

OPINION  
73-359

July 18, 1973 (OPINION)

Mr. Tor A. Hegland  
Executive Director  
Public Employees Retirement System  
Box 1214  
Bismarck, ND 58501

Dear Mr. Hegland:

This is in reply to your letter of July 13, 1973, relative to House Bill 1420 enacted by the 1973 Legislative Assembly. You state the following facts and questions:

"House Bill 1420 relates to persons 18 years old or older and makes them adults for all purposes. Consequently, they are now eligible for membership in the Retirement System.

"The question has come up whether employees between 18 and 21 years old must become members after a five month waiting period. In other words, do they have a choice like state employees had initially, to reject membership at the time the System was formed, or must they become members after a five month waiting period?"

House bill 1420 is found in Chapter 120 of the 1973 Session Laws. The bill amends several Sections of the Code and the stated purpose thereof, as found in the title, is a bill "relating to persons eighteen years old and over, and making them adults for all purposes."

Two of the many Sections of the statutes amended by the bill are Sections 54-52-01(2) and 54-52-05 of the North Dakota Century Code.

Section 54-52-01(2) of the North Dakota Century Code is amended by Section 60 of Chapter 120 of the 1973 Session Laws to provide as follows:

"As used in this Chapter, unless the context otherwise requires:

\* \* \*

2. 'Eligible employee' shall mean all permanent employees who meet all of the eligibility requirements set by this Chapter and who are eighteen years or more of age, and shall include appointive and elective officials at their sole election;

\* \* \* "

Section 54-52-05 of the North Dakota Century Code is amended by Section 59 of Chapter 120 of the 1973 Session Laws to read as follows:

"MEMBERSHIP FEE AND ASSESSMENTS. Every eligible permanent state, county, city, or noncertified school district employee concurring in the plan shall so state in writing and all future eligible employees shall be participating members. Each member shall pay to the treasurer of the retirement fund a membership fee to be fixed by the retirement board in an amount not exceeding five dollars, which shall be paid into the administrative expense and benefit fund in the case of state employees, to the county administrative expense and benefit fund in the case of county employees, to the city administrative expense and benefit fund in the case of city employees, and to the school district expense and benefit fund in the case of noncertified school district employees. An eligible employee shall be a permanent employee who has been employed by the state, county, city, or school district for five months, has reached age eighteen, and is employed for more than twenty hours per week for more than five months each year."

Both of these Sections were also amended by House Bill 1049 (Chapter 246 of the 1973 Session Laws) but for another purpose. While that bill retained the age of twenty-one, rather than eighteen, the purpose of the bill was different and we believe the two bills can be read together so that they do not conflict.

The result of the amendments to the two statutory provisions quoted above, was to reduce the age of eligibility for membership in the State Retirement System from twenty-one years to eighteen years. The only amendment to the statute, made by this bill, was to reduce the age for eligibility. The question which arises is whether the first sentence of Section 54-52-05, which sentence was not amended by the bill, provides to those eligible state employees who were eighteen years of age but under twenty-one years of age on July 1, 1973, the effective date of the bill, the option to accept or reject membership in the retirement system.

The provisions permitting employees to state whether they agreed to participate in the plan was a part of the original enactment and all eligible employees of the state, at the time the retirement program was implemented, did have the choice of accepting or rejecting membership in the plan. However, that same provision requires all future eligible employees to be participating members, i.e., such employees have no choice. Thus, we must determine whether the sentence, which was reenacted by the enactment of Section 54-52-05, applies at this time to the eligible employees who were eighteen years of age but under twenty-one years of age on July 1, 1973, the effective date of the bill.

We do not believe the legislature intended to permit those persons who were under twenty-one years of age but eighteen years of age on July 1, 1973, and who met the other requirements of eligibility, the option to accept or reject membership in the retirement system. It might be argued that had the legislature intended the option to be applicable only to the employees who were eligible for membership at the time of implementation of the retirement system, they would not have reenacted the first sentence of Section 54-52-05; we note that

sentence also contains the statement that "all future eligible employees shall be participating members." This is a continuous provision which could not be deleted. In addition, if the first sentence of Section 54-52j05 were to be construed as permitting an option, it would apparently apply to all persons who might be eligible on July 1, 1973, for membership in the retirement system, not only those eligible employees between the age of eighteen and twenty-one. This was obviously not the purpose of the statute. The avowed purpose was to make eighteen year old persons "adults for all purposes." The two statutes with which we are concerned are only two of the many Sections of the Code in which the words "eighteen" were substituted for "twenty-one" by the bill. The only purpose of the bill was to delete the word "twenty-one" and substitute in lieu thereof the word "eighteen". The stated purpose of the legislature when the retirement law was adopted in 1965 was to permit the eligible employees on the effective date of the retirement system the option to accept or reject membership in the program and that all future employees should be participating members. We cannot conclude that such intent was altered by the reduction in age for eligibility from twenty-one years to eighteen years.

In direct response to your question, it is our opinion that employees who were eighteen year of age on July 1, 1973, and who met the other requirements for eligibility must become members of the retirement system and that such employees do not have the choice to accept or reject membership in the retirement system.

Sincerely yours,

Allen I. Olson

Attorney General