

**OPINION
68-202**

February 9, 1968 (OPINION)

Honorable William L. Guy

Governor

RE: Schools - Teachers Professional Practices Commission - Composition

This is in reply to your letter of February 9, 1968, relative to section 15-38-17 of the North Dakota Century Code, as amended, governing the Teachers Professional Practices Commission. You note the provisions of this section and state the following facts and questions:

"One member of the commission who was a classroom teacher at the time of his appointment has now left the field of active classroom teaching but is in a field related to education as District Manager for an educational corporation in North Dakota.

"The North Dakota Education Association takes the position that the original intent of the legislation was that the commission should consist of those engaged in a professional capacity, the majority of whom would be classroom teachers, the assumption being that the balance would be administrators or supervisors.

"I would appreciate receiving an opinion from you relating to membership on the Teachers Professional Practices Commission and whether the membership must consist of classroom teachers or administrators."

Section 15-38-17 of the North Dakota Century Code, as amended, provides in part:

"There is hereby created a Teachers' Professional Practices Commission consisting of nine members, a majority of which shall be classroom teachers, appointed by the governor from a list of nominees submitted by the North Dakota education association. The list of nominees shall include at least three nominees for each position upon the commission. * * * Vacancies shall be filled for an unexpired term in the same manner as original appointments. * * *"

The statute above cited leaves no doubt but that the majority of the nine member Teachers' Professional Practices Commission must be classroom teachers since the language is explicit. While the North Dakota Education Association may be correct that the intent was the balance of the commission would be administrators and supervisors, same is not explicitly stated in the statute. This act was originally introduced as Senate Bill 272 in the 1965 Legislative Assembly. The bill, as originally introduced, did not require any special qualifications of the members of the commission.

The provision that a majority of the members of the commission be

classroom teachers was inserted by the House after the bill had passed the Senate. The House amendment was concurred in by the Senate. Had the intent of the Legislature been that the balance of the commission be administrators or supervisors, same could also have been specified in the bill. As a matter of fact, however, the North Dakota Education Association would appear to have primary control of this matter since the appointments are made from a list of names submitted by them and they can limit such list to classroom teachers, supervisors and administrators.

The only problem would appear to arise when a person appointed to the commission, because of his position, ceases to maintain the qualifications which originally were part of the basis for his appointment. If the classroom teachers remain in the majority on the commission after such person ceased to maintain the qualifications, it would appear such person could continue to hold his position on the commission. If, however, the classroom teachers are no longer in the majority by reason of such person ceasing to be a classroom teacher, it would appear a vacancy would be created by operation of law, i.e., the person would cease to hold his position by reason of loss of his qualifications as a classroom teacher, which vacancy should be filled in accordance with statute. The position of the last person who ceased to be a classroom teacher and who thus caused the board to have less than a majority of classroom teachers would apparently be vacated by operation of law.

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