

**OPINION  
74-445**

November 18, 1974        (OPINION)

Mr. Walter R. Hjelle  
State Highway Commissioner  
State Highway Building  
Bismarck, North Dakota 58505

Mr. Hjelle:

RE: Section 24-02-03, N.D.C.C.  
Section 185, ND Constitution

This will acknowledge receipt of your request for an official opinion as to the legality of payment for employee service awards purchased by the State Highway Department for its longterm employees.

You have indicated that this was announced to the employees as a continuous policy to provide an added benefit for 20 or more years of service for both present and future employees.

The Highway Commissioner under Section 24-02-03 is authorized and entrusted with the duty and responsibility of determining the compensation of employees of the Highway Department.

Recognition of prior services is not uncommon. The North Dakota Legislature in enacting Chapter 54-52 did recognize prior service in Section 54-52-01(7), (8), after the fact. After the fact in this instance is an expression denoting that the services which are being recognized were performed prior to the recognition. See also Sections 54-52-19 and 54-52-20.

Similarly leave schedules have been based on longevity and implemented after the fact, as determined by policies formulated and adopted by the various departments within the statutory provisions.

Policies as formulated and adopted have become part of the employment contract and the North Dakota Supreme Court has recognized policy as being a portion of the employment contract by implication. (See Zimmerman vs. Minot State College, 198 N.W. wd 108)

An award in recognition of former or prior service is a form of compensation and in this respect is not a gratuity or gift which would be in violation of Section 185 of the North Dakota Constitution.

Without considering the merits of the decision to make an award in recognition of long term prior service, it is our opinion that the cost of the award constitutes a legal expenditure and may be paid out of state highway funds. This opinion is concerned only with the legality of the expenditure and not the merits of the program. This is a situation or instance in which legislative guidelines would be beneficial.

Sincerely yours,

ALLEN I. OLSON

Attorney General

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