

Annex IV.

Name of schools mentioned
in paragraph 5 of
supplementary provisions

The fixed number of
the personnel to be
placed in schools shown
in the left column

Tokyo Univ. of Medicine and Dentistry	743 persons
Tokyo College of Medicine and Dentistry	35 persons
Akita College of Mining	243 persons
Akita Normal School	225 persons
Akita Youth Normal School	28 persons
Teda Textile Technical College	151 persons
Osaka Technical College	140 persons
Osaka Youth Normal School	61 persons

DRAFT OF LAW

to be submitted for GS' approval
Coordination Section, CLCO (TEL. 57-6010)
7845)

Apr. 9, 1949

1. CLCO Number: 89
2. Name of Law: Bill concerning the Partial Amendment of the Board of Education Law.

3. Competent Ministry: Education Ministry

4. Date of Cabinet Approval: 9/Apr.

5. SCAP Section concerned:
Mr. Loomis, Mr. Carpenter
Education Division CI&E SCAP

6. Remarks: (Reference:)
Board of Education Law (Law No. 170 July 15, 1948)

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.....
.....
.....
.....

7. G.S. Reviewers:

GS-EX-0

8. Date of G.S. Approval:

LS

CI&E

9. G.S. Member Responsible:

GS-CSU

GS-PAD

Recd GS 4/9/49

(2)

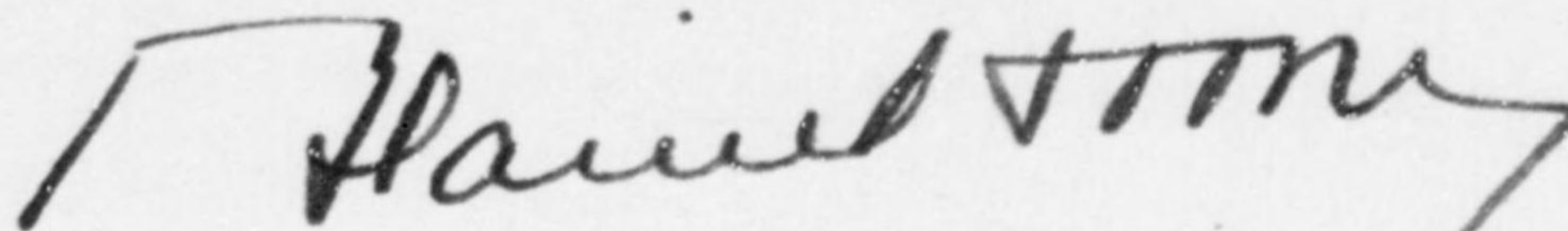
CIVIL SERVICE DIVISION
Government Section

April 19, 1949

MEMORANDUM FOR: Parliamentary and Political Division,
Government Section

SUBJECT : Draft of Law concerning the Partial Amendment
of the Board of Education Law

No objection is made by the Civil Service Division to the
bill named above.



BLAINE HOOVER
Chief, Civil Service Division

GP:BH:vr

Recd G3 4/19/49

(5)

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Public Affairs Division

12 April 1949

MEMORANDUM FOR: Parliamentary and Political Division

THROUGH : Executive Officer

SUBJECT : Comment on Draft Law Concerning Partial Amendment of the
Board of Education Law

1. Article 70 has been revised to permit the holding of local school board elections coincident with the prefectural school board elections, which are to be held at two year intervals after 1948. The simultaneous scheduling of elections within prefectures is considered advisable in order to secure the benefit of heightened public interest in prefecture-wide elections and to postpone the financial burden of elections during the next six months. This latter consideration is of some importance since the impending austerity program will require local governments to exist on reduced revenues during the 1949-50 fiscal year.

2. Article 86, as it is recorded in the attached draft bill, is inaccurate and misleading. The Liaison Office should be required to check the language of the Japanese original in order to make sure that the article actually means - as it is intended to mean - that the Minister of Education will recommend a number of books considered suitable as text books. From this list each prefectural school board may select the books to be used in schools under its jurisdiction. This requirement is a temporary one, to remain effective only so long as paper rationing is continued.

3. This draft bill has been discussed with representatives of CIAM, who support it and declare that it represents the wishes of the Japanese Government.

4. There are cogent reasons for interposing no objections at the present time, but the advisability of continuing these provisions in force indefinitely is open to question. Certainly there are good reasons for believing that local school boards ought eventually to be permitted to select texts to be used in their own schools - so long as specified minimum educational standards are maintained. Similarly, local public entities, which will bear financial responsibility for their own schools, ought to have the right to decide such things as when board elections are to be held - without being bound by arbitrary limitations imposed by national legislation.

OSBORNE HAUGE
Chief, Public Affairs Division

cc: Mr. Rizzo

1 Incl: Draft of Law concerning Partial
Amendment of Board of Education Law.

Recd. 4/12/49

(2)

GOVERNMENT SECTION
Buck Slip

4-11-1949

From: Parl. & Political
No: _____ INITIAL DATE _____

- CHIEF.....
- EX. OFF.....
- Deputy Chief.....
- Maj Rizzo.....
- Chief Adm Div.....
- Statistics & Review Br.....
- Civil Service Div.....
- Parl & Pol Div.....
- Public Adm Div.....
- Public Aff Div.....
- File.....
- Chief Clerk.....
- Personnel Clerk.....

FOR:

- INFORMATION
- NECESSARY ACTION
- ACTION (Prepare Reply)
- APPROVAL
- SIGNATURE
- INITIAL
- COMMENT OR CONCUR.
- RET. IN
- RETURN
- FILE
- BURN

CS: LS
CIE
GS/CSO
GS/PAD

on

Partial Amendment Board of Education Law

From: IS

To: GS

R.B. APPLETON-2635-582

Date: 21 April 1949

2.

1. No legal objection is made to introduction of subject bill in the Diet.

Incl: n/c

-----C.R.L.-----

Reed
GS
4/21/49

(2)

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

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CR/JR/JW/RAH/vls

Subject: Draft Legislation

Note No.

