

**OPINION
69-332**

April 7, 1969 (OPINION)

Mr. Tor A. Hegland

Executive Director

North Dakota State Retirement Board

RE: State - Employees Retirement System - Employer's Contribution

This will acknowledge receipt of your letter of March 31, 1969 with regard to the change in the limitation of employer's contribution to the retirement plan as found in Section 54-52-06, N.D.C.C.

Under the provisions of that section, the employer's contribution is limited to \$300 annually. In an opinion to the Chairman of the State Employees Retirement Board on July 19, 1966, we said that unless otherwise specified, the term "annual" as used in the statute, meant calendar year.

Two bills passed by the Forty-first Legislative Session, Senate Bill 46 and House Bill 388, changed the limitation on employer's contribution from \$300 to \$500 annually, effective July 1, 1969. There are some employees of the State whose salaries are such that the \$300 limitations will have been reached prior to July 1, 1969, in view of the fact that four percent of such salary constitutes the employer contribution. No department may make any adjustment in the employer contribution as prescribed by Section 54-52-06, N.D.C.C., until July 1, 1969.

The circumstances existing at the time of the July 19, 1966 opinion differ from those which will exist on July 1, 1969 when Senate Bill 46 and House Bill 388 become law. There had been no contributions to the plan in the first six months of 1966 even though the law had been in effect since July 1, 1965, and therefore, no rights had been vested in any employee by any employer contributions during the first half of calendar year 1965. That is not the situation that will exist on July 1, 1969. The amount of state contribution in which an employee may have vested rights during the first six months of 1969, under the law as it now exists, could total \$300. This cannot be retroactively adjusted to a lesser sum, which is a factor we were not faced with in 1966.

After July 1, 1969, the annual employer contribution limit is increased to \$500 and this must be applied in such a manner that the total amount of employer contribution in which an employee may have a vested right in calendar year 1969 can reach \$500, provided that such employee's salary is of such an amount that when applying the four percent monthly employer contribution rate thereto, the \$500 limitation is not exceeded during the whole calendar year.

For any employee therefor, that the employer contribution reaches \$300 prior to July 1, 1969, there may be a further employer

contribution not exceeding \$200 additional during the calendar year 1969 after July 1, 1969.

HELGI JOHANNESON

Attorney General