

N.D.A.G. Letter to Engmann (Jan. 2, 1986)

January 2, 1986

Mr. Scott Engmann
Executive Secretary
North Dakota Teachers' Fund for Retirement
1929 North Washington
Bismarck, ND 58505

Dear Mr. Engmann:

Thank you for your letter of November 14, 1985, in which you requested legal advice concerning four questions:

1. Whether past statutory provisions requiring members of the Teachers' Insurance and Retirement Fund to claim refunds of assessments within 18 months from the date teaching ceased precludes all members who failed to do so from claiming under present legislation which does not have such a time limitation. If the answer to this question is affirmative, you further inquire whether inactive accounts from those years are "unclaimed, do not survive, and are to remain in the Fund."
2. Whether Payne v. Board of Trustees of Teachers' Ins. and Ret. Fund, 35 N.W.2d 553 (N.D. 1948), precludes members, who did not teach under the 1969 or subsequent code amendments, but rather under statutes which did not provide for the payment of interest on refunds to withdrawing members, from receiving interest on refunds as provided by current legislation.
3. Whether an "unclaimed" account escheats to the state or a political subdivision or does a member, beneficiary, surviving spouse, or surviving children have the right to claim benefits when they elect to do so.
4. Does North Dakota law define what is meant by an "unclaimed" account under a retirement trust fund and under what circumstances an account becomes "unclaimed."

Your first inquiry concerning members' rights to claim refunds under present legislation even though they did not teach under such legislation has been previously addressed by this office. In a letter to Mr. Fred A. Schmidt, November 4, 1976, it was stated as follows:

In 1955, (See Section 7, Chapter 139, 1955, S.L.) the Legislature again amended the statute to remove the requirement that such refunds must be claimed within 18 months of the time the person ceased teaching. At that time several persons who could not previously claim refunds did claim such refunds. Thus we believe the interpretation placed upon this particular section by the Board has been that the current law governs,

regardless of the time the teacher ceased teaching. In construing a statute of doubtful meaning, the court will give weight to the long continued practical construction placed thereon by officers charged with the duty of executing and applying the statute. See, e.g. Payne v. Board of Trustees of Teachers' Ins. and Ret. Fund, 35 NW2d 553, (N.D. 1948).

Neither do we believe such construction is contrary to the decision of the North Dakota Supreme Court in Payne, supra, holding that the amount of an annuity is to be determined by the terms of the statute in effect at the time the teacher retired rather than at the time the teacher made application for the annuity. We believe there may be a substantial difference between a statute authorizing a person who is not otherwise entitled to benefits to receive a refund of his own assessments and a person who is entitled to an annuity from the Fund.

Assuming that the practices of the Board have not changed subsequent to the letter to Mr. Schmidt in 1976, the present law, which does not have an 18 month limitation on filing for a refund, would control. Thus, a living member may always claim his/her refund of accumulated assessments pursuant to N.D.C.C. §15-39.1-20, regardless of when the member ceased teaching.

Although my response to your initial query is negative, there may nevertheless be situations where unclaimed refunds of assessments remain in the fund for the benefit of all members. N.D.C.C. §15-39.1-17(1) (death of a member who has not acquired a vested interest) and N.D.C.C. §15-39.1-17(2) (death of a member who has acquired a vested interest) provide that a deceased member's designated beneficiary or surviving children are entitled to the member's refund of assessments. There appears to be no statutory time period limiting the right of a beneficiary or surviving children to claim a deceased member's unclaimed refund of assessments.

N.D.C.C. §15-39.1-17(1), (2) further provides that, in the absence of a named beneficiary or surviving children, the deceased member's refund of assessments "shall be paid to . . . the member's estate; provided however, that if no probate proceedings have been instituted within thirty days of the death of the member, then to the heirs at law who file claim with the fund within one hundred fifty days of the death of the member." Thus, in the absence of a designated beneficiary or surviving children, there may be occasions where a deceased member's refund of assessments has not been timely claimed. In such situations, the unclaimed refund of assessments will remain in the fund and inure to the benefit of all members.

Your second question is essentially answered in the above discussion. The statute (N.D.C.C. §15-39.1-20) has been in effect for some years and I assume refunds and interest calculations have been computed thereunder on numerous occasions. The Supreme Court has repeatedly held that "in construing statutes of doubtful meaning the Court will give great weight to the long-continued practical construction placed thereon by the officers charged with the duty of executing and applying the statute." Payne, supra, (citations omitted).

Assuming that the fund has established a certain method of computing the interest for refunds, I would suggest considerable caution in administratively changing that computation at this time without a corresponding change in the statute by the legislature. Therefore, the following observations, if they are not in accordance with the construction placed upon this section administratively, should not be considered as a determination that the method of computation must be changed or that the method previously used was incorrect.

N.D.C.C. §15-39.1-20 provides:

15-30.1-20. WITHDRAWAL FROM FUND. When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, the member may, after a period of one hundred twenty days, withdraw from the fund and shall be then entitled to receive a refund of assessments accumulated with interest. * * * (Emphasis supplied.)

The language of N.D.C.C. §15-39.1-20 is not susceptible to varying interpretations. The statute permits interest to be calculated and refunded with respect to all assessments irrespective of when such assessments were contributed. Such a construction does not run afoul of the prohibition against applying statutes retroactively, N.D.C.C. §1-02-10, since it applies to present and future rights to payment.

With regard to your third question, the legislature in 1985 enacted the Uniform Unclaimed Property Act relating to the disposition of abandoned and unclaimed property in this state. See N.D.C.C. Ch. 47-30.1. N.D.C.C. §47-30.1-13 provides that ". . . unclaimed intangible property held for the owner by a public employee pension program in this state is not subject to abandonment under this chapter." Thus, "unclaimed" accounts in the Teachers' Fund for Retirement do not escheat to the state or a political subdivision; rather, they remain in the Fund.

Your fourth question concerning the meaning of an "unclaimed" account under the Retirement Trust Fund has been previously discussed in the context of my response to question one. There is no statutory definition of "unclaimed account" and consequently, the specific statutory procedures for recovering entitlements, whether by beneficiaries, surviving children, estates, heirs at law, or living members determine when an account becomes unclaimed. In general, the only time that an account will become "unclaimed" is when there is no beneficiary or surviving children, probate proceedings have not been instituted within 30 days of the death of the member, and heirs at law have failed to file claim with the Fund within 150 days of the death of the member. See N.D.C.C. §15-39.1-17(1), (2).

I trust that this discussion adequately clarifies this matter for you. If further assistance is needed, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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