From: Govt Sec

To: **IS**

Date: **11 April 1949**

~~Major Harris~~
26-6076

1.

1. Immediate introduction of the attached draft bill in the Diet is proposed by **Education Ministry.**

2. Your prompt comment is requested.

1 Incl:

Partial Amendment of Board of Education Law.

C. W.

P&P Div

Board of Education Res

From: CIB

To: Govt Sec

A. K. Loomis, 26-5679

Date: 16 Apr 49

2

Subject legislation was discussed in working stage with CIB by Ministry of Education. CIB has no objection to proposed draft amendment.

1 Incl
n/c

----- D.R.F. -----

Recd GS 4/18/49

(2)

Draft of Law concerning the Partial Amendment of the Board
of Education Law

The Board of Education Law shall be amended in parts as follows.

Art. 70 shall be amended as follows.

Art. 70 The boards of education of cities, towns and villages except Osaka City, Kyoto City, Nagoya City, Kobe City and Yokohama City (to be hereinafter referred to as the Five Big Cities) shall be established by November 1, 1952. However, they shall be established neither in 1949 nor in 1951.

2. The necessary matters concerning the establishment of boards of education of the preceding paragraph may be provided for by government ordinances.

Art. 86 shall be amended as follows.

Art. 86 In spite of the provisions of Art. 50, Para. 2, the authorization of textbooks shall be made by the Minister of Education, until the paper-allocating system shall be abolished.

Supplementary Provisions

This law shall be enforced on and from the day of proclamation.

Reason

In the light of the various conditions after the enforcement of the Board of Education Law, the partial amendment of the law has become necessary because the establishment of boards of education of cities, towns and villages is to be postponed until 1952, because the election of local board members is to be held at the same ^{time as with} that of prefectural boards ^{members}, and because it has become unnecessary to limit the selection of textbooks to the prefectural boards of education only. These are the reasons why this draft shall be submitted to the Diet.

GOVERNMENT SECTION
Buck Slip

he

422 - 1949

FROM: *J.P. ...*
NO: INITIAL DATE

- CHIEF.....
- ~~OFF~~.....
- Deputy Chief.....
- Maj Rizzo.....
- Chief Adm Div.....
- Statistics & Review Br.....
- Civil Service Div.....
- Parl & Pol Div.....
- Public adm Div.....
- Public Aff Div.....
- File.....
- Chief Clerk.....
- Personnel Clerk.....

FOR:

- INFORMATION
- NECESSARY ACTION
- ACTION (Prepare Reply)
- APPROVAL
- SIGNATURE
- INITIAL
- COMMENT OR CONCUR.
- RETAIN
- RETURN
- FILE
- BURN

Richard ...

m

CIVIL SERVICE DIVISION
Government Section

25 April 1949

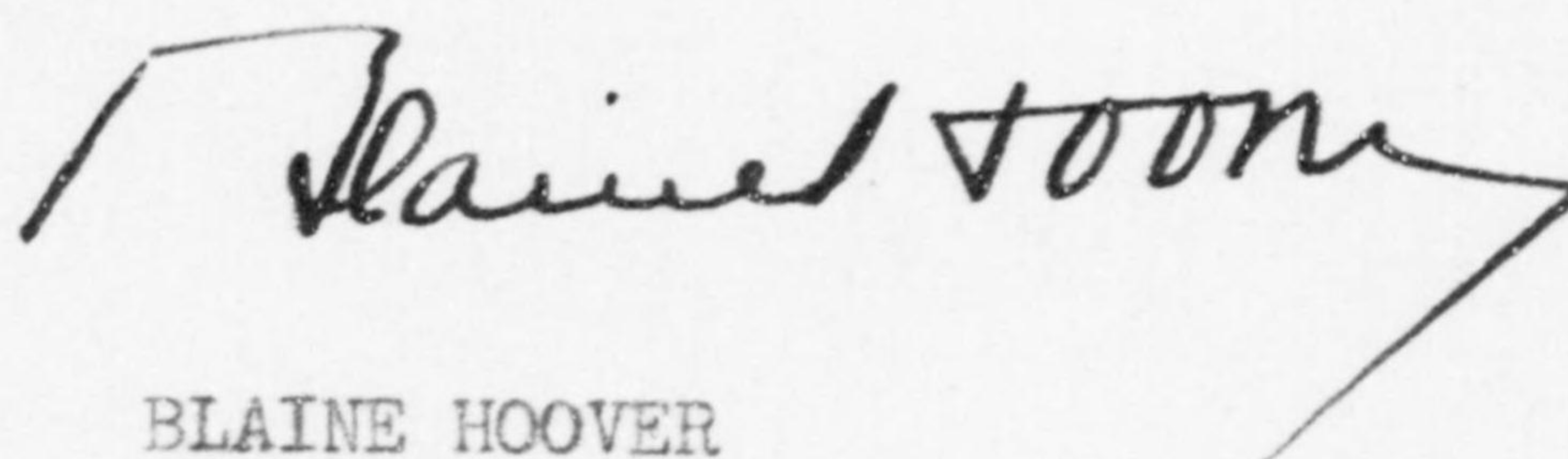
MEMORANDUM FOR: Parliamentary and Political Division
Government Section

SUBJECT : Law concerning the Right of Publication,
Etc. of the Text Books Compiled by the
Ministry of Education (Second Draft)

1. Objection is made to subject bill because of the danger of misinterpreting it in a manner which will be in conflict with Article 2 of the National Public Service Law.

