

LETTER OPINION
94-L-36

February 9, 1994

Mr. Sparb Collins
North Dakota Public Employees
Retirement System
Box 1214
Bismarck, ND 58502-1214

Dear Mr. Collins:

Thank you for your January 7, 1994, letter asking whether N.D.C.C. ? 54-52-17.7 authorizes the North Dakota Public Employees Retirement System Board (PERS Board) to restore a member's prior retirement service which was excluded from the calculation of a member's retirement benefit because the member was either a minor or temporary employee.

N.D.C.C. ? 54-52-17.7 provides that "[t]he years of service and prior service credit for each member as indicated in the records of the public employees retirement system as of July 1, 1991, are deemed correct and recognized as creditable years of service and prior service credit for purposes of calculating retirement benefits under this chapter and may not be reduced." N.D.C.C. ? 54-52-17.7 also provides that "the records may be corrected to reflect additional months of creditable service and prior service credit upon proper verification."

"Generally, the law is what the Legislature says, not what is unsaid." Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993). Further, "[i]t must be presumed that the Legislature intended all that it said, and that it said all that it intended to say." Id. quoting City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940). Finally, N.D.C.C. ? 1-02-05 directs that "[w]hen the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."

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N.D.C.C. ? 54-52-17.7 was enacted in 1991 with the purpose of "assur[ing] members, especially those with time prior to 1977, that all service reported to them is accurate and from which they will receive benefits." See Hearing on H. 1190 Before the Senate State and Federal Comm., 52d N.D. Leg. (March 14, 1991) (written testimony of Sparb Collins). Before N.D.C.C. ? 54-52-17.7 was enacted, this office concluded that participating members who were credited with service while employed as minors or in temporary positions were not entitled to have that service count for purposes of calculating the participating member's retirement benefit. Letter from Attorney General Nicholas J. Spaeth to Mr. Sparb Collins (September 18, 1989). As a result, some members had some ineligible service credit deleted from their record.

Because N.D.C.C. ? 54-52-17.7 is clear and free of all ambiguity, it must be given effect according to its plain and obvious meaning. The plain and obvious meaning of N.D.C.C. ? 54-52-17.7 is to assure participating members that the retirement service information appearing on their record as of July 1, 1991, is accurate. The statute does not authorize the PERS Board to restore retirement service credit which was determined not to be allowable as creditable service and removed between the date Attorney General Spaeth issued his opinion (September 18, 1989) and the established accuracy date set in the statute (July 1, 1991). N.D.C.C. ? 54-52-17.7 authorizes the PERS Board to correct records to reflect additional months of creditable service upon proper verification. However, service which was excluded because the member was either a minor or temporary employee would not constitute additional months of creditable service because it was determined ineligible under the law. Accordingly, it is my opinion that N.D.C.C. ? 54-52-17.7 does not authorize the PERS Board to restore a member's prior retirement service credit which was previously excluded because the member was either a minor or temporary employee and the service was ineligible under the law.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

dec/vkk