

**OPINION  
49-151**

July 26, 1949           (OPINION)

OFFICERS

RE: Judges' Retirement

Your letter of July 21 addressed to the Attorney General has been received and contents duly noted.

You refer to Chapters 206 and 207 of the Session Laws of 1949 relating to retirement and salaries of the judges of the district and supreme courts and you present five questions which I shall answer in the order presented.

(1) The first question that arises under Chapter 206 relates to the payment or collection of the assessment made on the salaries of the judges. Do I deduct from the salary warrant issued each month 5% of the amount for which such warrant would be issued if such deduction were not made?

Section 32 of Chapter 206 requires every judge of the supreme court and of the district court shall, from the effective date of this Act, pay an assessment of five percent of his salary into the general fund of the state, which said assessment shall be deducted from the salary of such judge and be retained by the state of North Dakota. Answering your first question, it is clear that it is the duty of the state auditor to retain five per cent of the salary warrants issued to district court and supreme court judges and to cover same into the general fund of the state. The five percent is based upon the total amount of the monthly salary without any deductions.

(2) Chapter 206 says that the assessment shall be paid into the General Fund of the State. Will the payments be made into the General Fund the same as other miscellaneous receipts that go into that fund or should the payments resulting from the deduction of 5% from the salaries of the judges be earmarked? That is, should there be a designation of the amounts of the payments so that the records of the Auditor and the records of the State Treasurer will show the amounts that have been collected and paid into the General Fund for such assessments?

Chapter 206 provides that the sums withheld shall be paid into the General Fund of the state and be retained by the State of North Dakota. However, it would be advisable for the state auditor and the state treasurer to keep accounts of all funds retained as provided by said chapter.

(3) Has the legislature made appropriation of the moneys that may be required to pay claims arising and presented under said Chapter 206 and under said Chapter 207.

The 1949 Legislature did not make a specific appropriation for the payment of retirement to the district and supreme court judges. However, Section 4 of Chapter 206 provides that, "Any such retired

judge shall, for the remainder of his life, receive an annual salary equal to one-half of the salary provided by law for his office at the time of his retirement, which salary shall be paid monthly as other judicial salaries are paid, and which said salary shall not be subject to an assessment of five percent as provided for by section 2 of this Act."

In this connection, I also call your attention to Section 2 of Chapter 207 which provides as follows: "When a judge of the supreme court or a judge of the district court shall be retired under the provisions of this Act, he shall receive the compensation allotted to his office for the remainder of his said term."

The language thus quoted is in effect to all intents and purposes a valid appropriation and where a judge of either the district court or the supreme court retires at the expiration of his term, the statutes quoted are standing appropriations of the amount to which such retiring judge is entitled.

(4) If and when a claim for compensation is made under Chapter 206 or under Chapter 207 against what fund should the warrants for salary payments be drawn under each of these Acts?

The warrants issued under Chapters 206 and 207 should be drawn on the general fund of the state.

(5) If a judge applies for retirement and is retired because of permanent disability under Chapter 207 and receives the payments provided in the Act, may he after the expiration of the term for which he had been elected and which he was serving at the time of his retirement apply for retirement for the remainder of his life under the provisions of Chapter 206 after retirement and receive compensation for the remainder of his life under the provisions of Chapter 206?

In reply to question 5, it is my opinion that where a judge of either the district court or supreme court retires under the provisions of Chapter 207, he is entitled to the full salary provided by law for the remainder of his term and at the expiration of his term, if he has attained the age of seventy years and has served the required length of time provided by Chapter 206, he may make application and receive an annual salary equal to one-half of the salary provided by law for his term at the time of his retirement for the remainder of his life.

WALLACE E. WARNER

Attorney General