

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 90-27

Date issued: October 23, 1990

Requested by: Senator Jerry Meyer

- QUESTION PRESENTED -

Whether a teacher contribution to the Teachers' Fund for Retirement which is paid by the employer is part of salary for purposes of calculating the teacher's and the employer's statutory contribution to the Fund under N. D. C. C. ' 15-39. 1-09.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a teacher contribution to the Teachers' Fund for Retirement which is paid by the employer is part of salary for purposes of calculating the teacher's and the employer's statutory contribution to the Fund under N. D. C. C. ' 15-39. 1-09.

- ANALYSIS -

Each teacher must be assessed 6.75% of his salary annually to be contributed to the Teachers' Fund for Retirement (hereafter Fund). Every employer of a teacher likewise is required to contribute 6.75% of the salary of each teacher to the Fund. N. D. C. C. ' 15-39. 1-09(1).

Salary is defined by N. D. C. C. ' 15-39. 1-04(9) as:

a member's earnings in eligible employment under this chapter for teaching, supervisory, and administrative services during a school year as reported on the member's federal income tax withholding statements plus the value of any fringe benefits selected at the member's option in lieu of monetary remuneration. "Salary" does not include fringe benefits such as payments for unused sick leave or vacation leave, housing allowances, transportation expenses, early retirement incentive pay, severance pay, or medical insurance premiums paid by the employer in addition to salary.

N. D. C. C. ' 15-39. 1-04(9).

In 1983 a teacher's employer was given the option to pay the teacher's contribution "in lieu of contributions by the [teacher]." N. D. C. C. ' 15-39. 1-09(2). Teacher contributions paid by the employer are paid "by effecting an equal cash reduction in the gross salary of [the teacher], by an offset against future salary increases or by a combination" thereof. Id. They are

"treated for the purposes of [N. D. C. C. ch. 15-39.1] in the same manner and to the same extent as teacher contributions made" before the contributions were assumed by the employer. Id. (emphasis supplied). Before the contributions were assumed by the employer, the teacher's salary was assessed to determine the amount of the teacher contribution to be deducted. The teacher contribution was a part of the salary although it was deducted from salary. N. D. C. C. ' 15-39.1-09 (1981).

Moreover, the administrative construction has been to consider the employer-paid teacher contributions as a part of salary. The initial Teachers' Fund for Retirement, Plan for Employer Payment of Member Assessments to the Fund, dated July 1, 1983, provided in part:

Assessments paid to the fund by the employer are to be based on the salary reported to the fund as defined in this plan and outlined in the models contained in the plan.

. . . .

Retirement Salary -- Salary for the purposes of the Teachers' Fund for Retirement includes a member's base salary plus any assessments paid by the employer on behalf of the fund member.

Teachers' Fund for Retirement, Plan for Employer Payment of Member Assessments to the Fund at 1, 3 (July 1, 1983). Since the initial Plan was issued, the Fund has consistently considered teacher-assessment contributions as a part of salary whether paid by the teacher or by the employer in whole or part. See Teachers' Fund for Retirement, Plan for Employer Payment of Member Assessments to the Fund (July 1, 1990). This policy is consistent with the unwavering legislative directive to treat teacher contributions paid by the employer as they were treated before employers exercised the option to pay teacher contributions. N. D. C. C. ' 15-39.1-09(2).

Furthermore, employer-paid teacher contributions are not fringe benefits excepted from N. D. C. C. ' 15-39.1-04(9)'s definition of salary. See letter from Nicholas J. Spaeth to Scott Engmann (June 4, 1990) ("To read this section otherwise would defeat the purpose of detailing those fringe benefits which are not to be considered as 'salary'."). Thus, salary for purposes of N. D. C. C. ch. 15-39.1 includes employer-paid teacher contributions.

It is, therefore, my opinion that teacher contributions paid by the employer must be considered part of salary for purposes of calculating a teacher's and the employer's contributions to the Fund under N. D. C. C. ' 15-39.1-09.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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