored Nation" clause, by statute and/or contract, requiring publishers to offer prices in each state as low as are being offered elsewhere, an educational publisher doing business in all fifty states must be continually sensitive to its obligations to treat all of its customers similarly. As a result of this national "system," Scott, Foresman and Company has developed a single price policy which provides that, at any one time, it has only one school price (in alternative forms which include or exclude cost of transportation) and that price is the same for wholesalers, retailers, states, local school districts, individuals, etc., without regard to quantities ordered or the duration of an adoption, if any.

Memorandum of Scott, Foresman and Company

(continued)

Foresman and Company has only one price which is in alternative forms: one which includes a factor for cost of transportation (which is not changed if actual costs differ), and one to which is later added the actual cost of transportation. Either is readily available to all customers, and Scott, Foresman and Company receives substantially the same amount under either form.

By way of example: a Scott, Foresman school price for a book might be \$2.00. With transportation costs included, it is \$2.16. One customer can elect to buy at \$2.00 and have the actual costs of transportation added to the invoice. Another customer, such as California, can elect to pay a price which includes all costs of transportation, in this case \$2.16. Whatever actual costs of transportation incurred by Scott, Foresman, whether greater or less than the sixteen cents, California pays \$2.16. The other customer pays \$2.00 plus actual freight charges which may be greater or less than sixteen cents. Scott, Foresman is in substantially the same position under either situation. In the first case, it will have received \$2.00 for its book and the delivery costs are offset by reimbursement from the customer. In those situations in California where actual costs exceed sixteen cents, Scott, Foresman makes less money from California. Where actual costs are less than sixteen cents, there would be a corresponding benefit to Scott, Foresman.

In recent years, California has elected to require a prepaid price. California has been offered the same prepaid price bid elsewhere at the same time. Should California someday decide to request the regular price (whereby transportation is not included in advance), it may do so and actual transportation costs will be added later. Under either option, however, California will still be offered the same price offered everywhere else.

Following is a detailed response to the Report (page numbers refer to pages of the Report):

Page 3, While textbooks may not be purchased under procedures
2nd ¶ which the Auditor General considers to be "the usual
 competitive procedures," the struggle for approval
 and selection is, in fact, highly competitive. There
 may be only one source for each textbook, and each may
 be unique, but there are often numerous sources for
 competing similar works. The Report is in error in
 the third sentence, which should state that publishers
 are required to bid their materials no higher than the

Memorandum of Scott, Foresman and Company

(continued)

lowest price offered to any other customer. In support of our contention that the system is not understood, in the Report note that the sixth sentence erroneously paraphrases the California statute. §60061 does not require "a publisher to provide California with the lowest prices at which he sells instructional materials anywhere in the United States." Rather §60061 requires a publisher to offer "a price in the State of California which, including all costs of transportation to that place, shall not exceed the lowest price at which the publisher offers said instructional materials for adoption or sale to any state or school district in the United States." (Emphasis added.)

Page 5,
1st ¶

Before discussing any details, the underlying premise that California and its local school districts "pay more for instructional materials than other states" is mistaken. As pointed out earlier, Scott, Foresman and Company charges the same prices to all customers. Since California is one of the so-called state-adoption states, it receives treatment equal to that accorded the other state-adoption states. Due to the fact that twenty-seven states have elected not to select materials on the state level, customers in those states (except where there may exist city or school district adoption agreements) pay current prices which are generally higher than those paid under adoption agreements entered into in prior years. California's printing capabilities provide an additional opportunity, one not presently being sought by any other state, to achieve unique financial advantages. The State of California and local school districts do not unlawfully pay more for instructional materials than other states. Scott, Foresman and Company complies with state price maximums, and its price guarantees on state-adopted instructional materials matches the price guarantees it offers to other states. The fact that there is no price guarantee on non-state-adopted materials means local districts, desirous of spending local funds for materials felt more appropriate for their children than those appearing on a state adoption list, pay the same price as every customer in the United States purchasing a non-state-adopted book.

Memorandum of Scott, Foresman and Company

(continued)

Page 5,
2nd ¶

As discussed earlier, §60061 of the Education Code requires a publisher to provide California with the lowest price at which he offers (not sells) instructional materials anywhere in the United States. Scott, Foresman and Company has complied with this requirement, which is essentially the same as is required by the other states. Nearly all state-adoption states have the same further requirement that, if a price is ever reduced below the contract price, such reduced price becomes the new contract price. While inflation has rendered such eventualities rather unlikely, Scott, Foresman and Company is sensitive to the requirement and has and will comply. Since there is no valid evidence of our failure to comply with statutory requirements, it is wrong to state that "there is no evidence that either the Department of Education or local school districts monitor publisher compliance with these statutory provisions." Further, there should be an awareness that reputable firms such as Scott, Foresman and Company, which has been a national publisher of educational materials since 1896, labor under similar state restrictions all over the country. The need for compliance monitoring is minimal and is being met.

