

**OPINION
59-99**

September 28, 1959 (OPINION)

EDUCATION

RE: Teachers' Insurance and Retirement Fund

- Military Service in War Counted as Teaching Service
- Payment of Assessment

This is in reply to your request for an opinion and interpretation of section 15-3936 as amended by the 1959 Legislature.

Your first question relates to teachers serving in the armed forces who may count such time for teaching service upon paying the assessments for such time.

The specific question is,

"Does this assessment mean only the teacher's assessments, or must it also include the matching for same?"

Under the statutory provisions of section 15-3936 we find this:

". . . . upon the payment of the assessment which would have been collected from him if he had continued as a teacher during the time of such service. . . ." (Underscoring ours)

The condition is upon the payment of assessments which would have been collected from him - not the total assessment which would have been paid into the fund.

It is therefore our opinion that the teacher having served in the armed forces may have such service counted as teaching service as provided for by the statute upon payment of the assessment he would have had to pay if he had actually taught during such time. He is not required to pay the assessments or contributions of the school district which would have been paid into the fund had he taught for such school district during the time.

The second question relates to when such option may be exercised. Your question is,

"Can the matching be made directly prior to retirement?"

We are assuming you refer to when such teacher may elect to count such time spent in the armed forces and pay the assessments thereon. We make this presumption on the basis that no provisions exist for matching the assessments for the time spent in the armed forces.

In 1959 the legislature amended section 15-3936 limiting the time during which such election or option may be exercised. The new provision is:

". . . . Provided such back assessments are paid not later than the end of the first year of teaching service in North Dakota following receipt of an honorable discharge from the armed forces of the United States."

The rights and benefits established under the Teachers Insurance and Retirement Fund are purely statutory. The legislature may alter or modify the provisions of such Act as it deems fit and proper just so long as it does not destroy or invalidate a vested right. The legislature created the privilege of counting the time spent in the armed forces as teaching time upon the payment of his back assessments. By the same token the legislature can limit the time within which such option or election must be exercised. Under the provisions of the 1959 amendment the option or election must be exercised within a certain time. When such time expires so does the right to exercise the option. The election or option by legislative enactment must be exercised on or before the end of the first year of teaching. The year referred to means the school year. It does not mean within one year after his honorable discharge. Thus the option can be exercised at the end of the first school year in which the individual teaches after being honorably discharged from the armed forces.

It is therefore our opinion that unless the election or option to count the time spent in the armed forces is exercised within the first year of teaching following his honorable discharge from the service, he has forfeited such option or election.

LESLIE R. BURGUM

Attorney General