

**OPINION
51-122**

May 21, 1951 (OPINION)

OFFICERS

RE: Judges - RETURN OF Retirement Contributions

We have your letter of May 17 requesting an opinion as to the application made by Beth R. Thomson as executrix of the estate of Harold P. Thomson for repayment of contributions made to the retirement fund of judges.

Chapter 206 of the 1949 Session Laws provides for retirement of justices of the supreme and district courts. Section 2 of that act provides that the judge shall pay an assessment of five per cent of his salary. The 1949 law had a provision that if any judge of the supreme or district court died before retirement, his administrator or executor shall be entitled to receive a refund of one-half of the amount retained from the salary of such judge, which claim shall be made within one year after the death of such judge and shall be filed with the state auditor of the state of North Dakota.

Senate Bill 119 of the 1951 session amended this law. It reenacted the provisions as to the payment of 5 per cent into the fund, but it changed the section with reference to the refund on the part of the administrator or executor of any judge who shall have died before retirement. The 1951 act provides that the administrator or executor shall be entitled to apply and receive payment of the amount retained by the state, which claim shall be made within one year of the death of such judge. The 1951 act was approved as of March 5, 1951. Judge Thomson's passing was subsequent to the approval of the 1951 act.

It is, therefore, our opinion that Beth R. Thomson is entitled to receive payment of the amounts of money which have been heretofore deducted from the salary of Harold P. Thomson.

It is a general proposition of law that an amendment to an act shall be given the same force and effect as if it had been a part of the original act.

In your letter you ask for an opinion as to whether or not the legislature made an appropriation to refund the withholdings to the administrator. In answering that question, will say that in the light of various decisions of the supreme court to the effect that where the law provides that any money shall be paid that that in itself is an appropriation and we will state that the amendment is an appropriation and as long as the five per cent assessments are paid into the fund of the state, the general fund of the state should be charged with the refund.

ELMO T. CHRISTIANSON

Attorney General