Page 6,
1st ¶

The statements made on this page and in the accompanying Table 1 ignore the prepaid transportation factor and do not always relate to materials bid or offered at the same time. In the list of selected Scott, Foresman and Company titles sent to Mr. Hjalmarson by Mr. Voss, the differences result from transportation costs. The Report, for example, shows that Florida is paying \$1.20 for WRITING OUR LANGUAGE (3-8), while California is paying \$1.30. When Scott, Foresman and Company bid for these two contracts (February 1, 1976 for Florida and July 9, 1976 for California), its price was \$1.20 plus transportation or \$1.30 with all costs of transportation included. Florida asked for and received the price to which actual transportation costs would later be added, and California asked for and received Scott, Foresman and Company's prepaid price which includes all costs of transportation, whatever the

Memorandum of Scott, Foresman and Company

(continued)

Page 6, actual shipping charges. If the differences appearing in the table and other data of the Report result from similar explanations by the other publishers, and we would presume such is the case, then the Report errs when it says books "were priced higher in California."

Page 9, Here the Report erroneously assumes that money is the only important consideration when purchasing educational materials. It fails to consider the educational advantages and disadvantages of a state adoption system. It does not take into account the children in local school districts and the superior ability of their classroom teachers to select, when needed and available, the materials most appropriate to meet their individual needs. At a time when California, or Texas or Tennessee, could be considering reducing or eliminating state adoption in order to provide more flexible decision-making authority at the local or even classroom level, the Report concludes that money may be saved by requiring longer-term adoption contracts. Any educational system, California's included, can only be judged ultimately on its ability to enhance the learning of the children within its system.

Page 10, It is true that California does not negotiate contracts for materials the State does not adopt. It is also true that the State does not contract for non-state-adopted instructional materials purchased by local school districts. Prices charged local districts for non-state-adopted books are based on current prices. The Report fails to consider that the Most Favored Nation clauses everywhere require price guarantee protection. Current prices of non-state-adopted materials must be the same everywhere in the country.

Page 12, Here the Report seems to suggest Tennessee's system is better because all materials are selected by the state under fixed-price contracts. In fact, the elimination of flexibility in decision-making at the local level may be a serious detriment to the teachers and students of that state.

Memorandum of Scott, Foresman and Company

(continued)

Page 12, Ohio does not establish maximum prices for publishers (and its constitutional ability to do so is highly questionable). Rather, publishers annually file their current prices with the State of Ohio and agree that the prices in effect at the time of such filing will be applied during that year in Ohio.

Page 12, If, contrary to our contention, a publisher's price
3rd ¶ warranty applies to contracts bid for prior to California, we would never be able to raise prices of
Page 13 any edition of every adopted book. All prices would be frozen upon first publication since we are governed by similar statutes all over the country. When evaluating compliance with California's system, one must be mindful of the similar requirements
Page 14 elsewhere in this national system. We see no difference between our interpretation (which is quoted on page 14 from a letter dated July 19, 1977 from me to the Auditor General, copy attached) and that employed by the California Department of Education. Both view as critical the only date controllable by a publisher, the date on which he submits the offer. Any other interpretation would be unreasonable and would probably be destructive to educational publishers. Should the California Legislature adopt a new legislative intent regarding §60061, it would be imposed in the context of a national system of similar Most Favored Nation requirements, the practical effect of which would prohibit all future price increases after first publication. Any publisher sensitive to legal exposure elsewhere could find itself precluding from bidding its materials in California--or it would have to consider setting initial prices high enough to anticipate the costs of inflation over the commercial life of each edition.

Page 15, The intent of §60061 is clear and unambiguous and
1st ¶ corresponds to the intent of the other states. It need not be changed and, if it were amended to show a legislative intent that California receive any prices other than those being bid elsewhere, the results could be disastrous for everyone, California included.

Memorandum of Scott, Foresman and Company

(continued)

Page 15, It should be clear by this point that we strongly
Conclu- disagree with the Conclusion of the Report. We do
sion not believe that the State of California is being
overcharged for educational materials. Publishers,
at least Scott, Foresman and Company, are in com-
pliance with California law and, therefore, there
is no evidence the State and local school districts
are not properly monitoring publisher compliance.

Page 16, (1) The legislative intent of §60061 and all simi-
Recommen- lar statutes elsewhere in the United States is
dations clearly that of seeking the equal to the best price
being offered. Such statutes do not and, in our
opinion, should not seek preferential treatment.

(2) Since Scott, Foresman and Company has not
overcharged California, a call to take steps neces-
sary to achieve recovery seems to be rendered moot.

The national system under which the publishers work
provides ample checks on compliance with similar
pricing restrictions, enough so that California
need not, but can if it chooses, attempt to further
clarify guidelines for publisher compliance.

Obviously California should and, we believe, ade-
quately does, monitor publisher pricing procedures.

Extension of the present two-year contracts to a
greater term, while it may achieve some economies,
would deny California its present ability to select
newer materials as they are published. Of important
consequence to publishers, it would eliminate all
attempts to reasonably deal with the issue of in-
flation. The present two-year contract permits
periodic increases in prices, which really are three
years old if the time necessary for selection and
bidding is considered. California has and should
continue to recognize the impact of inflation on paper,
printing, binding and personnel costs in its own
procedures. The economic health of educational pub-
lishing is vital to education in America.

The last Recommendation seems to be suggesting that
all materials published by all publishers be state-
approved and state-adopted. Such an eventuality

Memorandum of Scott, Foresman and Company

(continued)

Page 16, would not seem desirable for anyone.

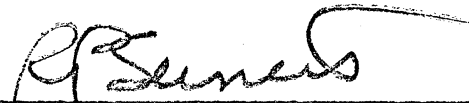
Recommen-
dations
(cont')

Local school districts in California are charged the same prices, albeit current, charged throughout all of the open-territory and state-adoption states where similar local authority exists.

