

**OPINION  
61-156**

September 26, 1961            (OPINION)

NATIONAL GUARD

RE: Employees of State and Political Subdivisions - Retention of Status

In your letter of September 20, 1961, you ask for an opinion from our office on the views expressed in an opinion of yours to the Minot City Council under the date of September 20, 1961. Your opinion dealt with the applicability of sections 37-01-25 and 37-01-25.1 of the North Dakota Century Code to municipalities. More specifically, since your city manager who is a captain in the North Dakota National Guard is not under civil service, and thereby not covered by the municipal ordinance, is he as a matter of law entitled to a leave of absence as set forth in the aforementioned sections of the Code?

Section 37-01-25 of the North Dakota Century Code provides:

OFFICERS AND EMPLOYEES OF STATE OR POLITICAL SUBDIVISIONS IN NATIONAL GUARD OR FEDERAL SERVICE TO RETAIN STATUS FOR PERIOD OF ACTIVE SERVICE. All officers and employees of this state or of a political subdivision thereof who:

1. Are members of the national guard;
2. Are members of the armed forces reserve of the United States of America;
3. Shall be subject to call in the federal service by the president of the United States; or
4. Shall volunteer for such service,

when ordered by proper authority to active noncivilian employment, shall be entitled to a leave of absence from such civil service for the period of such active service without loss of status or efficiency rating. If such persons have been in the continuous employ of the state or political subdivision for ninety days immediately preceding the leave of absence, the first thirty days of such leave of absence shall be without loss of pay."

Thus, the question to be determined is whether a municipality is a political subdivision within the meaning of this section.

We quote the following from Commissioner of Internal Rev. v. Shamberg's Estate, 144 F.2d. 998, 1004, which in turn is quoting from an opinion of the Attorney General of the United States:

The term 'political subdivision' is broad and comprehensive and denotes any division of the State made by the proper authorities thereof, acting within their constitutional powers, for the purpose of carrying out a portion of those functions of

the State which by long usage and the inherent necessities of government have always been regarded as public. The words 'political' and 'public' are synonymous in this connection

It is not necessary that such legally constituted 'division' should exercise all the functions of the State of this character. It is sufficient if it be authorized to exercise a portion of them. . . ."

Of course, the term "political subdivision" may be used in the statutes in more than one sense. An example of limiting the term would be found in section 37-17-02 of the North Dakota Century Code, as amended, where the term is defined as meaning counties, cities, and villages. But that section states that such a definition is only defined as such for purposes of that chapter. The term may designate a true governmental subdivision such as a county or a township or it may have a broader meaning. An example of where the term would include more than counties, cities, and villages is to be found in Sections 183 and 184 of the North Dakota Constitution. The opening sentence in each section contains "any county, township, city, town, school district or any other political subdivision." That language certainly indicates that a county, township, city, town, and school district are political subdivisions and they are not the only political subdivisions that exist in the state.

However, as we stated earlier, the term may be limited by the statutes. We find no language in chapter 37-01 that indicates the term is to be limited. It is the opinion of this office that the statutes, 37-01-25 and 37-01-25.1, indicate that the obvious intent of the Legislature was to grant a leave of absence with the right to reinstatement to the former position to any public or civil employee entering military service. Thus, this opinion is in basic agreement with the views expressed in your opinion to the Minot City Council.

LESLIE R. BURGUM

Attorney General