

OPINION
46-278

March 2, 1946 (OPINION)

TEACHERS RETIREMENT FUND

RE: Teaching in Schools Out of State - Private Schools

This will acknowledge your letter of February 26, 1946, enclosing a copy of a letter written to Miss Lauga Geir apparently after she had sent a copy to you of a letter written to her by me on February 20, 1946, with reference to her right to participate in the teachers retirement fund.

Lauga Geir is an old personal friend of mine, and since it seemed to me that the statute was clear on the question propounded by her, and that she was entitled to credit for the time she taught in Canada in arriving at the twenty-five years of service to entitle her to participate in the fund, I did not see any reason for communicating with you concerning her request. Surely, you do not intend to imply that this office should refrain from giving an opinion on the teachers insurance and retirement fund without first consulting you or the board. As I recall our talk when I first met with the board after I became attorney general, I agreed to confer with you and the board on matters of administrative procedure involved in the administration of the fund, with which I was not familiar, if such administrative procedure was involved in any legal question presented to this office. I am still perfectly willing to do that and if the question occasion comes up and there is any question concerning any procedural matter involving the administration of the fund, I will most certainly consult you, but I am unable to agree that this office should consult or confer with you or the board on purely a legal question involving the interpretation of statutes dealing with the fund.

I am sure that you will agree that an individual dealing with a public board or agency is entitled to come to this office concerning the meaning of the law administered by such board or agency, and especially a teacher who in a sense is a public servant.

We want to cooperate in every way possible, but we cannot be bound by the interpretations placed by you or the board upon the law which you administer. As we understand our functions here, we are to give our opinion concerning the law when requested. We do not pretend that our opinion is always correct, for we might be mistaken, but we do at least attempt to give the correct legal interpretation of the statute as we see it. In this particular instance, the law seemed clear to me.

Section 15-3927 of the North Dakota Revised Code of 1943 lays down the rule that any teacher who is employed in a public school or institution who has complied with the provisions of the teachers retirement fund law may retire and receive the annuity provided in the law, and then proceeds to define the period which such teacher must teach in public schools in order to be eligible, and which is

based on the following:

1. That the teacher must have taught school for a period or periods aggregating twenty-five years of service.
2. That the teacher must have taught eighteen years of such time in the public schools or state institutions of the state.
3. That the teacher must have taught at least the last five years of such teaching in the public schools or state institutions of the state.
4. That if the teacher has paid into the fund all of the assessments required under the law and met the three foregoing requirements, the teacher is eligible to participate in the retirement annuity provided by law.

In other words, out of the eighteen years of teaching in the public schools or state institutions of this state, at least the last five years must have been spent in the public schools or state institutions of this state. This would seem to imply that the other thirteen years would not have to be spent consecutively in teaching in public schools or state institutions, and it would seem to further imply that the teaching would not have to be in the public schools at all, except that there must be an aggregate of eighteen years service in the public schools or state institutions of this state. As I understood Miss Geir's letter, she had fulfilled all of the requirements listed above. She had taught eighteen years in the public schools of this state, the last five years being in the public schools or state institutions of this state. In addition to that, she had taught in Canada in a private academy and felt that the period she taught there should accrue to her credit in arriving at her twenty-five years of teaching service. She had stated or claimed that she had paid all of the assessments required by the statute.

The prerequisites stated in the section referred to in determining eligibility to participate in the fund seems entirely clear to me. Nowhere is there any intimation in the law that the teaching in a private school may not be counted towards the seven-year period of service permissible outside of the state.

I cite you two decisions to support my view of the law as above stated.

In Words and Phrases, Vol. 41, Permanent Edition, 233, we find reference to an Ohio case.

In construing a statute, a word should not be given a limited or specialized meaning, unless such meaning is made by legislative enactment; hence, in the act of 1900, 94 Ohio Laws, p. 305, relative to the teacher's pension fund, the word 'teacher,' not being specifically restricted in its meaning, will comprehend within its purview such instructors as shall have spent a part of the time required in teaching in schools not supported in whole or in part by public taxation. Venable v. Schafer, 28 Ohio Cir. Ct. R. 202, 204."

In the same volume of Words and Phrases, on page 234, we find:

Teacher having completed 23 full years' service, employed during 3 years at private school, but for \$200 annual salary, giving two 50-minute periods daily to public school pupils, under city's contract with private school for teaching service, was a 'teacher,' within St. 1917, s. 42.17, and entitled to annuity under sec. 42.11, as having completed 25 years' service, notwithstanding rules of the board of trustees of the fund, made after completion of such service, under which the 2 final years' service would have been insufficient. State v. Board of Trustees of Teachers' Insurance and Retirement Fund of Wisconsin, 169 N.W. 562, 564, 168 Wis. 238."

We contend that the above support the views expressed in the letter to Miss Geir.

While the board undoubtedly has the right to make rules and regulations under the terms of section 15-3907 of the North Dakota Revised Code, it cannot change or alter the meaning of the statutes under which the board must administer the fund, nor has it the power to promulgate rules that are, in effect, contrary to the statutes, or which will deny a teacher the right to participate in the fund under the statutes. The board has the power to promote the administration of the fund and promulgate rules under the above cited section as long as the rules do not conflict with the statutes and as long as they are in harmony with the statutes and as long as they do not deny any right to a teacher to which such teacher is entitled by virtue of the law. So the rule that you cite in your letter to Miss Geir can have no bearing if our construction of the statute is correct. If Miss Geir has paid the assessments provided by the law, as she says she has, then we still adhere to the position that she is entitled to credit for the teaching that she did in Canada in arriving at her twenty-five-year period of teaching services.

Nor does the fact that the board in the past placed its construction on the statute to the effect that teaching in a private institution shall not be considered in determining the twenty-five-year period of teaching service change the statute, if that construction is erroneous.

I call your attention to the case of State v. Baker, 221 N.W.2d. p. 355. Syllabus 20 of the court's opinion in that case states, "The statute requiring Attorney General to give written opinions on all legal or constitutional questions relating to state officers' duties when requested, requires that Attorney General's advice on constitutional questions be taken and followed by all state officers as on all other legal questions."

We are entirely agreed that teachers teaching in a private institution for the twenty-five-year period are not eligible to participate in the fund. But we cannot agree that teaching in a private institution may not be allowed as a credit on the twenty-five-year teaching service, if the teacher otherwise comes within the terms of section 15-3927 of the North Dakota Revised Code of 1943, and has fulfilled the four requirements listed in this

letter.

I am sending a copy of this letter to Miss Geir. She, of course, will have to do what she deems necessary.

NELS G. JOHNSON

Attorney General