Page 17, In our opinion, the disadvantages of the Recommenda-
Benefits tions far outweigh any advantages.

Admittedly, the complex national system of textbook adoptions, laws and contracts presents a tangled web when first viewed by someone unfamiliar with the process. Hopefully, this Memorandum will be of assistance in developing a clearer perception of how the system has worked and is working. At this point in time, a state desirous of achieving preferential treatment would, by the domino effect of similar laws, be seriously jeopardizing the ability of publishers to continue doing business with that state. We respectfully suggest that it would not be in the best interests of anyone for California to seek anything more than the price guarantees it presently demands and receives.

December 1 , 1977



Richard P. Sernett
Secretary and Legal Officer
Scott, Foresman and Company
(312) 729-3000

Instructional
Materials - low

July 19, 1977

Mr. John H. Williams
Auditor General
California Legislature
Suite 750
925 L Street
Sacramento, California 95814

Dear Mr. Williams:

Your letter of June 29, 1977, addressed to Mr. Philip Yoder, has been referred to me for reply.

Despite the fact that your letter requests a description of "the price limitations" placed "on textbook sales" under certain conditions, Mr. Don Truitt has orally advised me that you desire to know what prices we believe are required under California's "most-favored-nation" requirement in three instances.

With reference, then, to the three instances enumerated in your letter, we offer the following response:

- (a) A Scott, Foresman bid for a California adoption contract contains a bound book price which is the lowest prepaid transportation price bid anywhere on the date the bid is submitted in California. Scott, Foresman and Company has only one school price (delivered or plus transportation) at any one time and that price is the same for wholesalers, retailers, schools, individuals, etc., without regard to quantities ordered or duration of the adoption, if any. Prices are historically adjusted once or sometimes twice a year. Since we cannot control a State's call for an adoption, designation of bid date, date of execution of a contract or a contract's effective date or its duration, we have long believed that statutes, such as California's, are only intended to relate a publisher's lowest price warranty to the price on the date the bid is submitted (the only date controllable by a publisher).

Mr. John H. Williams
Auditor General
California Legislature

- 2 -

July 19, 1977

- (b) Any local public school district purchasing State-adopted materials with local funds is, in our opinion, entitled to and receives the State contract price.
- (c) Any school district in California purchasing non-California-adopted materials is charged Scott, Foresman's then-current prices since there is no applicable contract requiring any treatment to the contrary.

Should you have any other questions in this regard, please let me know.

Very truly yours,

RPS:ebw

Richard P. Sernett
Secretary and Legal Officer

CC: Don Truitt

BCC: Gordon R. Hjalmarson
Philip D. LaLeike
Philip E. Yoder

H. Templeton Brown, Esq.
Mayer, Brown & Platt

John H. Williamson
John S. Reno, Jr.
Silver Burdett Company

Edward E. Wanous
Richard D. Roberts
South-Western Publishing Company



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LOS ANGELES

June 29, 1977

Mr. Phillip Yoder
Regional Vice President
Scott-Foresman Publishing Co.
855 California Avenue
Palo Alto, California 94304

RECEIVED

JUN 30 1977

SCOTT, FORESMAN & CO
Palo Alto, California

Dear Mr. Yoder:

As a publisher that offers instructional materials for sale or adoption within the State of California, we would appreciate your interpretation of the California Education Code Section 60061 concerning textbook pricing. In this regard, please describe the price limitations you place on textbook sales under the following conditions:

- (a) A contract is established with the State of California for textbooks adopted in grades K-8.
- (b) A school district purchases state-adopted textbooks directly from the publisher with local funds.
- (c) A school district purchases non-state-adopted textbooks with local funds.

If you have any questions concerning this request, please feel free to contact Don Truitt of the Auditor General's staff (916) 445-2221.

Sincerely,

John H. Williams
JOHN H. WILLIAMS
Auditor General

JHW:DT:lc

SILVER BURDETT COMPANY

PUBLISHERS OF EDUCATIONAL MATERIALS SINCE 1885

MORRISTOWN, NEW JERSEY 07960

OFFICE OF THE PRESIDENT

January 3, 1978

(201) 285-7930

Mr. Wesley E. Voss
Assistant Auditor General
California Legislature
Suite 750, 925 L Street
Sacramento, California 95814

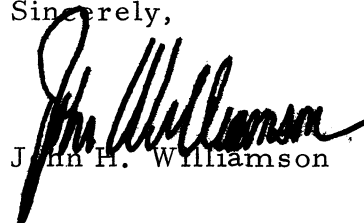
Dear Mr. Voss:

We have read with great care your letter of November 4, 1977, and the report prepared by the Office of the Auditor General to the Joint Legislative Audit Committee ("Deficiencies of Textbook Procurement Practices in California" - Report 585.2).

We find the report to be misleading and casts completely unwarranted doubts upon the ethics of every educational publisher. While I cannot speak for others, I can assure you that in our dealings with California, we observe both the spirit and letter of the law, extending to California the prices and services we offer elsewhere. Our practices in this regard will bear the inspection of any responsible agency. Moreover, it has been our company's experience that the staff of the State Department of Education is zealous in protecting California's interests in all dealings with publishers.

