

**OPINION  
53-123**

September 8, 1953           (OPINION)

TEACHERS INSURANCE AND RETIREMENT FUND

RE:   Qualification - Attending College When Entering Military Service

This office is in receipt of your request of September 4, 1953, for an opinion relative to the effect of Chapter 139 of the 1953 Session Laws. Your question is presented as follows: "Does said amendment provide for credit to service men who attended college at the time of induction into military service prior to July 1, 1953?"

Chapter 139 of the 1953 Session Laws amends Sections 15-3936 and 15-3937 of the 1949 Supplement to the North Dakota Revised Code of 1943. The amendment to Section 15-3936 adds only the following phrase, "but was attending an institution of higher learning for the purpose of improving himself in such profession at the time of entry into the armed forces."

It is evident that the intent of said passage was to enlarge upon the qualifications for participation in the teachers insurance and retirement fund.

In Section 15-3937 it will be noted that in addition to the above insertion we also have a change in the description of the kind of armed services that are included within the provision. You will notice that Section 15-3937 of the 1949 Supplement limits the military service as to one between the United States and Germany and Japan, while in the amendment provided for by Chapter 139 it broadens the scope to take in the service during a period of national emergency. The evident purpose of that was to include the persons who have during the past couple of years been engaged in this Korean War which is not declared to be a war but is a national emergency so as to give those persons also the benefit of counting the service in the military forces in determining the years required for qualifying for an annuity.

It is a legal principle that all legislation must be construed as prospective and not retroactive unless otherwise specifically stated in the law. However, it must be noted from the above amendments that the intention of the legislative assembly was to make it retroactive so as to give the persons now engaged in the national emergency the same rights and privileges as those who had theretofore been engaged in military service with Germany and Japan. There can be no doubt that such was the intent of the legislative assembly in enacting the new amendments to said sections. If this part of the law is to be construed retroactive, then we can find no logical reason for not holding also that the provision permitting the time spent in a post graduate course or in a refresher course in some college as being included within the meaning of engaged in teaching.

It is, therefore, the opinion of this office that Chapter 139 of the 1953 Session Laws is to such extent retroactive and the soldiers thus

involved be given the benefit of this new provision.

ELMO T. CHRISTIANSON

Attorney General