

**OPINION
51-191**

January 2, 1952 (OPINION)

TEACHERS INSURANCE AND RETIREMENT FUND

RE: Refunds of Overpayments, How Made

Your letter of December 28th is brief and clearly states the matter upon which you wish a clarifying opinion. The letter reads as follows:

It has been brought to my attention by the State Auditor that there may be a question as to whether the N. D. Teachers Ins. and Retirement Board can issue vouchers for Refunds to Treasurers of School Districts for overpayment of assessments for Teachers within the District. This has been the practice for the Board for many years.

As Treasurer and Member of the Board I would like a clarification at this time."

We have examined the statutes relating to the Teachers Insurance and Retirement Fund and not found therein any provision covering your situation. Business principles must therefore govern. Since all income of the fund is transmitted directly to you as state treasurer under the provisions of section 15-3921 of the 1949 Supplement, it would seem that, if the overpayment is noted on your receipt of the money remitted, you should refund the overpayment at once, crediting only the correct amount.

If the overpayment is not discovered until later, there would have to be a withdrawal from the fund credited in order to make the refund. Since the practice of the Board for many years has been for Board to issue vouchers for such refunds, that would seem to be a proper business practice, especially as there seems to be no statutory provision prohibiting such practice.

The funds so received by you are not, properly speaking, state funds, and such refunds are not subject to audit by the state auditing board. Therefore, it is our opinion that the practice long followed by the Board, as stated in your letter, in the making of refunds of overpayments may be continued. Such overpayments, in fact, never become a part of the fund.

ELMO T. CHRISTIANSON

Attorney General