

**OPINION**  
**59-149**

May 20, 1959 (OPINION)

JUDICIAL BRANCH OF GOVERNMENT

RE: Retirement of Judges - Retirement Salary

This is in reply to your request for an opinion dated May 19, 1959. In your request you state that you have received numerous inquiries from retired judges pertaining to Senate Bill No. 74 as passed by the thirty-sixth legislative assembly.

Your question is whether under the judges retirement program, chapter 27-17 of the 1957 Supplement to the N.D.R.C. of 1943, retired judges are entitled to increased retirement benefits as the result of the increase in judges' salaries as provided for in Senate Bill No. 74. The increase in salaries will become effective July 1, 1959.

The material portion of the retirement act as pertaining to the question at hand is section 27-1701 of the 1957 Supplement to the N.D.R.C. of 1943, and more particularly subsection 3 thereof which is as follows:

3. The amount of judicial retirement salary payable to a retired judge under subsection 1, of this section shall be equal to fifty percent of the annual salary payable from time to time to judges of the classification the retired judge last has prior to making his application for judicial retirement salary, but in no event shall his judicial retirement salary be computed upon a judicial salary less than the one he last received while in office."  
(Underscoring supplied)

Being that the retirement program is purely on a statutory basis, the statute will control.

The underscored language is significant in determining the question at hand. By paraphrasing this language it could be stated "that the retirement salary shall be equal to one-half the salary payable to the office (position) from which the judge retired." The salary taken into consideration is the salary paid to the office (position) and not the salary that was paid to the judge while he was in office. The salary that was paid to the retired judge, while in office, is merely considered to establish the minimum. Such minimum salary for retirement purposes is set by the statute and is not to be less than the salary the judge last received while in office.

It is also noted that the term "salary payable from time to time" contemplates that the salary can be changed or increased in the future and as such the increase would affect the retirement benefits to the judge.

In direct response to your inquiry, it is our opinion that the salary increases to the judges as provided for in Senate Bill No. 74 will

also in direct proportion increase the retirement benefits to the retired judges. The retirement benefits for the retired judges will be fifty percent of the salary paid to the office (position) from which the judge retired. Thus, where the salary is increased after July 1, 1959, pursuant to Senate Bill No. 74, the increased salary will be the basis upon which the retirement benefits will be determined.

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