

OPINION
73-99

February 26, 1973 (OPINION)

The Honorable Art Bunker
Speaker of the
House of Representatives
North Dakota Legislative Assembly
State Capitol
Bismarck, ND 58501

Dear Representative Bunker:

This is in response to your letter in which you ask for an opinion on the validity and constitutionality of Senate Bill 2302 which is attached and in which the amendments are filled in.

The provisions of Senate Bill 2320 as amended provide for adjusted compensation from July 1, 1958, and ending August 5, 1964, for those men and women who served in Vietnam during that period and who received armed forces expeditionary medals for Vietnam.

We have examined Article 87 of the North Dakota Constitution, and it would appear that this provision would not militate against Senate Bill 2302, because it does grant considerable broad authority to the legislature as to the basis of terms of service and such other terms and conditions.

While it is recognized that the Vietnam Conflict grew into being without a clear point of beginning, the 1971 Legislature apparently did use August 5, 1964, the date of the Tonkin Gulf Resolution as official recognition of the Vietnam Conflict.

This office, however, is presently involved in a lawsuit pertaining to the present adjusted compensation act. The present act was challenged on the ground that it unlawfully excluded career servicemen. The case has been heard in district court, and the district court has held the exclusionary provision invalid and unconstitutional as being an arbitrary and unreasonable classification prohibited by the Fourteenth Amendment of the United States Constitution. The case has been appealed to the North Dakota Supreme Court. Should the decision of the district court be sustained, career servicemen could not be excluded. A somewhat similar argument and conclusion could apply to Senate Bill 2302. The net result could be that all persons who served from July 1, 1958, in the military would be entitled to adjusted compensation if a similar court ruling were placed on Senate Bill 2302.

Other than the discussion above, we are in a very difficult position to make any further legal analysis because of the lawsuit that is pending and the posture that we had to take in the lawsuit.

Sincerely yours,

Allen I. Olson

Attorney General