

**OPINION**  
**53-74**

May 7, 1953           (OPINION)

MILITARY

RE: Compulsory - Agricultural College and State University

We are in receipt of your letter of May 5, 1953, in which you ask whether or not a student attending the University of North Dakota or the North Dakota Agricultural College may be compelled to actively attend Reserve Officers Training Corps instruction.

You refer to section 15-1021 of the North Dakota Revised Code of 1943, which reads as follows:

MILITARY INSTRUCTION REQUIRED. The university and the agricultural college shall give theoretical and practical instruction in military science under such rules and regulations as the state board of higher education may prescribe.

Pursuant to power granted thereby, the State Board of Higher Education has adopted a rule making compulsory the military training to which you refer.

So far as the constitutionality of such compulsory training is concerned, this has been upheld by the United States Supreme Court in the case of Hamilton v. University of California, 293 U.S. 245. Just as in the case of North Dakota, the ruling in that case had been promulgated by the Board of Regents of the State University pursuant to power granted to it by the state legislature.

The only question for our consideration then, is whether or not the statute granting power to the Board of Higher Education to make rules and regulations concerning military training is broad enough to allow making such training compulsory.

We note in this regard that in 1937, chapter 234 of the Session Laws, the legislature prohibited compulsory military training in state colleges or university, but that this was repealed in 1943, chapter 235 of the Session Laws, at the same time that section 15-1021 was adopted and in the same bill.

We can only conclude from this that the legislature had in mind making it possible for the board of higher education to take whatever action was deemed advisable in view of the changing circumstances. If this had not been the intended result, there could have been little reason for including in the same bill the repeal of chapter 234 of the 1937 Session Laws since nobody would have been empowered to make such training compulsory.

For the reasons stated, it is our opinion that a student attending the University of North Dakota or the North Dakota Agricultural College may be compelled to attend ROTC classes as a condition

precedent to his privilege to attend such institution.

ELMO T. CHRISTIANSON

Attorney General