

Date Issued: May 13, 1981 (AGO 81-44)

Requested by: Scott Engmann, Executive Secretary
North Dakota Teachers' Fund for Retirement

- QUESTION PRESENTED -

Whether a teacher who was vested in the North Dakota Teachers' Insurance and Retirement Fund (TIRF), Chapter 15-39 of the North Dakota Century Code, and who permanently ceased teaching prior to July 1, 1971, but was not eligible because of age for TIRF benefits until after July 1, 1975, is entitled to elect to qualify for benefits under the Teachers' Fund for Retirement (TFFR), as provided for in Section 15-39.2-01, N.D.C.C.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a teacher who was vested in the North Dakota Teachers' Insurance and Retirement Fund (TIRF), Chapter 15-39, N.D.C.C., and who permanently ceased teaching prior to July 1, 1971, but was not eligible because of age for TIRF benefits until after July 1, 1975, is entitled to elect to qualify for benefits under the Teachers' Fund for Retirement (TFFR), as provided for in Section 15-39.2-01, N.D.C.C.

- ANALYSIS -

Section 15-39.2-01, N.D.C.C., provides in pertinent part:

15-39.2-01. RETIRED TEACHERS - ELECTION OF COVERAGE - ELIGIBILITY - LIMITATION. Notwithstanding the provisions of chapter 15-39.1, any person who retired from teaching under the teachers' insurance and retirement fund prior to July 1, 1971, who had ten or more years of teaching credit under that program shall be entitled to elect to qualify for benefits under the teachers' fund for retirement by complying with the provisions of this chapter. . . .

This section allows a teacher who retires before July 1, 1971, with ten years of teaching credit under the Teachers' Insurance and Retirement Fund (TIRF), Chapter 15-39, N.D.C.C., to elect to qualify for benefits under the Teachers' Fund for Retirement (TFFR), Chapter 15-39.1, 8

Section 15-39-27(1), N.D.C.C., states that a teacher may retire before the age of 55. This subsection provides, in part:

1. . . .If a teacher shall retire before attaining the age of fifty-five years, eligibility for the retirement annuity.

Thus, a teacher is regarded as "retired" in this subsection even though he is not eligible to receive a retirement annuity.

The Supreme Court of North Dakota has held that the date a teacher ceases to teach fixes the time of retirement and not the date of the application for retirement benefits. In Payne v. Board of Trustees, 35 N.W.2d. 553 (N.D. 1949), the Court determined that ". . .the time of retirement . . . is left optional with the teacher and follows automatically when he ceases to teach. . . . by ceasing to teach he retired." 35 N.W.2d. 553, 558.

Teachers with vested rights under TIRF are teachers who had twenty-five years of service; teachers who had fifteen years of service and are disabled; and, teachers who had ten years of service, and wished to exercise their ten year option. Section 15-39-27(1), (2), and (3), N.D.C.C.

- EFFECT -

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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