We respectfully suggest that the validity of the report in question be carefully checked before it either receives wider circulation or is used as the basis for any actions by the state.

Sincerely,



John H. Williamson

/mac

**SOUTH-WESTERN PUBLISHING CO.**
INCORPORATED

SPECIALISTS IN BUSINESS AND ECONOMIC EDUCATION

Telephone 513-271-8811

5101 MADISON ROAD — CINCINNATI, OHIO 45227

January 3, 1978

Mr. Wesley E. Voss
Assistant Auditor General
California Legislature
Suite 750, 925 L Street
Sacramento, CA 95814

Dear Mr. Voss

This is in response to your letter of November 4, 1977.

The facts of price differentials in the attachment are correct. The implications in the letter based on these facts reflect a lack of understanding on the part of California officials of the textbook adoption process in California and other states.

South-Western Publishing Co. sells only in the secondary and post-secondary markets in California. In these markets California is "open territory." Texas holds state adoptions at the secondary level.

The differences indicated on your attached sheet arose from the fact that we were required to bid prices in Texas on the contract which were effective September, 1977, in October, 1976, prior to a price increase January 1, 1977. The prices paid in California in April, 1977, were the same prices quoted to all customers in all states at that point in time.

South-Western has always followed an open and even-handed pricing policy. All customers are extended the same prices at any point in time. Some prices can differ depending on whether the prices quoted include transportation. We are confident we are keeping both the letter and spirit of the law in California and in every other jurisdiction in which we do business.

Mr. Voss, your letter of November 4 was addressed to Mr. Gary Eisenberger, President. Mr. Eisenberger is not connected with South-Western. Mr. E. E. Wanous is the president of South-Western. Please change your records accordingly.

Very truly yours


Richard D. Roberts
Executive Vice President

nz

cc John H. Williams, Wilson Riles
Cincinnati • West Chicago • Palo Alto, Calif. • Dallas • Pelham Manor, N. Y.

SECTION 60061 OF THE STATE EDUCATION CODE

§ 60061. A publisher or manufacturer shall:

- (a) Furnish the instructional materials offered by him at a price in the State of California which, including all costs of transportation to that place, shall not exceed the lowest price at which the publisher offers said instructional materials for adoption or sale to any state or school district in the United States.
- (b) Automatically reduce the price of said instructional materials to any governing board to the extent that reductions are made elsewhere in the United States.
- (c) Provide any instructional materials free of charge in the State of California to the same extent as that received by any state or school district in the United States.
- (d) Guarantee that all copies of any instructional materials sold in California shall be at least equal in quality to the copies of such instructional materials that are sold elsewhere in the United States, and shall be kept revised, free from all errors, and up to date as may be required by the state board.
- (e) Not in any way, directly or indirectly, become associated or connected with any combination in restraint of trade in instructional materials, and that he will not enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of instructional materials for use in the State of California.
- (f) Maintain an office and depository in the State of California or arrange with an independently owned and operated depository in the State of California to receive and fill orders for instructional materials.

For purposes of the preceding paragraph of this subdivision, "instructional materials" shall mean textbooks, or instructional materials systems or instructional materials sets which include textbooks.

For purposes of textbook purchases by governing boards pursuant to subdivision (b) of Section 60264 and Section 60401, the provisions of this subdivision shall apply to every publisher or manufacturer except one whose total orders for textbooks from all governing boards in California under any section of this division are or will be, for the particular school year, less than 1,000 copies of any single title or less than 10,000 copies of multiple titles.

- (g) Upon the willful failure of the publisher or manufacturer to comply with the requirements of this section, be liable to the governing board in the amount of three times the total sum which the publisher or manufacturer was paid in excess of the price required under subdivisions (a) and (b) and (e), and in the amount of three times the total value of the instructional materials and services which the governing board is entitled to receive free of charge under subdivision (c).

OWEN K. KUNS
RAY H. WHITAKER
CHIEF DEPUTIES

STANLEY M. LOURIMORE
EDWARD F. NOWAK
EDWARD K. PURCELL

KENT L. DECHAMBEAU
HARVEY J. FOSTER
ERNEST H. KUNZI
SHERWIN C. MACKENZIE, JR.
ANN M. MACKAY
TRACY O. POWELL, II
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8011 STATE BUILDING
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Legislative Counsel of California

BION M. GREGORY

Sacramento, California

May 6, 1977

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DEPUTIES

Honorable Mike Cullen
Assembly Chamber

Contracts for Instructional Materials - #2890

Dear Mr. Cullen:

You have asked three questions regarding contracts for the purchase of instructional materials which we have answered in sequence.

QUESTION NO. 1

May a publisher which provides textbooks for California school districts pursuant to contract with the State Board of Education charge more for such textbooks than that charged elsewhere in the country, if the actual transportation costs to a destination in California are greater than the transportation costs incurred in delivering textbooks to any other state or school district in the nation?

OPINION NO. 1

A publisher which provides textbooks for California school districts pursuant to contract with the State Board of Education is not permitted to charge more for such textbooks than that charged elsewhere in the country if the actual transportation costs to a destination in California are greater than the transportation costs incurred in delivering textbooks to any other state or school district in the nation.

ANALYSIS NO. 1

Part 33 (commencing with Section 60000) of the Education Code* generally governs the manner of acquisition of instructional materials, including textbooks, by elementary and secondary schools in the state (Sec. 60000).