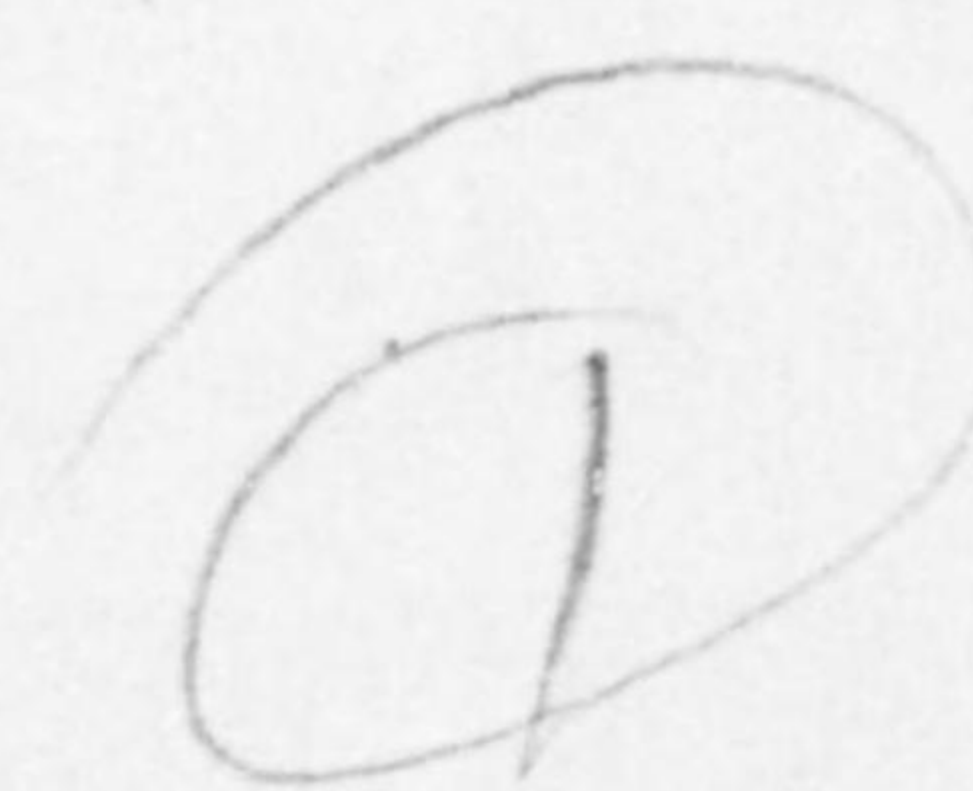
2. To meet the foregoing objection the following revision of Article 3, Para. 4 is recommended:

"4. Besides those provided for in the three preceding paragraphs of Article 2 in the National Public Service Law (Law No. 120 of 1947) or other law, matters needed for the Examination Committee shall be prescribed by Cabinet Order."



BLAINE HOOVER
Chief, Civil Service Division

BH:CWP:jd



GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T CG/JR/JW/RAH/vls

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Subject: Draft Legislation

Major Harris
26-6076

Note No. From: Govt Sec To: CIB Date: 22 April 1949

1. 1. Immediate introduction of the attached/draft bill in the Diet is proposed by Education Ministry.

revised

2. Your prompt comment is requested.

1 Incl:

Right of Publication etc. of Textbooks
Compiled by Ministry of Education

C. W.

P&P

Mr. Trainor, 26-5679

From: CIE

To: Govt Sec

Date: 25 April 1949

2

Subject legislation was discussed in working stage with CIE by
Ministry of Education. CIE has no objection to proposed draft law.

1 Incl
n/c

----- D.R.N. -----

Education

*Publication of Textbooks
Compiled by Education Ministry*

010(22 Apr 4 9)ESS/FIE

From: ESS

To: OS

[Signature]
WFM/WKL/EMR/STH/AM
Mr. Baron, 57-8806
Date: 28 April 1949

2.

No objection is made to introduction in the Diet of the proposed
Right of Publication etc. of Textbooks Compiled by Ministry of Education.

1 Incl
n/s

----- W.F.M. -----

①

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T CW/JH/JW/RAH/vls

(Do not remove from attached sheet)

Subject: Draft Legislation

Major Harris
26-6076

Note No. From: Govt Sec To: ESS Date: 22 April 1949

1. 1. Immediate introduction of the attached ^{revised} draft bill in the Diet is proposed by Education Ministry.

2. Your prompt comment is requested.

1 Incl:

Right of Publication etc. of Textbooks
Compiled by Ministry of Education

C. W.

Educ.

*Right of Public Textbooks Compiled
by Ministry of Education*

From: LS

To: GS

R.B. APPLETON-2635-582

Date: 25 April 1949

2. 1. Subject bill has been completely re-written and complies essentially with objections made by Legal Section in Check Note dated 4 April 1949. No further legal objection is made to introduction of the bill in the Diet.

2. However, part of the language of paragraph 3 of the Supplementary Provisions is still unclear, although this may be merely a matter of correcting the English translation. The clause in question states "the said right may, regardless of the provisions of Article 4, be established by means of a private contract, unless it is recognized improper to let them compete with one another...etc." (underlining added). What is probably meant is that the said right may be established by means of a private contract with anyone who has passed the examination provided for in Article 2, regardless of the provisions of Article 4, if there is insufficient time to conduct competitive bidding and still finish the printing of the textbooks in time for use in education. Or it may even mean that if no publisher who has passed the examination will guarantee completion of the books in the time left, the right of publication may be granted to another suitable publisher selected by the Minister of Education, who is willing to make such a guarantee. In any case the language of this paragraph should be clarified

Draft Legislation (cont'd)

2.
cont'd prior to final enactment into law.

Incl:
a/c

----- C.R.L. -----

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T CW/JH/JW/PAB/vls

(Do not remove from attached sheet)

Subject: Draft Legislation

Major Harris
26-6076

Note No.

From: Govt Sec

To: LS

Date: 22 April 1949

1.

1. Immediate introduction of the attached ^{revised} draft bill in the Diet is proposed by Education Ministry.

2. Your prompt comment is requested.

1 Incl:

Right of Publication etc. of Textbooks
Compiled by Ministry of Education

C. W.

P&P

Second Draft

4/21

49

Law concerning the Right of Publication etc. of
the Textbooks compiled by the Ministry of Education (Draft)
(Administration of the Copyright)

Article 1 The copyright of the textbooks compiled under the name of the Ministry of Education (hereinafter referred to merely as textbooks) shall be administered by the Minister of Education.

