

OPINION
73-96

February 12, 1973 (OPINION)

The Honorable Wayne Sanstead
President of the Senate
Forty-third Legislative Assembly
State Capitol
Bismarck, ND 58501

Dear Mr. Sanstead:

The question has been presented as to whether the legislature may establish a starting date for payment of the bonus to the Vietnam Conflict veterans different from that contained in chapter 37-25 of the North Dakota Century Code. That date is presently August 5, 1964. See section 37-25-02(1) of the North Dakota Century Code.

The authority for the enactment of Chapter 37-24 of the North Dakota Century Code is Article 87 of the Amendments to the North Dakota Constitution. The provisions, approved September 1, 1970, provides:

"The legislative assembly of the state of North Dakota is hereby authorized and empowered to provide by legislation for the issuance, sale, and delivery of bonds of the state of North Dakota in such principal amounts as determined by the legislative assembly to be necessary for the payment of adjusted compensation to North Dakota veterans of the Vietnam conflict. Such adjusted compensation shall be paid from the proceeds of the bonds at rates equal to the rates provided by law for adjusted compensation paid by the state of North Dakota to veterans of World War II and the Korean conflict on the basis of terms of service and such other terms and conditions as the legislative assembly may provide. Grants or stipends paid pursuant to law by the state of North Dakota to any veteran for educational assistance shall be deducted from the adjusted compensation otherwise payable to such veterans."

We note the constitutional authority contains no specific dates and does not limit the period of time during which the bonus may be paid except to provide the bonus is to be paid to North Dakota veterans of the Vietnam conflict. While we have no formal basis upon which to form such a conclusion, we understand the August 5, 1964, date is the date of the Gulf of Tonkin Resolution by Congress. There has been considerable debate as to whether that resolution actually was a declaration of war and whether a formal declaration of war had ever been issued, etc. While attempts were made to have this question settled by the United States Supreme Court, no such decision was, in fact, rendered.

In an opinion to Major General LaClair A. Melhouse, Adjutant General, dated January 29, 1973, this office considered the question of the meaning of the term "cessation of hostilities" as used in section 37-25-02(1), the same section we are here concerned with. In replying to the question, we stated:

"The perplexity encountered in determining the exact meaning of the term as used in the statute can be appreciated if it is remembered that the hostilities were not begun with a formal declaration by either Congress or by the President. In the absence of such formality, it could suggest that hostilities could be terminated without a formal declaration. * * *"

In view of the fact there was not, to our knowledge, a judicially determined date for the beginning of hostilities in Vietnam, we cannot state, as a matter of law, that the legislature is bound by the August 5, 1964, date on which the Gulf of Tonkin Resolution was adopted by Congress. While such date may be commonly accepted as the date of the beginning of formal hostilities, we do not believe this office can reach that judicial determination.

In summary, it is our conclusion that the date of August 5, 1964, contained in section 37-25-02(a) as the beginning of the period of time for which the Vietnam bonus may be paid is not binding upon the legislature and they may amend such a provision should they deem it proper, since Article 87 of the Amendments to the North Dakota Constitution provides the compensation is to be paid "on the basis of terms of service and such other terms and conditions as the legislative assembly may provide."

Sincerely yours,

ALLEN I. OLSON

Attorney General