Pursuant to Article 4 (commencing with Section 60060) of Chapter 1 of Part 33, every publisher or manufacturer of instructional materials, which is defined to include textbooks (see Sec. 60011), offered for adoption or sale in California is required to comply with certain specified requirements (Sec. 60060). One such requirement is provided for in subdivision (a) of Section 60061, and it reads as follows:

"60061. A publisher or manufacturer shall:

"(a) Furnish the instructional materials offered by him at a price in the State of California which, including all costs of transportation to that place, shall not exceed the lowest price at which the publisher offers said instructional materials for adoption or sale to any state or school district in the United States."

As can be seen, the above quoted subdivision clearly requires that textbook contracts provide that textbooks shall be offered for sale in California at a price, including all costs of transportation to a destination in California, which does not exceed the lowest price at which the seller offers the textbooks for adoption or sale to any state or school district.

The provision in question has not been the subject of judicial decision. However, the language is clear and unambiguous. Under those circumstances the plain language of the statute is to be followed, and there is no need to engage in construction or interpretation (Scott v. McPheeters, 33 Cal. App. 2d 629; Copeland v. Raub, 36 Cal. App. 2d 441). Thus,

* All section references to code sections are to sections of the Education Code as reorganized, effective April 30, 1977, unless otherwise specified.

we think that the magnitude of the transportation cost to a destination in California, as compared to that incurred in delivering textbooks to other parts of the nation, is immaterial in determining the maximum price that can be charged for textbooks. The maximum price that can be charged for textbooks, including all costs of transportation to a destination in California, is determined solely by reference to the lowest price at which the publisher offers the textbooks for adoption or sale to any other state or school district in the nation. The payment of transportation costs is entirely the responsibility of the publisher or manufacturer.

It is, therefore, our opinion that a publisher which provides textbooks for California school districts pursuant to contract with the State Board of Education is not permitted to charge more for such textbooks than that charged elsewhere in the country if the actual transportation costs to a destination in California are greater than that incurred in delivering textbooks to any other state or school district in the nation.

QUESTION NO. 2

Does our answer in Question No. 1 differ if intrastate transportation and warehousing charges for delivering textbooks to a destination in California are greater than the lowest cost of such intrastate charges in delivering textbooks within any other state in the nation?

OPINION AND ANALYSIS NO. 2

In view of our answer to Question No. 1, it is our opinion that a publisher which provides textbooks for California school districts pursuant to contract with the State Board of Education is not permitted to charge more for such textbooks than that charged elsewhere in the country if the intrastate transportation and warehousing charges for delivering textbooks to a destination in California are greater than the lowest cost of such intrastate charges in delivering textbooks to any other state or school district in the nation. Subdivision (a) of Section 60061 makes no particular provision or distinction concerning intrastate transportation costs for the purposes in question, nor is any such provision made elsewhere in the statutory law.

QUESTION NO. 3

What legal remedy is available to the State Board of Education for a publisher who violates subdivision (a) of Section 60061 by charging more for textbooks, including all costs of transporting textbooks to a destination in California, than that charged to deliver textbooks to any other state or school district in the nation?


OPINION AND ANALYSIS NO. 3

Subdivision (g) of Section 60061 provides, in pertinent part, that upon the "willful" failure of a publisher or manufacturer to comply with any of the requirements of the section, the publisher or manufacturer is liable in the amount of three times the total sum which the publisher or manufacturer has paid in excess of the price required. Thus, in any instance where a willful failure to comply can be shown, a publisher who violates subdivision (a) of Section 60061 may be liable in the amount of three times the total sum which was charged over the maximum amount authorized.

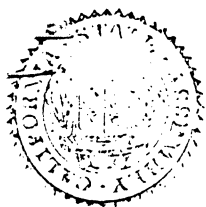
In addition, Section 60060 expressly provides, as indicated in Analysis No. 1, that every publisher shall comply with the statutory provisions in question, including subdivision (a) of Section 60061. Thus, subdivision (a) of Section 60061 would necessarily enter into and form a part of any contractual arrangements between the State Board of Education and publisher for the furnishing of textbooks (Alpha Beta Food Markets, Inc. v. Retail Clerks Union, 45 Cal. 2d 764; Robertson v. Dodson, 54 Cal. App. 2d 661). It follows, we think, that a publisher could be sued for breach of contract upon failure to comply therewith.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
James W. Heinzer
Deputy Legislative Counsel

JWH:co



Joint Legislative Audit Comm. Fee

OFFICE OF THE AUDITOR GENERAL

APPENDIX D-1



California Legislature

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LOS ANGELES

November 4, 1977

285

In October 1977, the California State Auditor General issued the enclosed report entitled Deficiencies of Textbook Procurement Practices in California.

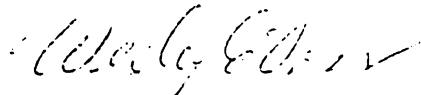
Three general textbook procurement issues were illustrated in the report.

- (1) Most publishers charge California a higher textbook price than other states with similar contract dates.
- (2) The California two-year contract for state-adopted textbooks allows more frequent price increases than other states with four-year to six-year contract price guarantees.
- (3) Non-state adopted textbooks are not protected by contract price guarantees and California school districts frequently pay a much higher price than states requiring contracts for all textbooks.