2 The Minister of Education may establish the right of publication of the textbooks (hereinafter referred to merely as the right of publication).

3 In the present Law "copyright" shall mean the right as provided for in Article 1 of the Copyright Law (Law No.39,1899) and "right of publication" shall mean the right established in accordance with the provision of ~~Article 28-28~~ of the same law.

(Qualification Examination)

Article 2 Those who apply for undertaking the publication of the textbooks shall be subjected to examination about qualification made by the Minister of Education.

2 The examination of the preceding paragraph shall aim to make examination whether those who want to procure the right of publication, have enough business ability as well as credit ability to manufacture and supply good-quality textbooks by the time they are required in schools, prior to conduct the competition as provided for in Article 4, so that no trouble shall cause in education.

(Textbook Publication Qualification Examination Committee)

Article 3 The Minister of Education shall inquire of the Textbook Publication Qualification Examination Committee (hereinafter referred to as ~~XXXXX~~ the Examination Committee) as to the examination as provided for in the preceding article.

2 The Examination Committee shall consist of not exceeding twenty (20) Committee-men.

3 The Committee-men as provided for in the preceding paragraph shall be appointed by the Minister of Education from among men of learning and experience and officials of Ministries (or Boards) concerned.

4 Besides those provided for in the three preceding paragraphs matters needed for the Examination Committee shall be prescribed by the cabinet order.

(Form of the Contract for the Establishment of the Right of Publication).

Article 4 The establishment of the right of publication of the textbooks shall be made by means of the competition among those who have passed the examination as provided for in Article 2.

However, in case where there is no time enough to carry out the competition, the establishment may be made by a private contract with any person who has passed the examination as provided for in Article 2.

(Deposit)

Article 5 One who desires to be admitted to a competition shall deposit in cash or with Government bonds the deposit not less than one percent of the sum multiplied the estimated manufacturing cost price by the prescribed number of copies which shall be published at the first time.

2 In case where the person who has knocked down a contract, does not conclude the contract, his contract deposit shall be reverted to the National Treasury.

(Bidding)

Article 6 The competition shall be conducted by bidding as to the manufacturing cost price per copy, and the right of publication shall be established for the person who made the lowest bidding not exceeding the prescribed manufacturing cost price as indicated by the Minister of Education.

2 In case where a competition will be effected, it shall be publicly notified, in Official Gazette, journals, notice or any

means possible at least ten days before computing from the day before the date of bidding. However, in urgent cases, the term may be shortened to five days.

3 The notice prescribed in the preceding Article, shall ⁿcontain the following items:

- 1 Kinds ^{of textbooks} and number of copies of ~~them~~ of which are prescribed to publish at the first time.
- 2 Place at which clauses of contract is indicated.
- 3 Standards of computation of manufacturing cost price
- 4 Place and date of bidding
- 5 Condition about the deposit of bidding

4 The standards of computation of manufacturing cost price as provided for in Item 3 of the preceding paragraph shall be prescribed by ordinance in advance.

5 The Minister of Education or officials in charge shall estimate an amount for the manufacturing cost price of textbooks to be bidden and shall put it, enclosing in an envelop, at the opening of bidding at its place.

6 The net price of textbooks shall be computed on the basis of the bidding price as to the manufacturing cost price prescribed by ordinance.

(Opening of Bidding)

Article 7 The opening of bidding shall be carried out before the bidders at the place and at the date and time indicated in the public notice. However, in case of absence of any bidder, an official who has no concern in the bidding shall attend at its opening.

2 The bidder is not allowed to exchange, to change or to cancel his bidding already submitted.

(Second Bidding)

Article 8 If, upon opening bids, none is found coming up the expected manufacturing cost price limit established in accordance

With the provisions of paragraph 5 of Article 5, bids may be called anew for anew forthwith.

(Determination of Successful Bidder)

Article 9 In case where there are two or more persons who have made a successful bid with one and the same price, the successful bidder shall be determined forthwith by drawing.

2 In the case as stipulated in the preceding paragraph, if there be any of the bidders who fails to turn up or to draw lots, an official having no concern with the bidding may be caused to draw lots for such bidders.

(Term of Public Notice of Second Bidding)

Article 10 When, in case there is no bidder or no successful bidder at a competition, or in case a successful bidder fails to conclude the contract, bids are again to be called for, the period prescribed in paragraph 2 of Article 5 may be shortened to five days.

(Duty of Publication)

Article 11 When the Minister of Education has designated kinds and necessary number of copies of textbooks to be published based on the demand number of textbooks as reported from prefectural board of education, under the provisions of Article 8 of the Law of Provisionary Measures concerning the Publication of Textbooks (Law No. 132, 1948), any one on whom the right of publication ^{has been established} (hereinafter referred to merely as the owner of the right of publication) shall be responsible to publish the textbooks designated..

(Revision of Manufacturing Cost Price)

Article 12 In case where, owing to the change in the prices of commodities and other inevitable reasons, it has become necessary during the period of duration of the right of publication, to change the manufacturing cost price, the Minister of Education may confer with the owner of the right of publication to revise the price.

(Obligation to pay the Charge for Publication)

Article 13 When the publication has been designated the owner of the right of publication shall pay quickly to the national treasury the charge for publication in limit between 2% and 16.6% of net price (except sum same with the charge for publication), in proportion to the number or volumes of which the publication has been designated. However, the Minister of Education may fix the period for the payment of the charge for publication not exceeding four months as from the day of designation of publication.

(Mitigation and Exemption of the Obligation of Payment of Charge for Publication)

Article 14 In case where the Minister of Education has recognized that the owner of the right of publication has become unable to manufacture and supply all or part of the textbooks and it has ^{become} difficult to him to pay the charge for publication, due to natural calamities or other reasons unaccountable to him, or in case where the said Minister has recognized that it has been necessary to reduce the price particularly from the viewpoint of the compulsory education when the number of publication of textbooks are not over 50,000, the said Minister can mitigate or exempt the charge for publication.

(Lapse of a Right Of Publication)

Article 15 In case where there is a certain reason fallen under one of the following cases, the Minister of Education may have a right of publication lapsed.

