

**OPINION
69-504**

June 11, 1969 (OPINION)

Mrs. Clara D. Brown

Executive Secretary

Teachers Insurance and Retirement Fund

RE: Teachers Insurance and Retirement Fund - Minimum Annuity - Statu

Conflict

This is in reply to your letter of June 9, 1969, relative to Senate Bill 258 enacted by the recent Legislative Assembly. You state the following facts and questions:

In section 3 of section 15-39-17 of the North Dakota School Laws the minimum annuity after twenty-five years of service is given as \$750.00.

The intent was a twenty-five percent increase which would calculate to \$900.00 minimum as the latest minimum was \$720.00. The old minimum of \$600.00 was used which is not correct. The other figures represent the twenty-five percent increase intended. The new base is \$1,500.00 rather than \$1,200.00 and the yearly increments are \$125.00 rather than \$100.00 and \$75.00 rather than \$60.00.

In section 15-39-28.1 the minimum is given as '\$75.00 per month.' This would equal the intended \$900.00 minimum which was also intended for the former section.

Would you please inform us as to which minimum should be used - the \$750.00 or the \$900.00 - in calculating Single Life Annuity figures."

I believe the reference to section 15-39-17 should be to section 15-39-28.

Subsection 1 of section 15-39-28 was amended by section 3 of Senate Bill 258. The amendments, among other things, increased the minimum annuity for a teacher who has attained the age of fifty-five years and who has twenty-five years of service from \$600.00 to \$750.00. There is no dispute as to these figures and they are not, of themselves, subject to construction. However, as you have also noted, section 4 of Senate Bill 258 amended section 15-39-28.1 of the 1967 Supplement to the North Dakota Century Code to read as follows:

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 after the completion of twenty-five years of teaching, shall not be less in amount than the sum of seventy-five dollars per month, but the provisions of this section shall not

apply to the annuity of any teacher who has selected retirement allowance option 1 or 2 as contained in section 15-39-29 or the retirement option provided in subsection 4 of section 15-39-27. Provided, however, that any teacher who has taught in North Dakota and paid into the fund for twenty-five years or more and has reached the age of sixty-five shall receive an annuity of not less than the sum of one hundred dollars per month."

Section 15-39-28.1 was first enacted in 1963 and has been amended in each subsequent legislative session. Subsection 1 of section 15-39-28 has not been amended for several years. Therefore section 15-39-28.1 was enacted subsequently to section 15-39-28(1). The enactment of section 15-39-28.1 served to establish a minimum annuity higher than that provided in section 15-39-28(1). Therefore your statement that in increasing the benefits the legislature applied a twenty-five percent increase to the figures is probably correct. Prior to the enactment of Senate Bill 258, the minimum was \$60.00 per month or a minimum of \$720.00 per year. This figure had superseded the \$600.00 figure contained in section 15-39-28(1) although the \$600.00 figure had not been amended. See opinion of this office addressed to you on August 10, 1965. Both sections were amended by Senate Bill but apparently the discrepancy in the figures was not discovered at the time the bill was prepared.

In view of the fact that section 15-39-28.1 specifies that the \$75.00 per month payment shall apply "notwithstanding any other provision of law" it appears this amount would supersede the amount specified in section 15-39-28(1). It is therefore our opinion that the figure of \$75.00 per month or \$900.00 per year amount should be used in calculating a single life annuity rather than the sum of \$750.00 per year as provided in section 15-39-28(1).

HELGI JOHANNESON

Attorney General