

**OPINION
59-182**

September 23, 1959 (OPINION)

MUNICIPAL GOVERNMENT

RE: Employees' Pensions in Cities - Refund of Contributions

This is in reply to your letter of September 16, 1959, requesting the opinion of this office with regard to section 40-4620 of the 1957 Supplement to the North Dakota Revised Code of 1943 as amended by Section 4 of Chapter 310 of the 1959 Session Laws.

This section provides as follows:

EMPLOYEE ENTITLED TO REFUND FROM FUND UPON TERMINATION OF EMPLOYMENT WITH CITY OR UPON COVERAGE UNDER FEDERAL SOCIAL SECURITY. Any employee who shall have been in the service of the city for a period of two years and shall have contributed to the city employees' pension fund, and who voluntarily and while in good standing as an employee of said city shall have left the employment of such city, shall be entitled, upon application at the time of such retirement to a refund of all contributions made by him except fifty percent of the contributions made by him during the first two years of his city employment."

More particularly your question is whether or not city employees are entitled to refunds of their contributions to the City Employees' Pension System when they elect to withdraw from the City Employees' Pension System and be covered by Social Security.

The title to the above cited statute indicates that the employee is entitled to a refund upon coverage under federal social security: however upon reading the body of the statute we find no reference whatsoever made concerning refunds to a city employee who elects to be covered under federal social security.

Section 1-0212 of the North Dakota Revised Code of 1943 provides as follows:

HEADNOTE, CROSS REFERENCE, AND SOURCE NOTE. No headnote, source note, or cross reference, whether designating an entire title, chapter, section, subsection, or subdivision, shall constitute any part of a statute."

In 50 Am. Jur. 300, STATUTES s 312, we find the following statement:

The rule which permits reading the title of an act in aid of statutory construction applies only in cases where the legislative meaning is left in doubt by failure to clearly express it in the law. Moreover, the ambiguity which justifies a resort to the title must arise in the body of the act; an ambiguity arising from the title is not sufficient."

It is to be noted that no ambiguity arises from the reading of the body of the statute itself. The statute is explicit in that it provides for refunds only in the situation in which an employee who has been in the service of the city voluntarily has left the employment of such city. There is no mention made concerning refunds to city employees who elect to be covered under federal social security. The only mention made of refunds for such reason is in the title to the statute. The title is not part of the statute.

It is therefore the opinion of this office that, under Section 4 of Chapter 310 of the 1959 Session Laws, city employees electing to be covered under federal social security rather than the city pension system are not entitled to refunds of their contributions to the City Employees' Pension System when they elect to withdraw from such system and to be covered by social security.

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