Our comparison of textbook prices between California and other states included the publications of yours shown on the enclosed list. If you

would care to comment on the report by January 10, 1978, your response will be included in an additional report issued by this office.

Sincerely,



WESLEY E. VOSS
Assistant Auditor General

WEV:lc

Enclosures

(SAME LETTERS SENT TO ADDRESSES ON ATTACHED LIST)

bcc: Hayes, Chrono, Reading, Job 285 File, Truitt

D.C. Heath and Company

125 Spring Street
Lexington, Massachusetts 02173
Telephone (617) 862-6650

July 19, 1977



Mr. Wesley E. Voss
Assistant Auditor General
Joint Legislative Audit Committee
Office of the Auditor General
California Legislature
925 L Street
Sacramento, California 95814

Dear Mr. Voss:

This is in reply to your letter of June 28, 1977 in which you requested our interpretation of the California Education Code Section 60061 concerning textbook pricing.

In our opinion, contract prices established in an adoption agreement between a publisher and the State Board of Education in California apply only to orders placed by the Board in accordance with the contract. Since our contract is with the State Board and not with a school district, if a school district wishes to purchase state-adopted textbooks directly from a publisher with local funds, they would not be entitled to the contract prices, but they would pay instead the regular catalog price offered to all school customers and in effect at the time the order is received. This same price is offered to school districts purchasing non-state adopted textbooks with local funds.

Very truly yours,

Henry G. Cosman
Vice President Controller

HGC/mk

APPENDIX E-2

July 19, 1977

Mr. John H. Williams
Auditor General
California Legislature
Suite 750
925 L Street
Sacramento, California 95814

Dear Mr. Williams:

Your letter of June 29, 1977, addressed to Mr. Philip Yoder, has been referred to me for reply.

Despite the fact that your letter requests a description of "the price limitations" placed "on textbook sales" under certain conditions, Mr. Don Truitt has orally advised me that you desire to know what prices we believe are required under California's "most-favored-nation" requirement in three instances.

With reference, then, to the three instances enumerated in your letter, we offer the following response:

- (a) A Scott, Foresman bid for a California adoption contract contains a bound book price which is the lowest prepaid transportation price bid anywhere on the date the bid is submitted in California. Scott, Foresman and Company has only one school price (delivered or plus transportation) at any one time and that price is the same for wholesalers, retailers, schools, individuals, etc., without regard to quantities ordered or duration of the adoption, if any. Prices are historically adjusted once or sometimes twice a year. Since we cannot control a State's call for an adoption, designation of bid date, date of execution of a contract or a contract's effective date or its duration, we have long believed that statutes, such as California's, are only intended to relate a publisher's lowest price warranty to the price on the date the bid is submitted (the only date controllable by a publisher).

Mr. John H. Williams
Auditor General
California Legislature

- 2 -

July 19, 1977

- (b) Any local public school district purchasing State-adopted materials with local funds is, in our opinion, entitled to and receives the State contract price.
- (c) Any school district in California purchasing non-California-adopted materials is charged Scott, Foresman's then-current prices since there is no applicable contract requiring any treatment to the contrary.

Should you have any other questions in this regard, please let me know.

Very truly yours,

RPS:ebw

Richard P. Sernett
Secretary and Legal Officer

CC: Don Truitt

BCC: Gordon R. Hjalmarson
Philip D. LaLeike
Philip E. Yoder

H. Templeton Brown, Esq.
Mayer, Brown & Platt

John H. Williamson
John S. Reno, Jr.
Silver Burdett Company

Edward E. Wanous
Richard D. Roberts
South-Western Publishing Company

August 16, 1977

Mr. Wesley E. Voss
Assistant Auditor General
Joint Legislative Audit Committee
Office of the Auditor General
925 L Street - Suite 750
California Legislature
Sacramento, California 95814

Dear Mr. Voss,

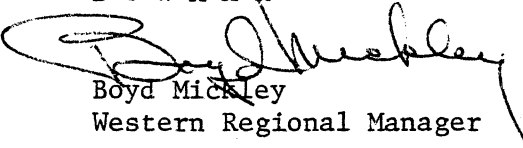
In replying to the questions regarding California Education Code Section 60061 concerning textbook pricing, we at BOWMAR operate under the following policy:

- a) A contract is established with the State of California in Grades K-8, and at that time our bid price is catalog price plus tax and shipping costs. We continue to honor the price regardless of the increases in catalog prices during the remaining years of the contract. This gives the schools a savings the second year of the contract.
- b) When school districts purchase state-adopted textbooks or media directly from the publisher with local funds, we also honor the state bid prices.
- c) When a school district purchases non-state-adopted textbooks with local funds, they are charged catalog prices plus tax and shipping.

Please feel free to contact me if this does not answer your questions.

Sincerely,

B O W M A R


Boyd Mickley
Western Regional Manager



Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

APPENDIX F



California Legislature

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MIKE CULLEN
LONG BEACH

JOHN H. WILLIAMS
AUDITOR GENERAL

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SACRAMENTO

SENATORS
PAUL CARPENTER
CYPRESS

GEORGE DEUKMEJIAN
LONG BEACH

NATE HOLDEN
LOS ANGELES

November 7, 1977

285

Mr. Robert R. Laidlaw, President
Laidlaw Brothers Publishing, Inc.
Thatcher and Madison
River Forest, Illinois 60305

Dear Mr. Laidlaw:

Thank you for your October 21 response concerning our report, Deficiencies of Textbook Procurement Practices in California. I would like to respond to each of the major issues addressed in your letter.

