

**OPINION
54-122**

February 15, 1954 (OPINION)

TEACHERS INSURANCE AND RETIREMENT FUND

RE: Instructors at State Hospital May Qualify

This is in reply to your letter of January 28, 1954, in regard to the applicability of either the state teachers retirement or the state old age and survivors insurance system to certain officials of the State Hospital.

More specifically your question appears to be, which system is applicable to the persons occupying the following positions?

1. Director of rehabilitation services, whose responsibilities include maintenance of training programs for patients and conducting educational programs for employees and students both in graduate and undergraduate levels.
2. Director of Nursing Education whose entire responsibility consists of educating nursing personnel, both in-service training and affiliate nurses training courses for student nurses, and
3. Director of Psychologic Services, who maintains an associate professorship at the University of North Dakota, so as to give accredited training to psychology interns.

Section 15-3910 of the North Dakota Revised Code of 1943 provides in part that any person who "hereafter shall become, a teacher in any state institution, shall be a member of the fund" (teacher's retirement fund).

Section 15-3901 of the North Dakota Revised Code of 1943 provides in so far as here applicable that "teacher" shall include: "all persons employed in teaching in any state institution" and also "all supervisors of instruction" but that "the term 'teacher' shall not include persons connected with any professional school or college of any state institution as lecturers who are engaged in the practice of their respective professions and with whom teaching is merely an avocation".

"State Institution" as here used is not further defined, although subsection 2 of Section 15-3901 does provide that "State Institution" shall include certain named institutions. The State Hospital is not among those named. However, as the legislature has seen fit to "any state institution" in the two sections here concerned, rather than expressly limiting the meaning of that term to the named institutions or some particular classification of state institutions, persons teaching at the state hospital must necessarily be included in the definition of teacher.

As your letter indicates that teaching or supervising instruction is

an essential and major part of the duties of these officers, rather than being a minor, separate or subordinate occupation, and as they are employed by the state hospital, a state institution, for the performance of such duties, they do come under the Teacher's Retirement System.

Subsection M of Section 52-0920 of the 1953 Supplement to the North Dakota Revised Code of 1943 provides in so far as here applicable:
" * * * Employees who are members of any other retirement system in the state which is maintained in whole or in part of public contributions unless such political subdivision or its instrumentalities as a whole elect to adopt this system are exempt from the provisions of this Act (chapter) * * *"

As the officials here concerned are members of the teacher's retirement system, they are under the provision exempt from the old age and survivor's insurance system.

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