- 1 When it has been recognized that the enterprising ability and state of credit of the owner of the right of publication has gotten so low, as compared with that of the time when the right of publication has been established that he has been unable to manufacture and supply the textbooks causing no trouble in education.
 - II When the said owner fails to fulfil his obligation as provided for in Article ¹¹/₄ or Article ¹³/₂.
 - III When the Minister of Education has canceled the designation of publication in accordance with the provisions of Article 14 or Article 15 of the Law of Provisionary Measures concerning the Publication of Textbooks.
 - 2 The Minister of Education shall inquire of the Examination Committee before he makes the recognition as provided for in item 1 of the preceding paragraph.
 - 3 In case where the conference as provided for in ~~the paragraph~~ ^{Article 12 has} ~~has not been settled,~~ ^{the owner of the right of publication or} ~~in case where it has been unable to confer~~ the Minister of Education may have a right of publication lapsed.
- Article 16 In case where a right of publication has lapsed, the Minister of Education may order the person for whom a right of publication has been established, to confer with the person ~~from~~ whom the Minister of Education has newly established the said right in accordance with the provisions of Article 4, as to the assignment of the textbooks, half-made as well as ready-made and the printing-mould which the former owner has possessed at the time of the lapse.
- 2 In case where it has passed more than one month as from the day of the lapse of a right of publication, the order to confer as provided for in the preceding paragraph shall not be made.

3 In case where the conference as provided for in paragraph 1 has not been settled, or in case where it has been unable to confer, the Minister of Education shall decide as to the assignment.

4 In case where the decision as provided for in the preceding paragraph has been made, it shall be deemed that the conference between the persons concerned has been settled as provided for in decision.

5 Any person among those concerned the assignment who is unsatisfactory as to the assigning price in the decision as provided for in paragraph 3 may claim the increase or the decrease of the sum by means of suit within three months as from the day on which he received the information of the decision.

6 In the suit as provided for in the preceding paragraph, one of the persons concerned the assignment shall be the defendant.

(Assignment of a Right of Publication etc.)

Article 17 A right of publication shall not be assigned without the approval of the Minister of Education.

2 The provisions of Article 17 shall be applied mutatis mutandis to the person who has been assigned a right of publication as the provisions of the preceding paragraph.

3 A right of publication of textbook shall not be pledged.

(Application to Other Books)

Article 18 The provisions of the present Law ~~xx~~ shall be applied mutatis mutandis, as prescribed by the cabinet order, to those books used in education which are not textbooks but are compiled under the name of the Ministry of Education.

(Application of Other Law and Ordinance)

Article 19 As to the matters concerning the establishment and administration of the right of publication of textbooks, so long as not contrary to the character, the Copyright Law (Law No. 39

1899), the Finance Law (Law No. 34, 1947), the Accounts Law (Law No. 35, 1947), the National Property Law (Law No. 73, 1948) and the provisions of ordinance based on the provisions of these Law shall be applied.

(Enforcement Cabinet Order)

Article 20 Necessary procedural and administrative matters for enforcement of the present Law shall be prescribed by cabinet order.

Supplementary Provisions

- 1 The present Law shall come into force as from the day of its promulgation.
- 2 Those right of publication owned by those who are managing the publication of textbooks at the time of the enforcement of the present Law shall be deemed as the right of publication established on the provisions of the present Law.
- 3 In case where the right of publication shall newly be established, as to the textbook whose right of publication shall lapse during the period between Oct. 1, 1948 and Mar. 31, 1950, the said right may, regardless of the provisions of Article 4, be established by means of a private contract, unless it is recognized improper to let them compete with one another, so that the manufacture and supply of textbooks may be in time for the period when they are needed for education.
- 4 The kinds of textbook whose right of publication may be established, as the provision of the preceding paragraph, by a private contract shall be fixed by the Minister of Education with the consultation of the Textbook Committee.

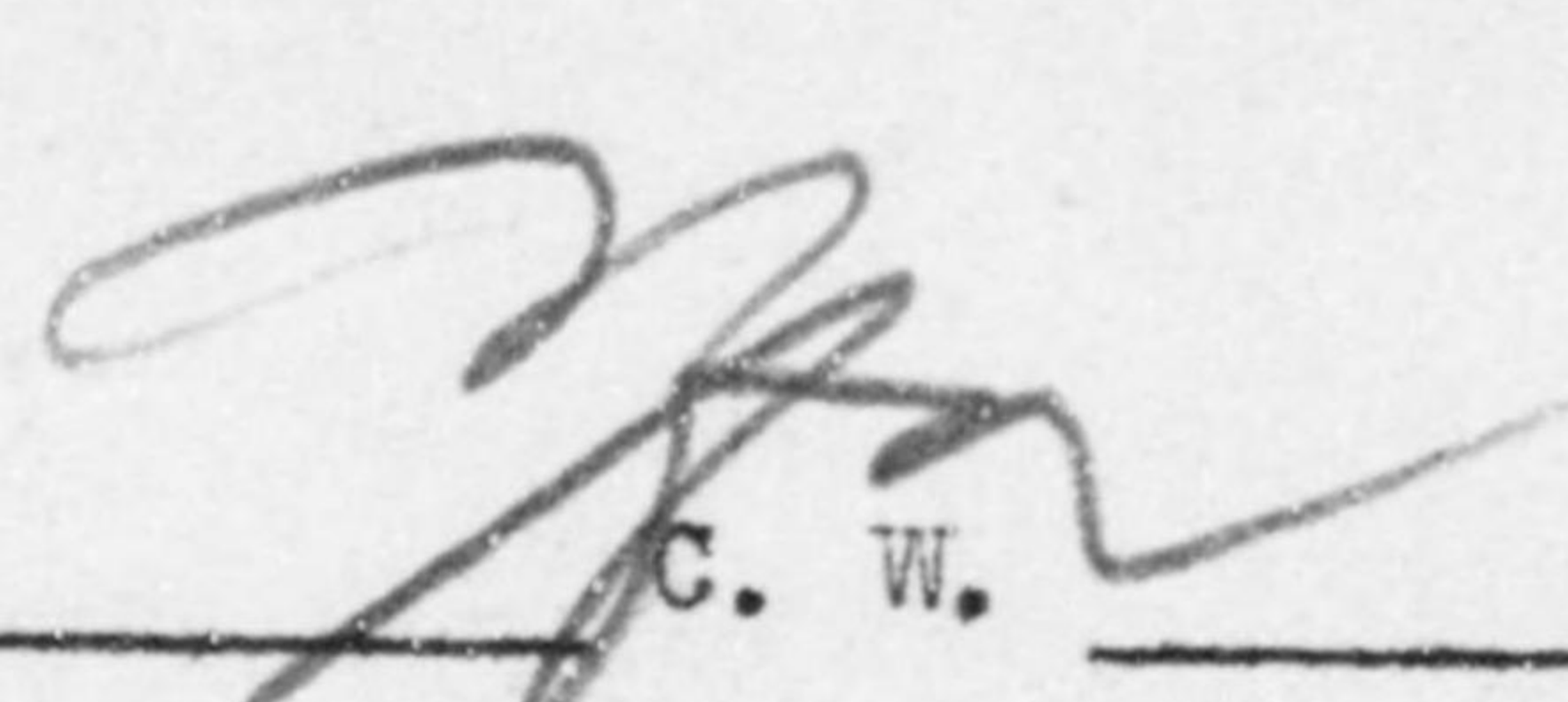
GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T CW/JN/JW/RAH/vs

