

**OPINION
47-236**

August 7, 1947 (OPINION)

TEACHERS INSURANCE AND RETIREMENT FUND

RE: Teachers Who Served in Armed Forces of U.S.A. - Credit

This is in reply to your letter of July 31 enclosing a letter from Miss Minnie J. Nielson, Executive Secretary, Teachers Insurance and Retirement Fund, in which she requests interpretation of the provisions of section 15-3937 of the North Dakota Revised Code of 1943.

Said section reads as follows:

"PARTICIPATION IN FUND BY MEMBERS OF ARMED FORCES. Any person who, since the first day of January, 1940, entered into active service in the army, navy, marine corps or coast guard, including the specialist's corps of the United States army or who, during the continuation of the present war between the United States and Germany and Japan, or either of them, hereafter shall enter into active service in any of said armed forces, and who, prior to the entry into such active service was a teacher by whom contributions had been made into the state teachers' insurance and retirement fund, shall be entitled, upon his resumption of the teaching profession in the state of North Dakota, to have the time of his services in such armed forces credited as 'teaching service' under said teachers' insurance and retirement fund law upon payment by him of the assessments for said period of service, based upon the salary received by him during the first school year during which teaching is resumed."

The specific question presented is whether credit may be given for the time spent in the armed forces of the United States only to such persons as were engaged in teaching at the time or immediately prior to induction into service, or whether credit may be given to a teacher who at the time of induction was engaged in a pursuit other than teaching, but who upon his discharge from the service again enters the teaching profession.

Under the language of the statute quoted, "who prior to the entry into such active service was a teacher by whom contributions had been made into the state teachers' insurance and retirement fund, shall be entitled, upon his resumption of the teaching profession in the state of North Dakota, to have the time of his services in such armed forces credited as 'teaching service' under said teachers' insurance and retirement fund law upon payment by him of the assessments for said period of service, * * *," it should be observed that the language does not state that such person must be engaged in the profession of teaching at the time of his induction nor does it state that he must be engaged in teaching immediately prior to his induction, but it does state that any person who prior to the entry into such active service was a teacher by whom contributions were made into the fund, shall be entitled, upon his resumption of the

teaching profession in the state to have the time of his service in such armed forces credited as teaching services.

I believe that this law should be liberally construed in favor of those who resume teaching after being discharged from military service. I have in mind a person who has been educated and trained for the profession of teaching and has been engaged in that profession for some time. He temporarily takes other employment for a month, a year, or several years, he is then inducted into the armed forces of the United States, he is honorably discharged and then resumes the work of a teacher. Another person who also has been educated and trained as a teacher is inducted into service. Upon his discharge he also resumes his work as a teacher.

The law was intended to benefit those who are engaged in the teaching profession. The fact that they may temporarily have been engaged in other work and while thus temporarily engaged are inducted into the armed forces of the United States should not deprive them of the benefits of this law.

Nor does it appear that the fund will suffer by permitting such a person or persons to receive credit for the time of service in the armed forces. He makes his contribution in accordance with the rates established, based upon the salary which he was receiving during his induction. In my opinion, therefore, it would only be fair and equitable to give a teacher credit for the time he served his country upon contribution of the amount required regardless of whether or not he was engaged in other work at the time of induction into service.

NELS G. JOHNSON

Attorney General