We took great care to ensure that our comparison was methodologically correct. A contract textbook price for another state was not used if that contract was consummated before a California contract. For non-state-adopted textbooks without contract price guarantees, we attempted to establish purchase patterns and prices for California schools during the effective dates of lengthy contracts guaranteeing prices for other states.

You state in your letter that the average publisher overcharge of 6.6 percent for state-adopted textbooks is attributable to the costs of transportation which California law requires to be included in the textbook price.

Section 60061 of the California Education Code requires all costs of transportation to be included in the bid price which cannot exceed the lowest price nationally. In addition, the 6.6 percent overcharge cited in our report is an average of all overcharges noted. The individual overcharges ranged from less than one percent to nearly 30 percent. The amount overcharged varied with the publisher and cannot be attributed to additional costs of transportation. Also, California schools are paying as much as 100 percent more than other states when textbooks are not under state contract.

Mr. Robert R. Laidlaw
November 7, 1977
Page 2

You stated that:

"Laidlaw Brothers, as does most publishers, annually establishes three prices for each of our publications:

1. Net wholesale price, FOB out shipping point.
2. List price, FOB customer. This price is net wholesale price plus 33-1/3% and is used for those situations that require a list price. Few, if any, books are actually sold at this price and none to school customers.
3. Net wholesale price, FOB customer. This price is used for customers who require a delivered price. The net wholesale price, FOB customer, is net wholesale FOB our shipping point plus 7% for transportation."

First, some publishers increase prices more frequently than once a year. The price for American Political Behavior, a textbook cited in our report, was increased four times during two and one-half years. In addition to paying a lower initial price, the State of Tennessee will realize the benefits of a guaranteed price until June 1979.

Further, we also found that more than three prices are in effect nationally at any one time. At least four states (Tennessee, Texas, Florida and Arkansas) require publishers to place all books in a private depository located within their state. The publisher pays approximately eight percent of the textbook list price for depository services and the state or schools purchase the books FOB the depository. These were the contract prices we used in our comparisons. Tennessee also requires additional retail list price which cannot exceed the wholesale school price by more than 15 percent. The different kinds of textbook prices appear to vary with the contract requirements of the states.

In our report, we referenced Ohio as a state that requires a maximum price for which all textbooks may be sold. We state that California could establish price guarantees for all textbooks by using similar methods. We do not state that Ohio is receiving lower textbook prices, but we do contend that it is feasible to require long-term contracts for all textbooks sold within California. Actually, Ohio often pays a higher price than California due to annual price increases by publishers. We compared the 1977 Ohio prices for 35 textbooks to the 1977 through 1979 California prices and found that Ohio is paying more for 26 of the titles compared. In no instance did Ohio receive a lower price in return for allowing annual price increases.

Mr. Robert R. Laidlaw
November 7, 1977
Page 3

We have enclosed a listing of the Laidlaw Brothers' textbooks which were used in our survey. If you care to respond by January 10, 1978, we will include your comments in a subsequent report.

Sincerely,



THOMAS W. HAYES
Assistant Auditor General

TWH:lc

Enclosure

Publisher: Laidlaw Brothers

TEXTBOOK PRICES UNDER STATE CONTRACT

Textbook	Grade Level	Florida Price	California Price	Difference
Spectrum Math Series:				
Red, Orange, Yellow, Green	3-6	\$1.77	\$1.89	\$.12
Blue, Purple	7&8	2.04	2.18	.14
Using the Metric System	7&8	.72	.77	.05
Growth In Spelling				
	7&8	Texas Price 3.87	4.14	.27
Growth In English				
	7	Arkansas Price 7.86	8.41	.55
Power In English	8	7.86	8.41	.55

NOTE: The California sales tax has been deleted in all comparisons.

LIDLAW BROTHERS

A Division of Doubleday & Company, Inc.

River Forest, Illinois 60305

APPENDIX F-2

November 15, 1977

Mr. Thomas W. Hayes
Assistant Auditor General
Joint Legislative Audit Committee
California Legislature
925 L Street, Suite 750
Sacramento, California 95814

Dear Mr. Hayes:

I appreciate receiving your letter of November 7 responding to mine of October 21 regarding the Report #285, Deficiencies of Textbook Procurement Practices in California. As you did with my original letter, I would now like to respond to each of the major issues addressed by your letter.

The differences between the contract prices in California and the contract prices in other states for which contracts were made at the same time is, in my opinion, solely the cost of transportation added to the net wholesale price. In other states, the net wholesale price is used as a contract price. In California, transportation must be added to the net wholesale price, as required by the state law. Section 60061 of the California Education Code is clear that transportation must be included in the bid price.

There are at least two interpretations that can be made of the California language that the bid price cannot exceed the lowest national price. One is the interpretation that has been applied to this section since it was passed, that is, that as long as the same net wholesale price is used, the contracts are in compliance. The other interpretation is the one that you seem to be favoring, which is that net wholesale plus transportation in California cannot exceed net wholesale price in other states. If such an interpretation were applied, it would immediately dry up the furnishing of textbooks to California by all national publishers, since it would place national publishers in jeopardy of the most favored nation's clause in every other state's contract since we would be required to include transportation for California orders at the same price as without transportation

for other states. This would be an additional service for California that we would not be furnishing in other states.

