

**OPINION
65-97**

January 22, 1965 (OPINION)

Mr. Fred E. Sorenson

Secretary

Grand Forks Firemen's Relief Association

RE: Firemen - Relief Association - Pension

This is in response to your letter in which you ask for an opinion on the construction of section 18-05-06 of the North Dakota Century Code with reference to the following facts:

A member of the Grand Forks Fire Department Relief Association has been a member of the Grand Forks Fire Department Relief Association for twenty years and a member of the association for ten years. The question is can he retire from the fire department before he reaches the age of fifty years then after reaching fifty years of age can he apply for and receive his pension from the association with reference to the above mentioned section.

The section in question provides as follows:

"SERVICE PENSION - WHO MAY RECEIVE - RECIPIENT ENTITLED TO NO FURTHER RELIEF FROM ASSOCIATION. - A firemen's relief association organized under the laws of this state may pay out of any funds received from the state, city, municipality, or from any other source, a service pension in such amount, not exceeding one hundred dollars per month, as may be provided by its bylaws, to each of its members who has retired and who:

1. Has reached the age of fifty years;
2. Has done active duty for twenty years or more as a member of a volunteer, paid, or partially paid and partially volunteer fire department in the municipality in which such association exists;
3. Has been a member of the firemen's relief association for at least ten years prior to the date of his retirement; and
4. Complies with any additional conditions as to age, service, and membership which may be prescribed by the bylaws of the association.

No pension shall be paid to any person while he remains a member of the fire department, and a person who is receiving a service pension shall be entitled to no other relief from the association."

In reviewing the requirements it is found that the individual must meet the following qualifications to be entitled to a pension: He

must have done active duty for twenty years or more; he must have been a member of the firemen's relief association for at least ten years prior to the date of his retirement; and he must have reached the age of fifty years. It is observed that the twenty-year requirement need not be immediately preceding reaching the age of fifty years nor is the ten-year membership required to be immediately prior to his retirement. It is not required that the individual meet these requirements immediately preceding either his retirement or reaching the age of fifty years. He will have satisfied the requirements if he fulfills them any time before making application for benefits.

Assuming that the association has not adopted any bylaws inconsistent herewith, nor has prescribed that the length of service and participation in membership must be immediately prior to reaching the age of fifty years or immediately prior to retirement, the plain statutory provisions would control.

On this assumption and based on the statutory provisions, it is our opinion that a member having met the qualifications such as having reached the age of fifty years, has done active duty for twenty years and has been a member of the association for ten years prior to his retirement, is eligible to receive a pension from the association. The fact that he retired before reaching the age of fifty years does not alter the conclusion, provided he meets all the requirements otherwise.

HELGI JOHANNESON

Attorney General