

**OPINION
65-423**

August 10, 1965 (OPINION)

Mrs. Clara D. Brown

Executive Secretary

Teachers Insurance and Retirement Fund

RE: Teachers Insurance and Retirement Fund -

Annuities - Minimum

This is in reply to your recent letter relative to section 15-39-28.1 of the North Dakota Century Code, as amended by Senate Bill 298 enacted by the 1965 Legislative Assembly. You are particularly interested in the application of this section to teachers receiving annuities as of the effective date of the amendment, July 1, 1965. You ask if such teachers are entitled to the minimum of \$60.00 per month.

Section 15-39-28.1 of the North Dakota Century Code, as amended by chapter 143 of the 1965 Session Laws, provides:

RETIREMENT ANNUITIES - MINIMUM. Notwithstanding any other provision of law to the contrary, the amount of annuity payable to any teacher who has retired under the provisions of this chapter, shall not be less in amount than the sum of sixty dollars per month."

Section 15-39-28.1 of the North Dakota Century Code was enacted by chapter 162 of the 1963 Session Laws. Prior to the 1965 amendment, the statute provided the amount of annuity payable to any teacher who completed twenty-five years of teaching service and retired at the age of fifty-five or over prior to July 1, 1947, should be increased by an amount equal to twenty-five percent of the amount of annuity payable at that time. You will note the 1965 amendment does, in effect, remove all limitations on the increase of the annuity. It is no longer necessary that a teacher retire with twenty-five years of teaching service or be fifty-five or over on July 1, 1947.

It might be argued that a teacher receiving a disability payment has not "retired" within the meaning of section 15-39-28.1 as amended. However section 15-39-27(2) of the North Dakota Century Code governs the payments to teachers who suffer from total disability. We note the first paragraph of section 15-39-27 provides:

Any teacher who is employed as such in a public school or state institution and who has complied with the provisions of this chapter may retire and receive the annuity provided for in section 15-39-28." (Emphasis ours).

Section 15-39-28(2) of the North Dakota Century Code provides:

Each teacher who shall have retired from service in the public schools, or state institutions under the provisions of section 15-39-27 shall be entitled to receive an annuity as follows:

* * *

2. If said teacher shall have retired and applied for an annuity under the provisions of section 15-39-27, subsection 2, he shall receive as an annuity a sum equal to two percent of the total earnings at salary for the years of teaching service for which assessments were paid. Said annuity, however, shall not be less than three hundred dollars in any one year, subject to all the provisions of this chapter. * * *." (Emphasis ours)

The obvious implication of the wording of these statutes is that any teacher who receives a disability annuity has "retired" as that term is used in this chapter. In addition we would note the amount payable as an annuity for disability is made subject "to all the provisions of this chapter." This would include section 15-39-28.1 of the North Dakota Century Code, as amended by the 1965 Legislative Assembly, providing for a minimum annuity payment of sixty dollars per month.

It is therefore our opinion that a teacher who receives a disability annuity is entitled to the minimum of sixty dollars per month as provided by section 15-39-28.1 of the North Dakota Century Code, as amended.

ATTORNEY GENERAL

Helgi Johanneson