

**OPINION  
71-453**

May 28, 1971 (OPINION)

Miss Margaret L. Gillen

Executive Secretary

Teachers' Insurance and Retirement Fund

RE: Teachers' Fund for Retirement - Assessments - Computation

This is in reply to your letter of May 19, 1971, in which you set forth the following facts and questions:

1. If a teacher who has previously retired and prior to July 1, 1971, resumes teaching and has earnings over the amount established by the Social Security Administration, what rate of assessments shall be withheld on said teacher's earnings for the school term involved?

"Does Section 15-39.1-21 of the 1971 law spell out the rate of assessment? Would the possible interpretation be based on the wording 'and all obligations of the Teachers' Insurance and Retirement Fund existing on July 1, 1971?'

2. What is the basis for the average monthly salary of a teacher on sabbatical leave during the school year of 1970-71, one percent of the monthly and yearly salary, which the teacher is actually paid while on leave? Can the employing unit or the Board of Trustees of the Fund readjust the above salary to be representative of the teacher's typical earnings?

"If the latter is the case, what years' earnings are used as an average salary and over what period of years?

"Would this question be based on Section 15-39.1-10?

"It would appear, would it not, that the Fund has lost source of revenue by the omission of Section 15-39-24 not being included in Section 15-39.1? This source of revenue has brought in approximately \$55,000 to our Fund each fiscal year for a number of years."

1. With respect to your first question, we have previously indicated that a teacher who has retired and received benefits under the existing law and then resumes teaching is entitled to an increase in benefits only on the basis of the existing law and not on the basis of the new law as contained in House Bill 1517 of the 1971 Legislature. It would hardly be equitable to deny such person the increase in benefits of the new law and then assess such person at the increased rates specified in the new law. This matter would, as noted in your letter, appear to be governed by Section 15-39.1-21 of House Bill 1517 which reads as follows:

"EFFECT ON EXISTING OBLIGATIONS. Nothing herein contained shall be construed to affect existing retirement benefits and all obligations of the teacher insurance and retirement fund existing on July 1, 1971, shall be assumed and paid from the teachers' fund for retirement. Amounts which persons retired on July 1, 1971, are receiving shall be frozen as of that date and shall not be deemed increased by this chapter."

We further note the provisions of Section 15-39.1-03 of House Bill 1517 which provides as follows:

"RIGHTS UNDER PRIOR ACT PRESERVED. No person shall be caused to be deprived of rights vested under the chapter superseded hereby. Any such person may elect to claim his retirement benefits according to the provisions of the retirement program for teachers in effect prior to the effective date of this Act."

It would appear that under these provisions a teacher who had retired and received benefits and then resumed teaching would not be required to pay the increased assessments under the new law since he would not be entitled to the increased benefits under House Bill 1517. Such teachers' rights are frozen under the existing law and he is entitled to the increased benefits and is obligated to pay the assessments only as provided by the existing law and not as specified in House Bill 1517.

2. Section 15-39.1-10(1) of House Bill 1517 provides that any teacher having the prescribed qualifications may retire and receive an annuity computed in part as follows:
  1. One percent of the monthly salary of the teacher for the school year next preceding the effective date of this Act for each year of service of said teacher prior to the effective date of the Act;"

The school year next preceding the effective date of this Act would be the 1970-1971 school year.

The statute then provides:

"Monthly salary within the meaning of this provision shall be deemed to be an amount equal to one-twelfth of the annual salary of the teacher. If for any reason the earnings of the teacher for the year next preceding the effective date of this Act are shown to have been nonrepresentative of his typical earnings, the board shall readjust the credit to be allowed for the past years of service to the last year of typical earnings."

Under this provision the Board could hold that a teacher on a sabbatical leave during the 1970-1971 school year was not receiving a representative salary since ordinarily salaries for sabbatical leaves are at a reduced rate. The Board could then readjust the credit to be allowed to the last year of typical earnings. This is a question of fact to be determined by the Board based on the earnings of the

teacher over the several years before the sabbatical, the amount of the sabbatical, the terms of the sabbatical, i.e., one-half salary, etc.

In your letter you note that Section 15-39-24 of the 1969 Supplement to the North Dakota Century Code has not been enacted as part of the new law contained in House Bill 1517. I assume you have reference to Sections 15-39-23 and 15-39-24 which provide for the county treasurer to remit twenty cents per child from the county equalization fund to the Teachers' Insurance and Retirement Fund. It is true that the deletion of such provision from the new law will mean the Fund will not receive that money. However, the school districts are, by House Bill 1517, obligated to pay increased assessments which amount to more than twenty cents per child. The twenty cents which was previously remitted to the Fund will now be distributed to the school districts and will assist them in paying the increased assessments but by no means will cover the cost of such increased assessments to the school district.

HELGI JOHANNESON

Attorney General