

**OPINION  
49-87**

December 12, 1949            (OPINION)

HIGHWAY PATROL

RE: Retirement Act

Your inquiry of December 8, 1949, addressed to the Honorable Wallace E. Warner, Attorney General, has been referred to the undersigned for attention in his capacity as Special Assistant Attorney General for the State Highway Department. Specifically your inquiry is directed as to the status of patrolmen appointed prior to World War II and who served in the military forces during World War II.

Section 8 of chapter 239 Laws of 1949 provides that in computing the length of service of a contributor for retirement purposes, "full credit shall be given to each contributor for each year of service rendered to the patrol including service rendered prior to July 1, 1949, upon complying with the provisions of the Act." The last sentence in that section provides "the time during which a contributor is absent from service without pay shall not be counted in computing the service of the contributor unless approved by the board." I believe from other sections which will be later set out in this Opinion that this sentence may be disregarded so far as the purposes of this Opinion are concerned.

Section 9 of the Act provides that "every member who has been in the employ of the North Dakota Highway Patrol prior to July 1, 1949, shall have the option and he may elect to make back payments to the date when he first entered the service of North Dakota Highway Patrol." It then provides how those back payments may be made in the event the party desires to go back of that date.

Attention is now called to section 37-0125 N.D.R.C. 1943 as amended by the 1947 Supplement to said code. This section of our law provides in part that men in the military service, "when ordered by proper authority to active non-civilian service, shall be entitled to a leave of absence from such civil employment for the period of such active service without loss of status or efficiency rating and if they have been in the continuous employ thereof for ninety days immediately preceding without loss of pay during the first thirty days of such leave of absence."

It is the opinion of this office that a highway patrolman who interrupted his service with the Highway Patrol to become a member of the Armed Forces of the United States during World War II retained his status as a highway patrolman during his absence and if reinstated or reemployed upon his return he is entitled to take advantage of the time he was absent in the service of this country so far as the Retirement Act of the North Dakota Highway Patrol is concerned and he should be given full credit for that time if he elects to have it considered.

.WALLACE E. WARNER

Attorney General