

**OPINION  
54-133**

December 17, 1954 (OPINION)

TEACHERS

RE: Retirement Benefits

This will further answer your letter of November 29, 1954, as to your second problem. You inquire as to the proper construction of Section 15-3928, subsection 3 of the 1953 Supplement to the N.D.R.C. of 1943.

The part of said subsection in which you are interested is the amendment which was added to said section by Chapter 138 of the 1953 Session Laws. You submit the following example: A teacher who has earned an annuity of four hundred dollars and has retired with the allowed minimum of six hundred dollars provided for by the said retirement fund again resumes teaching, how shall the benefits thereafter be determined? Shall it be added to the minimum earned of four hundred dollars or be added to the allowable annuity of six hundred dollars?

In order to arrive at some determination of the question, it might be well to discuss the problem which confronted the teaching profession in the state the evident purpose of the amendment enacted in 1953, which amendment reads as follows: "Except that in addition to retirement benefits earned prior to the resumption of teaching, such teacher shall be entitled to such additional retirement benefits as may be earned during the period in which teaching is resumed."

Prior to 1953 we find under section 15-3928, subsection 4 the provisions dealing with the resumption of service as a teacher after having once retired. It will be noted that in said subsection 4 it specifically states that when such teacher resumes teaching after having once retired "shall again be paid at the same amount and under the same conditions after subsequent retirement."

The practical operation of the teachers insurance and retirement before the amendment of 1953 was that any teacher who had retired and at a later date resumed teaching would again be entitled to receive an annuity under the same conditions that she was entitled to before retirement, to-wit, two percent of the earned salary. The purpose of amending this subsection was to encourage those teachers who had served twenty-five years and had attained the retirement age and thereupon retired to resume teaching in North Dakota in order to relieve the shortage of teachers in the state. In order to give this amendment any meaning at all that would be of benefit to teachers, it is necessary to construe this new provision to mean that a teacher once having retired and being entitled to the minimum annuity of six hundred dollars would receive in addition to two percent of such additional salaries as she was earning upon resuming teaching after having once retired. It is unfortunate that those interested in that amendment used the word, "earn" which is susceptible of being interpreted to mean that she would not be entitled to add the new addition to the annuity to the minimum allowance of six hundred dollars, but would have to be applied to the total salary that the teacher had earned prior to her retirement. But if such a construction is placed on this amendment, it would add nothing to the section involved because such teacher was already entitled under the old law to receive the additional two percent on her wages when she again resumed teaching.

It is therefore our opinion that a teacher having once retired and by law having established her right to six hundred dollars a year annuity would be entitled to add to this six hundred dollars, two percent of her future salary until the maximum established by the retirement fund would have been reached.

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