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Subject: Draft Legislation

Maj. Harris

Note No.	From: Govt Sec	To: LS	Date: 25 March 1949 26-6076
1.	<p>1. Immediate introduction of the attached draft bill in the Diet is proposed by Education Ministry.</p> <p>2. Your prompt comment is requested.</p> <p>1 Incl: Law re Right of Publication etc. of Textbooks Compiled by Education Ministry.</p> <p style="text-align: right;"> C. W.</p>		
2.	From: LS	To: GS	R.B. Appleton - 2635-582 Date: 4 April 1949
<p>1. Legal Section objects to the introduction of the subject bill in the Diet in its present form because of the unusually poor draftsmanship of its provisions, which repeatedly violate the basic principle that substantive law must be provided by Diet statute, and not left to cabinet orders, ministerial ordinances, or ministerial discretion unguided by standards clearly defined in the statute itself.</p> <p>2. Specifically, reference is made to the following provisions which violate the aforementioned basic principle:</p> <p>a. Article 1 contains no definition of the so-called "right of publication".</p> <p>b. Article 2 similarly leaves the term "qualification examination" undefined.</p> <p>c. Article 3 vaguely states that the Minister of Education shall "inquire of " a so-called Examination Committee "as to the examination", but no clear indication of the purpose or functions of the Committee is made. Matters needed for the "qualification standards" are to be provided in ordinance, and other necessary matters in cabinet order. What is probably meant, but not expressed, is that Committee investigators shall examine the qualifications and</p> <p style="text-align: right;"><i>Lead GS 4/8/49</i></p>			

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
CHECK SHEET

(Do not remove from attached sheets)

File No.:

Subject:

Note No.:

From:

To:

Date:

2.
(Cont'd)

facilities of any person or firm proposing to perform any contract for the printing of books compiled in the name of the Minister of Education; and that no contract shall be awarded to any bidder until the Committee shall have been satisfied by such investigation that the facilities and equipment of such bidder are ample and sufficient to insure the proper performance of the contract.

d. In Article 4, the phrase "The establishment of the right of publication of the textbooks shall be made by means of the competition..." is unclear, and the proviso permitting the establishment by a "private contract" in cases provided by Cabinet Order virtually encourages favoritism and corruption. Provisions such as the following are suggested:

"It shall be the duty of the Committee, after public notice, and in accordance with rules and regulations to be prescribed by it and approved by the Minister, to grant to the lowest bidder, as hereinafter provided, who shall give adequate security for the performance of the contract, all contracts for publication of books described herein."

"The Committee shall adopt, promulgate and publish in the Official Gazette, after approval by the Minister, rules and regulations prescribing the form and manner of advertisement for bids, and other matters relating to the performance of its work."

e. In Article 5, the provisions for conducting the so-called "competition" are so loosely drawn that they would hardly discourage favoritism and corruption. Item 2 leaves the "basis of computing" to be provided for in ordinance. There are no provisions to insure adequate public notice to bidders of the time, place and manner of receiving bids; or for the sealing of bids; or for specifications adequately informing bidders in advance of the nature, kind, quantity and quality of the printing to be done; or for public opening and recording of the bids; or for the deposit with each sealed bid of a certain sum (e.g. 5% of the amount of the bid) as a guarantee that the bidder will enter into the contract if it shall be awarded to him; or for the giving of a bond conditioned for the faithful performance of the contract. Possibly it is intended to have all these, as well as other necessary provisions, included in the Cabinet Order under the broad authorization of Article 14. There is no provision that all bids may be rejected which do not conform to Committee rules and regulations, or that all bills and accounts presented under contracts for printing must be audited

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
CHECK SHEET

(Do not remove from attached sheets)

File No.:

Subject:

Note No.:

From:

To:

Date:

2.
(Cont'd)

by the Board of Audit. All these matters seem so fundamental that they should be provided in the law itself and not left to Cabinet Orders, ordinances, or ministerial discretion.

f. Article 6 incorporates by reference a provision from another law, without indicating its contents (in itself a poor legislative technique); and establishes a liability in all those having a "right of publication" to publish the textbooks in accordance with the "designation" of the Minister. It would seem much fairer to base the obligation to publish upon the terms of a contract granted after competitive bidding on detailed specifications made known in advance, and not subject to change or modification after the contract is awarded, than to impose a liability based upon a Ministerial order issued after the application for the "right of publication".

g. Article 7 leaves the important question of revisions of the price to be provided for in ordinance, with only vague standards in the law.

