

OPINION OF THE JUSTICES

May 15, 1975



The following request of the house of representatives for an opinion of the justices was adopted and filed with the supreme court on April 23, 1975:

“Whereas, the House of Representatives has before it for action House Bill No. 660, An Act prohibiting the required reading of books or material which contains obscene language; and

“Whereas, said bill states that no person shall require the reading, as part of a course of instruction in a public elementary or secondary school, of any book or material which contains language which is obscene according to the definition of that term in RSA 650:1; now therefore, be it

“Resolved by the House of Representatives:

“That the Supreme Court is respectfully requested to give their opinion upon the following question:

“Does this bill violate any of the provisions of the Constitution of the United States or the Constitution of New Hampshire?

“That the Speaker of the House transmit ten copies of this resolution and ten copies of House Bill 660 to the Clerk of the Supreme Court for consideration.”

The following answer was returned:

To the House of Representatives:

The undersigned justices of the supreme court submit the following reply to the inquiry contained in your resolution adopted and filed with this court on April 23, 1975.

House bill 660 reads as follows:

"1. Books and Material Containing Obscene Language Prohibited. Amend RSA 189 by inserting after section 26 the following new section:

"189:26-a Books and Material Containing Obscene Language Prohibited. No person shall require the reading, as part of a course of instruction in a public elementary or secondary school, of any book or material which contains language which is obscene according to the definition of that term in RSA 650:1. Any person who violates this paragraph shall be guilty of a misdemeanor.

"2. Effective Date. This act shall take effect sixty days after its passage."

The proposed enactment applies to any material "which contains language" which is obscene under RSA 650:1.

This court has held that RSA 650:1 meets constitutional requirements. *State v. Harding*, 114 N.H. 335, 320 A.2d 646 (1974). We are of the opinion also that the provisions of RSA 650:1 which purport to apply different standards to material designed for children from that designed for adults is constitutional. *Ginsburg v. New York*, 390 U.S. 629, 638-43 (1968).

In *Miller v. California*, 413 U.S. 15, 24 (1973), the Supreme Court laid down the constitutional guidelines for determining whether a work or material is obscene. They are: "(a) whether 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest, *Kois v. Wisconsin*, *supra* at 230, quoting *Roth v. United States*, *supra* at 489; (b) whether the work depicts or describes in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."

It should be noted that these guidelines require considering the material as a whole, as does RSA 650:1. See *Kois v. Wisconsin*, 408 U.S. 229 (1972).

Consequently, we are of the opinion that the proposed legislation is of doubtful constitutionality, because it would proscribe requiring the reading of any book or material solely because it "contains language which is obscene", without also requiring consideration of

whether, "taken as a whole", it could be found to appeal to the prurient interest, and to lack serious value.

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Request of House of Representatives
No. 7210

OPINION OF THE JUSTICES

May 26, 1975