I indicated in my previous letter that "most publishers" annually establish three prices. You came back with the nit pick regarding a specific publisher who apparently raised the price of an individual book more often than that during a given period of time. I can't answer for that particular publisher. I can, however, point out that your contention that there are more than three prices in effect nationally is true, but those prices are merely variations based on the net wholesale price. You give two examples.

One is with regard to retail prices. You are correct in that there is a retail price required by a number of states. This retail price is the net wholesale price plus 15 per cent. This price, however, I did not consider because it does not change what the publisher sells the book for. The retail price is the amount a retail outlet is allowed to charge for the book after purchasing it from the publisher at the net wholesale price. The retail price does not increase what the publisher derives from the sale.

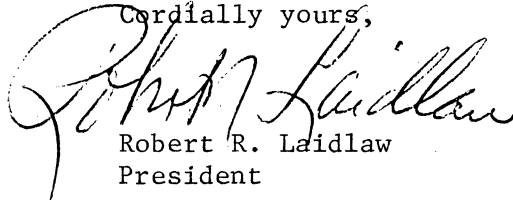
The other example has to do with depositories and your contention is that since the publisher pays 8 per cent or some other per cent of the net wholesale price to the depository for services that this constitutes for a different price. This is absolutely untrue. In those states where there is a depository, the school pays the contract price. The school also pays the transportation from the depository to the school. The publishers, in turn, pay the depository a fee for rendering the service of accepting orders, processing the orders, warehousing the books, shipping the orders, and collecting on the receivables. The fee paid for the work done by the depository and which the publishers would have had to do in their own order processing department and warehouse if it was not being done by the depository is based on a percentage of the sale. This does not in any way constitute a different price to the schools.

I call your attention particularly to the fact that in those states where there are depositories and, in fact, in states such as Kentucky where there are no depositories but the books are under state adoption, that the books are billed to the school at the net wholesale price and then transportation from point of shipment to the school is added and is paid by the school.

What you say about Ohio in your letter is correct, but the implication of what you said in the report, due to the way it was said, is that Ohio enjoys an advantage over California because Ohio specifies a maximum price.

Finally, with regard to the listing of Laidlaw Brothers textbooks which were used in your survey, I believe that you could find, through a quick application of mathematics, that the California price for each book is precisely 7 per cent higher than the contract prices for that book in Florida, Texas, and Arkansas to which you made a comparison. As I have pointed out in my previous letter and again in this letter, this 7 per cent is the amount that we build into our price for California to cover the cost of transportation as required by Section 60061 of the California Education Code.

Cordially yours,

A handwritten signature in cursive script that reads "Robert R. Laidlaw". The signature is written in dark ink and is positioned to the left of the typed name and title.

Robert R. Laidlaw
President

RRL:me

WILSON RILES
Superintendent of Public Instruction
and Director of Education



STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION

STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

January 3, 1978

Honorable Mike Cullen
Assemblyman
State Capitol
Sacramento, CA 95814

Dear Assemblyman Cullen:

This is the response to the Auditor General's report about textbook costs (No. 285.2) wherein you asked for the status of implementation of the Auditor General's recommendations. The Department's responses are substantially the same as in the letter of September 28, 1977 to John Williams, Auditor General, which has been included in the Auditor's report.

Regarding determining overcharges by publishers, our preliminary investigation indicates that this will indeed require a large amount of staff time. This staff time would be required to negotiate and establish the legitimate comparative prices. Publishers' reactions to this Auditor General's report and to our inquiries indicate that every price comparison had an exception which needed to be considered. Furthermore, it would probably require considerable legal work where apparent differences could not be resolved. The Department does not have staff to assign to this recommendation.

Regarding the recommendation to revise California's standard textbook contract to extend the present two-year contract to six years, the State Board of Education currently contracts with textbook publishers for a maximum term of six years. State law provides that every two years the State Board must, when applicable, retain, add and/or delete textbooks from the state adopted list. Textbooks initially adopted, and under contract, for six years are automatically "retained" on each of the two succeeding biennial lists. The net effect is that, although a State Board contract guarantees the availability of textbooks (and other types of instructional material) for up to six years, present state law precludes the Board from imposing a price guarantee for longer than two years.

Regarding the \$10 million uncommitted surplus in the State Instructional Materials Fund, the Department of Education's position is that this surplus be reallocated to the districts and will so advocate through legislative channels. The Department of Finance is recommending that it be returned to the State General Fund by 1978-79 budget action. The Department of Finance has also requested an Attorney General's opinion to the question of the surplus being available for redistribution by the State Board of Education or available as uncommitted surplus to be returned to the State General Fund.

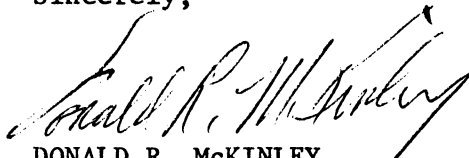
Honorable Mike Cullen

-2-

January 3, 1978

Again, I thank you for the opportunity to respond and I assure you we will do all possible to benefit the school children in California as well as the taxpayers.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald R. McKinley". The signature is written in dark ink and is positioned above the typed name.

DONALD R. McKINLEY
Chief Deputy Superintendent
(916) 445-5272

DRM:bas

Office of the Auditor General

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
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