h. Articles 8 and 9 similarly leave the obligation to pay the so-called "charge for publication" (presumably a royalty charge under the Copyright Law) and the power to mitigate or exempt from such obligation, to ordinance, Cabinet Order, or unguided ministerial discretion.

i. Article 10 permits the Minister to have a "right of publication lapsed" when "the enterprising ability and state of credit of the owner... is recognized to not be equal to the publication of textbooks". Such a standard is so vague as to permit mere whim or fancy to decide. The obligation of contracts should not be impaired by Ministerial fiat if due process of law is to be established in Japan. The right to annul State printing contracts should be based upon the failure or non-performance of the terms thereof on the part of the contractor with the State.

j. Articles 11 and 12 similarly grant unnecessarily broad and arbitrary powers to the Minister to assign "rights of publication" after "lapse", and to approve assignments to any person he desires, regardless of provisions elsewhere in the law regarding "qualification examination" and "competition" to establish the "right of publication" in the first place. The interests of the State would be sufficiently protected and due process of law more adequately observed by provisions such as the following:

"Upon the failure or non-performance of the terms of any of the contracts described in this law on the part of the contractors with the State, the Minister may annul the contract

1

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
CHECK SHEET

(Do not remove from attached sheets)

File No.:

Subject:

Note No.:

From:

To:

Date:

2.
(Cont'd)

in which default is made and the Board of Audit shall withhold payment from the contractor for all work done by him until the damage to the State shall be ascertained by proper adjudication, and the Minister may readvertise and enter into a contract for the balance of the uncompleted term of any contract so annulled or abrogated in the manner prescribed in the provisions of this law."

k. Paragraphs 3 and 4 of the Supplementary Provisions permit exceptions to the regular method of establishment of the "right of publication" to be made by means of "private contracts" by the Minister in cases which are defined in a vague and unclear manner.

Incl: n/c

acc
-----A.C.C.-----

GOVERNMENT SECTION
Civil Service Division

30 March 1949

MEMORANDUM FOR: Political & Parliamentary Division, Government
Section

SUBJECT : Proposed Law Concerning the Right of Publica-
tion etc of the Text Books Compiled by the
Ministry of Education.

1. In the proposed law named above it is recommended
that Paragraph 5 of Article 3 be amended to read as follows:

"5. Besides those provided for in the four
preceeding paragraphs or in the National
Public Service Law (Law No. 120 of 1947),
matters needed for the Examination
Committee shall be provided for in cabinet
order."

2. No objection made to other parts of the proposed
law.

BLAINE HOOVER,
Chief, Civil Service Division.

GWP:mvb

Recommended
Chief
30 March 49.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

CW/JN/JW/RAH/vs

(Do not remove from attached sheet)

Subject: Draft Legislation

Note No.	From: Govt Sec	To: ESS	Date: 25 March 1949 <i>Maj. Harris</i> 26-6076
1.	<p>1. Immediate introduction of the attached draft bill in the Diet is proposed by Education Ministry.</p> <p>2. Your prompt comment is requested.</p> <p>1 Incl: Law re the Right of Publications etc. of Textbooks Compiled by the Ministry of Education.</p> <p style="text-align: right;">C. W.</p>		
2.	<p>010(25 Mar 49)ESS/YIE</p> <p>From: ESS To: GS</p> <p style="text-align: right;"><i>[Signature]</i> WFM/WEL/NER/WAF/mr Mr. Foster, 57-8417 Date: 2 April 1949</p> <p>No objection is made to introduction in the Diet of the proposed Law re the Right of Publication etc. of Textbooks Compiled by the Ministry of Education.</p> <p>1 Incl n/c</p> <p style="text-align: center;">----- W.F.M. -----</p> <p style="text-align: right;"><i>Rec'd GS 4/7/49</i></p>		

GOVERNMENT SECTION
Buck Slip

3/25 1949

From: Parl. & Political Div
No: _____ INITIAL DATE

<input checked="" type="checkbox"/>	CHIEF.....	
<input checked="" type="checkbox"/>	EX OFF	<u>RS</u>
<input type="checkbox"/>	Deputy Chief	
<input type="checkbox"/>	Maj Rizzo	
<input type="checkbox"/>	Chief Adm Div	
<input type="checkbox"/>	Statistics & Review Br.....	
<input type="checkbox"/>	Civil Service Div.....	
<input type="checkbox"/>	Parl & Pol Div.....	
<input type="checkbox"/>	Public Adm Div.....	
<input type="checkbox"/>	Public Aff Div.....	
<input type="checkbox"/>	File.....	
<input type="checkbox"/>	Chief Clerk.....	
<input type="checkbox"/>	Personnel Clerk.....	

FOR:

- INFORMATION
- NECESSARY ACTION
- ACTION (Prepare Reply)
- APPROVAL
- SIGNATURE
- INITIAL
- COMMENT OR CONCUR
- RETAIN
- RETURN
- FILE

CS: ESS
CIE
LS
GS/CSD

DRAFT OF LAW

to be submitted for GS' approval
Coordination Section, CLCO (TEL. 57-6010)
7845)

Mar/ 25, '49

1. CLCO Number: 32
2. Name of Law: Bill for the Right of Publication etc.
of the Textbooks compiled by the Ministry
of Education.

3. Competent Ministry: Education Ministry

4. Date of Cabinet Approval: 22/Mar.

5. SCAP Section concerned: Mr. Loomis.

C.I.E. Education Division. Mini
Mr. Harkness

6. Remarks: (Reference:)

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7. G.S. Reviewers:

GS-Ex-0
ESS
CIE
LS

8. Date of G.S. Approval:

9. G.S. Member Responsible: H. Kobayashi

Rec'd GS 3/25/49 GS/CSD

Law Concerning the Right of Publication etc. of the
Textbooks compiled by the Ministry of Education(Draft)

(Administration of the Copyright)

Article 1 The copyright of the textbooks compiled under the name of the Ministry of Education (hereinafter referred to merely as textbooks) shall be administered by the Minister of Education.

