

**OPINION
69-505**

June 11, 1969 (OPINION)

Mrs. Clara D. Brown

Executive Secretary

North Dakota Teachers' Insurance

and Retirement Fund

RE: Teachers Insurance and Retirement Fund - Teachers Contribution -
Statutory Conflict

This is in reply to your letter of June 9, 1969, relative to Senate Bill No. 258 enacted by the 1969 Legislative Assembly and effective July 1, 1969. You state the following facts and questions:

Section 15-39-14 gives three percent of a teacher's salary as the rate to be contributed by the employer and not to exceed \$150.00 per year. The intended rate was two percent with the \$150.00 maximum.

The teacher's assessment is to be three percent to a maximum of \$225.00 which would mean the maximum salary would be \$7,500.00. Two percent of \$7,500.00 would give the \$150.00 maximum for the employer.

In section 15-39-17 the intended rate of two percent is given.

May we legally use the two percent for the employer's share as it was the intent of the law?"

Section 1 of Senate Bill No. 258 amends section 15-39-14 of the 1967 Supplement to the North Dakota Century Code to read, in part, as follows:

* * * When a political subdivision or institution covered by the benefits of the teachers' retirement fund provides sick leave and employs substitute teachers at additional cost to said subdivisions or institutions, they shall be assessed three percent per annum but in no event be required to pay in excess of one hundred fifty dollars per year as matching fund for any one teaching position. Teachers employed on a full-time basis shall be assessed three percent per annum, but not more than two hundred twenty-five dollars per year." (Emphasis supplied.)

Section 2 of Senate Bill No. 258 amends section 15-39-17 of the 1967 Supplement to the North Dakota Century Code to provide, in part, as follows:

* * * The disbursing officers of each school district, and of each county, between June twentieth and June thirtieth of each

year, shall forward to the treasurer of the county the assessments deducted and retained as provided in this chapter, and in addition thereto, contributions to the fund in an amount equal to assessments shall be set aside from funds available for the payment of the salary of the teachers, except that no contribution by any school district, as determined by a teacher's contribution, shall exceed two percent of the teacher's salary or one hundred fifty dollars per year as matching fund for any one teaching position. * * *." (Emphasis supplied.)

There is an obvious discrepancy in the law in that section 15-39-14, as amended by Senate Bill No. 258, specifies a two percent contribution by the school districts or institutions. Neither of these provisions were part of the original bill as introduced. However, the changes were recommended by the Senate Education Committee. See page 590 of the Senate Journal. The amendments were adopted by the Senate. See page 619 of the Senate Journal. Since both amendments were adopted at the same time, there is nothing in the legislative history which is of assistance in determining whether the two percent or the three percent rate should prevail.

However, as you have noted, the teacher's contribution is three percent but not to exceed \$225.00 per year. It appears logical that the legislature would have intended the salary bases against which the percentages were to be applied to be the same. In this instance the maximum salary upon which the teacher would be required to pay an assessment would be \$7,500.00 (\$225.00 divided by three percent). The employers (school districts, institutions, etc.) are limited to a maximum payment of \$150.00 and it would appear that the two percent rate is the one intended by the legislature since \$150.00 divided by two percent also equals \$7,500.00. If the three percent rate is used, it would mean the school districts would be paying a higher rate on a lower salary base, i.e., \$5,000.00 (\$150.00 divided by three percent).

Ordinarily this method of determining legislative intent would be given little consideration. However, in view of the fact the statutes, as amended, are directly conflicting and in view of the fact the legislative intent is impossible to determine from the legislative history, we believe the above method of determining legislative intent is proper in this instance.

It is our opinion that two percent is the proper rate for the employer's share of contribution to the Teachers' Insurance and Retirement Fund.

HELGI JOHANNESON

Attorney General