

N.D.A.G. Letter to Engmann (April 23, 1990)

April 23, 1990

Mr. Scott Engmann
Executive Director
North Dakota Retirement and
Investment Office
P.O. Box 7100
Bismarck, ND 58502

Dear Mr. Engmann:

Thank you for your March 27, 1990, letter. You ask for my opinion on whether a retired member of the Teachers' Fund for Retirement (TFFR) is subject to the limitations of N.D.C.C. § 15-39.1-19.1 if that individual is retained by a school district as an independent consultant. A member of my staff discussed the matter with you and learned that the individual is being retained for the purpose of teaching and is not eligible to participate in a partial service retirement agreement pursuant to N.D.C.C. § 15-39.1-12.1 because he or she is not sixty-two years old or older.

Under N.D.C.C. § 15-39.1-19.1,

[t]he benefits payable to any retired person who has retired from teaching . . . and who again returns to teaching in a public school or state institution in this state shall be discontinued when the retired person's earnings during the fund's fiscal year exceed the maximum earnings allowed by the federal Social Security Act.

The question, therefore, is whether the independent consultant relationship described above constitutes a "return[] to teaching" under N.D.C.C. § 15-39.1-19.1.

The term "teaching" is neither defined in N.D.C.C. ch. 15-39.1 nor elsewhere in the North Dakota Century Code. The term "teacher", however, is defined in N.D.C.C. § 15-39.1-04(11) which states, in relevant part, as follows:

11. "Teacher" includes:
 - a. All persons who are certified to teach in this state who are contractually employed in teaching in any state institution or by any school board or other governing body of any school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in any state institution or in the school system of any school district in this

state, except that the superintendent and assistant superintendent of the developmental center at Grafton may be brought within this definition at their option.

Based on the statutory definition of "teacher," it is my opinion that a retired member has "return[ed] to teaching" within the meaning of N.D.C.C. § 15-39.1-19.1 if that individual is both "certified to teach in this state" and "contractually employed in teaching in any state institution or by any school board or other governing body of any school district of this state." The term "contract" is defined in N.D.C.C. § 15-39.1-04(4) as "a written agreement with any school board or other governing body of any school district of this state or a letter of appointment by a state institution, state agency, or other employer participating in the fund."

Whether an individual satisfies these criteria and, therefore, has "return[ed] to teaching" is a question of fact for which I cannot be of assistance. The fact that an individual is designated as an "independent consultant" should not control your determination whether the individual has "return[ed] to teaching."

If you have any further questions on this matter, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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