2 The Minister of Education may establish the right of publication of the textbooks (hereinafter referred to merely as the right of publication).

(Qualification Examination)

Article 2 Those apply for undertaking the publication of the textbooks shall be subjected to the qualification examination made by the Minister of Education.

(The Textbook Publication Qualification Examination Committee)

Article 3 The Minister of Education shall inquire of the Textbook Publication Qualification Examination Committee (hereinafter referred to as the Examination Committee) as to the examination as provided for in the preceding article.

2 Matters needed for the qualification standards shall be provided in ordinance.

3 The Examination Committee shall consist of not exceeding twenty (20) Committee-men.

4 The Committee-men as provided for in the preceding paragraph shall be appointed by the Minister of Education from among men of learning and experience and officials of Ministries (or Boards) concerned.

5 Besides those provided for in the four preceding paragraphs, matters needed for the Examination Committee shall be provided for in cabinet order.

(Form of the Contract for the Establishment of the
Right of Publication)

Article 4 The establishment of the right of publication of the textbooks shall be made by means of the competition among those who have passed the examination as provided for in Art. 2. However, in case where there is no time enough to carry out the competition, or in case as provided for in cabinet order, the establishment may be made by a private contract with any person who has passed the examination as provided for in Art. 2.

(Competition)

Article 5 The competition shall be conducted by bidding as to the manufacturing cost price per copy, and the right of publication shall be established for the person who made the lowest bidding not exceeding the prescribed manufacturing cost price as indicated by the Minister of Education.

2 The basis of computing shall be provided for in ordinance.

3 The net price of textbooks shall be computed on the basis of the bidding price as to the manufacturing cost price as provided for in parag. 1.

(Duty of Publication)

Article 6 Those for whom a right of publication has been established (hereinafter referred to as the owner of a right of publication) shall be liable to publish the textbooks in accordance with the designation of publication as provided for in Article 8 of the Law of Provisional Measures concerning the Publication of Textbooks (Law No. 132, 1948 hereinafter referred to as the Provisional Measures Law).

(Revision of the Manufacturing Cost Price)

Article 7 In case where, owing to the change in the prices of commodities and other inevitable reasons, it becomes necessary, during the period of duration of the right of publication, to change the manufacturing cost price, the Minister of Education

may confer, as provided for in ordinance, with the owner of the right of publication to revise the price.

(Obligation to pay the Charge for Publication)

Article 8 When the publication has been designated, the owner of a right of publication shall pay quickly to the national treasury the charge for publication computed as provided for in ordinance, in proportion to the number of volumes which the publication has been designated. However, the Minister of Education may fix the period for the payment of the charge for publication not exceeding four months as from the day of designation of publication.

(Mitigation and Exemption of the Obligation of Payment of Charge for Publication)

Article 9 In case where the Minister of Education deems it improper, for a certain special reason, to have the charge for publication paid, he may mitigate or exempt, as provided for in cabinet order, the obligation to pay the charge for publication.

(Lapse of a right of Publication)

Article 10 In case where there is a certain reason fallen under one of the following cases, the Minister of Education may have a right of publication lapsed.

I When the enterprising ability and state of credit of the owner of a right of publication is recognized to not equal to the publication of textbooks.

II When the said owner fails to fulfil his obligation as provided for in Art. 6 or Art. 8.

III When the said owner has been put by the Minister of Education to the punishment as provided for in Art. 15 of the Provisional Measures Law.

2 The Minister of Education shall inquire of the Examination Committee before he makes the recognition as provided for in Item 1 of the preceding paragraph.

3 In case where the conference as provided for in Art. 7 has not

been settled the owner of a right of publication or the Minister of Education may have a right of publication lapsed.

Article 11 In case where a right of publication has lapsed, the Minister of Education may order the person for whom a right of publication has been established, to confer with the person for whom the Minister of Education has newly established the said right, as to the assignment of the textbooks, half-made as well as ready-made, and the printing-mould which the former owner has possessed at that time of the lapse.

- 2 In case where it has passed more than thirty days as from the day of the lapse of a right of publication, the order to confer as provided for in the preceding paragraph shall not be made.
- 3 In case where the conference as provided for in the parag. 1 has not been settled, or in case where it has been unable to confer, the Minister of Education shall decide as to the said assignment.
- 4 In case where the decision as provided for in the preceding paragraph has been made, it shall be deemed that the conference between the persons concerned has been settled as provided for in decision.
- 5 Any person among those concerned the assignment who is unsatisfactory as to the assigning price in the decision as provided for in paragraph 3 may claim the increase or the decrease of the sum by means of a suit within thirty days as from the day on which he received the information of the decision.
- 6 In the suit as provided for in the preceding paragraph, one of the persons concerned the assignment shall be the defendant.

(Assignment of a Right of Publication etc.)

Article 12 A right of publication shall not be assigned without the approval of the Minister of Education.

- 2 The provisions of Art. 6 shall be applied mutatis mutandis to the person who has been assigned a right of publication as the

Provisions of the preceding paragraph.

3 A right of publication of textbook shall not be pledged.

(Application to otherbooks)

Article 13 The provisions of the present Law shall be applied *mutatis mutandis*, as provided for in cabinet order, to those books used in education which are not textbooks but are compiled under the name of the Minister of Education.

(Enforcement Cabinet Order)

Article 14 Matters needed for the enforcement of the present Law shall be provided for in cabinet order.

Supplementary Provisions

1. The present Law shall come into force as from the day of its promulgation.
2. Those rights of publication owned by those who are managing the publication of textbooks at the time of the enforcement of the present Law shall be deemed as the right of publication established on the provisions of the present Law.
3. In case where a right of publication is newly established as to the textbook of which the right of publication lapse between from Oct. 1, 1948 to Mar. 31, 1950, the said right may, regardless the provisions of the body of Art. 4, be established by means of a private contract.
4. The kinds of textbooks of which the rights of publication may be established, as the provisions of the preceding paragraph, by a private contract, shall be fixed ^{by} the Minister of Education with the Consultation of the Textbook Committee.